



Disciplinary Policy and Procedures

DISCIPLINARY POLICY AND PROCEDURES

1 INTRODUCTION

- 1.1 The purpose of this procedure is to ensure that all issues relating to conduct or capability of staff at work are dealt with sensitively and equitably. This procedure applies to all staff, excluding the Principal, and is designed to be corrective rather than punitive. It is also consistent with the ACAS Code of Practice on Disciplinary and Grievance.
- 1.2 These procedures should be read in conjunction with the Disciplinary Code attached in Appendix 1. The procedure for disciplinary matters relating to the post of Principal are attached in Appendix 2.
- 1.3 Informal mechanisms for helping a member of staff to improve their performance, attendance or conduct should have been exhausted before formal procedures are used. In this respect the College accepts that supervisors play an important role in the day-to-day management of employees and should seek to deal with minor lapses in conduct or performance through informal counselling in the first instance.

2 CONDUCT AND CAPABILITY

- 2.1 Conduct relates to the behaviour of an individual. In the terms of the disciplinary procedure a member of staff, for example, may behave in a way which is inappropriate even though their work performance and attendance is otherwise satisfactory.
- 2.2 Capability is about an individual's ability to do his/her job. This procedure would be used where the quality or quantity of work is persistently unsatisfactory, or where the ability to do a job is affected by unacceptable levels of absence (including sickness).

3 KEY PRINCIPLES

3.1 The application of these procedures relies on these key principles:

- Procedures are applied as quickly as possible after a thorough investigation of the facts.
- The member of staff will be informed in writing about the nature of the conduct or capability issue in accordance with the relevant stage of the procedure before any investigatory meetings or disciplinary hearings take place.
- The member of staff will be advised of the manager who will conduct the hearing, who else will be present at the hearing and be given a copy of the disciplinary procedures, before the hearing takes place.
- The member of staff will have the right to state their case and/or submit written statements at any stage before decisions are taken.
- The member of staff has a statutory right to be accompanied by an appropriate work colleague or a representative of a Trade Union at investigation meetings or formal hearings. The manager may also be accompanied by another manager or a Member of the Board of Directors.
- The member of staff will be informed in writing of the reasons for any disciplinary action to be taken, and will be advised of his/her right to appeal. There is a right of appeal at all stages
- A record of investigation meetings and disciplinary decisions will be copied to both the member of staff and the manager involved
- The manager making the disciplinary decision will not be involved in deciding appeals against that decision
- The College and the individual may take legal advice but may not be accompanied or represented by legal advisers at any stage.

4 INFORMAL COUNSELLING AND SUPPORT

4.1 Every effort should be made to support a member of staff to improve their performance, attendance or conduct before using the formal disciplinary procedure.

- 4.2 Informal counselling should be a one-to-one discussion between an employee and his/her supervisor/manager. During the discussion the supervisor/manager should explain the required standards, the manner in which the employee has failed to meet those standards and the possible reason for the failure, including the identification of any underlying problem within or out with the workplace.
- 4.3 The supervisor/manager should indicate clearly to the employee the improvement required and should consider taking other action that might assist the member of staff to achieve this improvement e.g. closer supervision, additional training etc.
- 4.4 It should also be made clear how the member of staff's progress is to be monitored and when the position will be reviewed.
- 4.5 Informal counselling does not form part of the formal disciplinary procedure and therefore no formal warning can be given. No record of the counselling interview will be kept of the employee's personal file. The supervisor/manager shall however make a personal record showing the date of and the reasons for the counselling interview and shall inform the employee accordingly. The record will normally be destroyed at the end of a satisfactory review period
- 4.6 Where counselling does not result in the required improvement or where the alleged failure to meet the required standards is considered to be of a more serious nature the formal procedure should be followed.

5 DISCIPLINARY GENERAL

- 5.1 Whenever formal disciplinary action is being contemplated the points of procedure set down in paragraphs 4.2 - 4.5 will be adhered to.
- 5.2 Investigation
 - 5.2.1 A disciplinary hearing will not be convened until the circumstances of the case have been fully investigated
 - 5.2.2 Management may suspend an employee on full pay where it is considered necessary to enable a full investigation to take place.

5.2.3 The person conducting the investigation will seek to establish the facts by carrying out investigatory interviews with relevant people and where possible will obtain written, signed statements from witnesses who will be advised that they may be requested to appear at any subsequent disciplinary hearing. Although there is no automatic right to be accompanied at investigatory interviews, such a request from the employee who is the subject of the investigation should be agreed. Where it is considered appropriate, due to the nature of the investigation, management may also agree to requests from witnesses in the investigatory process to be accompanied.

5.2.4 If following investigations, a disciplinary hearing is deemed to be unjustified the employee will be informed accordingly and in these circumstances no document relating to the investigation shall be placed on the employee's personal file. The documents will be held in a separate, secure and confidential location to ensure that the College can meet all its future responsibilities and obligations. Only in exceptional circumstances will these documents be further referred to for employment purposes concerning the employee.

5.2.5 Where the investigation concerns matters relating to the safety and well being of young and/or vulnerable people the documents shall be available for inspection by the employee and the employee may add a personal note to the record. If there is a further disciplinary investigation relating to the employee, the documents will be examined and, where considered relevant, may be taken into account. Where a previous allegation is taken into account in any disciplinary decision, the written notification will indicate this fact and the reasons for doing this.

5.3 Convening a Disciplinary Hearing

5.3.1 If, following investigations, a disciplinary hearing is deemed necessary, the employee concerned will be given at least seven days notice in writing of the hearing. The letter will also contain

- the fact that it will be a formal disciplinary hearing
- the nature of the complaint together with the relevant supporting documentation

- the names of any witnesses who will present evidence at the hearing and copies of their written statements. Copies of written statements made by individuals who are not available to give evidence in person at the disciplinary hearing will also be enclosed
- the right to call witnesses or submit statements or other documentation subject to the names of any such witnesses and/or any written submissions being provided in advance to the person conducting the hearing and
- the fact that they have the right to be accompanied at the hearing by a trade union official or some other person of their choice.

5.4 Conducting a Disciplinary Hearing

- 5.4.1 As far as possible, the person who conducted the investigation will not conduct the disciplinary hearing nor will he/she take part in the decision making process. It is recognised that there are some circumstances when it is unrealistic and/or inappropriate to separate the two roles by virtue of the line manager's supervisory responsibilities. These will be in instances of minor disciplinary matters.
- 5.4.2 The person conducting the hearing will ensure that the facts gathered during the investigation are presented to the employee. These facts may be presented by the person who conducted the investigation and who will remain in attendance until the presentation is complete. The person conducting the hearing may be accompanied by an advisor.
- 5.4.3 Witnesses, if any, shall be called to give their evidence and, after questioning by both parties, will withdraw but will be subject to recall.
- 5.4.4 The employee, accompanied by a representative, if any, will be given adequate opportunity to put forward an explanation or defence.
- 5.4.5 The person conducting the hearing, assisted by any advisory staff, will consider all the evidence presented with a view to arriving at a

decision which is reasonable, taking account of all the circumstances.

6 STAGES OF THE DISCIPLINARY PROCEDURE

- 6.1 Hearings to do with poor performance, poor attendance and minor misconduct will be conducted in accordance with section 7. Definitions of what constitutes minor, serious and gross misconduct are set out in the Disciplinary Code (Appendix 1)
- 6.2 Hearings to deal with serious or gross misconduct will be conducted in accordance with section 8.

7 DEALING WITH CASES OF POOR PERFORMANCE, POOR ATTENDANCE AND MINOR MISCONDUCT

7.1 STAGE 1 Verbal warning

- 7.1.1 The first stage is a hearing to investigate the areas of concern and decide whether a verbal warning should be given. The employee will be informed that this constitutes the first stage of the formal disciplinary procedure. These hearings will be conducted by the immediate line manager of the member of staff concerned.
- 7.1.2 The line manager will make a written record of the warning. The outcome will be put in writing to the individual within seven working days. It will also be copied for the employee's personal file. If the decision is to issue a verbal warning the member of staff should be advised in writing of
- the day from which the warning will normally be disregarded for disciplinary purposes
 - the right of appeal
- 7.1.3 The verbal warning will normally remain in force for 6 months during which time the performance, attendance, or conduct of the individual should improve to a fully satisfactory standard. Managers are required to give regular feedback and ongoing support during this period. The emphasis is on helping to correct weaknesses rather than penalising staff

7.1.4 Where there is insufficient or no improvement in performance, attendance or conduct during this period, this will be dealt with at Stage 2 of the procedures. In case of poor attendance, the level of attendance expected in the future should be made when the warning is given.

7.2 Stage 2 Written Warnings

7.2.1 The second stage is a hearing to investigate the areas of concern and decide whether a written warning should be given. Hearings which could lead to a written warning should be heard by the immediate line manager. The outcome should be put in writing within seven working days and should be copied and placed on the employee's individual file.

7.2.2 A written warning may be issued:

- Where an employee who has been issued with a verbal warning fails to achieve and maintain the required improvement in conduct or performance or where a further act or omission warranting disciplinary action occurs, or
- Where the misconduct or failure in performance is considered to be sufficiently serious to warrant this form of disciplinary action

7.2.3 A letter of formal warning will be issued to the employee in the name of the line manager who conducted the hearing and will state:

- that a formal written warning is being given
- the nature of the unsatisfactory matters dealt with at the hearing
- the date of any previous verbal warning where appropriate
- the action required of the employee to remedy the matter
- that subsequent failure in conduct or performance will result in a more serious disciplinary action
- that a copy of the warning letter will be placed on the employees personal file
- the date from which the warning will normally be disregarded for disciplinary purposes
- the date from which the warning will be expunged if no further disciplinary action is taken

- the employee's right of appeal
- that any appeal must be made in writing within 5 working days
- that all appeals must indicate the grounds of appeal

7.2.4 A first written warning will normally remain in force for 12 months at work during which time the performance, attendance or conduct of the individual should improve to a satisfactory standard. Managers are required to give regular feedback and ongoing support during this period. The emphasis is on helping to improve performance or conduct rather than penalising staff.

7.2.5 Where there is insufficient or no improvement in performance, attendance or conduct during this period this will be dealt with at Stage 3 of this procedure. In cases of poor attendance, the level of attendance expected in the future should be made clear when the warning is given. If this level is not achieved at any time whilst the warning is in force, the member of staff will be referred to the Occupational Health Provider. Depending on the outcome of this referral, the line manager will decide whether to move to Stage 3.

7.3 Stage 3 Final Written Warning

7.3.1. The third stage is a hearing to investigate the areas of concern and decide whether a final written warning should be given. Hearings which could lead to a Final Written Warning should be taken by the manager above the immediate line manager. The outcome should be put in writing to the employee and other parties to the hearing within seven working days. It should also be copied and placed on the individual's file. If the decision is to issue a Final Written Warning the employee should be advised in writing of their right of appeal.

7.3.2 A final written warning may be issued when

- an employee who has been issued with a written warning fails to achieve and maintain the required improvement in conduct or performance or where a further act or omission warranting disciplinary actions occurs; or
- if the further act is of a serious nature this should be dealt with as described in section 8.

7.3.3 The letter of final warning will be issued to the employee in the name of the line manager who conducted the hearing and will state

- that a final written warning is being given
- the nature of the unsatisfactory matters dealt with at the hearing
- the date of the previous written warning
- the action required of the employee to remedy the matter
- the subsequent failure in conduct or performance may result in dismissal
- that a copy of the warning letter will be placed in the employees personal file
- the date from which the warning will normally be disregarded for disciplinary purposes
- the date from which the warning will be erased if no further disciplinary action is taken
- the employees right of appeal
- that any appeal must be made in writing within 5 working days
- that all appeals must indicate the grounds of appeal

7.3.4 A Final Written warning will remain in force for 2 years during which time the performance, attendance or conduct of the individual should improve to a fully satisfactory standard. Managers are required to give regular feedback and ongoing support during this period. The emphasis is on helping to improve performance or conduct rather than penalising staff.

7.3.5 Where there is insufficient or no improvement in performance, attendance or conduct during this period, dismissal will have to be considered. The decision on further disciplinary action, including dismissal, will be taken by the Principal and the Chair of the Board of Directors or delegated representative. There will be no further right to a hearing but the individual may appeal against the decision (see section 11).

7.3.6 In cases of poor attendance, the level of attendance expected in future should be made clear when the warning is given. If this level is not achieved at any time whilst the warning is in force advice will be taken about available options. Dismissal for unsatisfactory attendance due to sickness is unlikely to be decided without a recent referral to the Occupational Health Provider.

8 DEALING WITH CASES OF SERIOUS OR GROSS MISCONDUCT.

- 8.1 Guidance on what constitutes serious and gross misconduct is outlined in the Disciplinary Code (Appendix 1). The major difference between the two types is that gross misconduct can lead to summary dismissal without notice. For the purpose of this procedure gross misconduct is behaviour of such a nature that the College is unable to tolerate the continued employment of the individual concerned.
- 8.2 Where gross or serious misconduct is alleged, the Principal or another senior nominated manager, in consultation with the Chair of the Board of Directors may suspend the employee on full pay:
- pending further investigations into the circumstances of the case, and/or
 - when it is considered undesirable for the employee to remain at work prior to the disciplinary hearing

Written confirmation of the suspension will be forwarded to the employee by recorded delivery within three working days and will state the reasons for the suspension. Suspension in these circumstances will not be regarded as a form of disciplinary action. Where the investigation is not concluded within one month of the suspension being enacted, the suspension should be reviewed at that time and at monthly intervals thereafter. The employee will be notified of the review outcome.

- 8.3 An employee suspended in the circumstances described in paragraph 7.2 will receive full pay during the period of suspension. For this purpose full pay will consist of the normal salary or wage, including all contractual payments and entitlements.
- 8.4 The Principal or nominated senior manager may then instigate a formal investigation. The member of staff alleged to have committed the offence must be told in writing that an investigation is to begin, with a broad indication of timescales.

- 8.5 The investigation will be undertaken by two managers, one of whom should be outside the member of staff's management chain. In cases of alleged fraud or financial irregularity, advice should be taken from the appropriate College financial auditor or advisor and Board of Directors.
- 8.6 The remit of the investigating committee is to establish facts and collect as much relevant information as possible. They can interview anyone they believe relevant to the allegations. They should not form a judgement on whether a disciplinary hearing is appropriate but they should try to reach conclusions about whether or not, on the balance of probability, the alleged offence took place.
- 8.7 At the end of the investigation the investigating committee should send the report with its reasons and conclusions about the alleged offence, plus witness statements to the Principal. The person alleged to have committed the offence, plus their trade union representative or work colleague will **not** receive a copy of the report (including witness statements) unless the Principal decides that a disciplinary hearing is appropriate. The Principal will convey her decision in writing to the investigating committee.
- 8.8 In exceptional circumstances the Principal can reconvene the investigating committee if more information is required before a decision is made. When a decision whether to proceed with a disciplinary hearing is made this will be conveyed in writing to the member of staff under investigation.
- 8.9 Disciplinary hearings for serious and gross misconduct will be held before a Disciplinary Panel composed of three members drawn from the Senior Management Team and the Board of Directors. Employees should be informed that they may be accompanied by a trade union representative or colleague.

9 DISCIPLINARY PENALTIES

- 9.1 Disciplinary penalties may be imposed where:
- following a final warning the employee fails to achieve and maintain the required improvement in conduct or performance

- A failure in conduct occurs of a sufficiently serious nature to justify such disciplinary action without prior warning. This will normally be considered as serious or gross misconduct.

9.2 Disciplinary penalty refers to any of the following:

- A final warning will remain in force for two years. This must be notified to the member of staff at the time the warning is issued
- The withholding of an annual increment in conjunction with a final written warning
- Suspension without pay for a period not normally exceeding three working days, in conjunction with a final written warning. In exceptional circumstances a longer period of suspension without pay may be applied.
- Demotion or transfer to another job or place of work, with an immediate reduction of salary in conjunction with a final written warning
- Dismissal with due notice; or
- Dismissal without notice, only in cases of gross misconduct

For gross misconduct the penalty will normally be immediate dismissal, even for a first offence.

9.3 Once a disciplinary hearing has taken place the Disciplinary Panel will have to decide whether, on the balance of probabilities, the offence took place and what the appropriate penalty should be. The panel should take advice from the advisor to the panel to ensure that the penalty is both appropriate and consistent.

9.4 Where disciplinary penalties are applied, the decision will be notified or confirmed in writing in the name of the Senior Manager who conducted the disciplinary hearing and the letter will:

- refer to previous warnings, if appropriate
- state clearly the disciplinary penalty applied and the effective date
- specify the reasons for this action

- refer to the employee's right of appeal and indicate the date by which notice of appeal should be received
- where appropriate, refer to the employee's right to submit a claim of unfair dismissal to an employment tribunal and indicate the time limit for submission of such a claim

10 CRIMINAL OFFENCES

- 10.1 If a member of staff is convicted of a criminal offence of any type they must let their line manager know immediately. Failure to do so will be a disciplinary offence in itself.
- 10.2 An employee will not be disciplined solely because of being charged or convicted of a criminal offence. In all such cases consideration will be given to whether the alleged or proven offence is of a serious nature and the relevance of the offence to making the employee unsuitable for their work in the College.
- 10.3 In all cases where disciplinary action is being contemplated the matter will be investigated by nominated managers as thoroughly as the circumstances permit.
- 10.4 In cases of suspected irregularities relating to the finances of the College or to any funds managed by the College, the Principal and the Chair of the Board of Directors will be informed and, if appropriate, an audit investigation will be carried out. The senior manager will consult the Principal before making any decision to suspend the employee on full pay.
- 10.5 Following investigations, the senior manager may determine that the available evidence is sufficient to justify holding a disciplinary hearing prior to the outcome of any criminal proceedings.
- 10.6 Where investigations relating to a criminal offence reveal insufficient information to justify holding a disciplinary hearing, consideration of the case will be deferred until further information is available. In these circumstances the employee may be suspended on full pay until further notice.

11 APPEALS

- 11.1 Any appeal against oral or written warnings must be made in writing, indicating the grounds of appeal within five working days of the employee receiving confirmation of the warning.
- 11.2 Appeals against warnings should be heard as soon as possible and normally within ten working days of receipt of the written notice of appeal.
- 11.3 Appeals against warnings should be heard by a nominated member of management more senior than the line manager who issued the original warning. The employee should be given at least seven calendar days notice in writing of the appeal hearing and shall be informed of the right to be accompanied by a person of their choice.
- 11.4 The manager conducting the hearing will carry out a full review of the facts and may confirm, amend or withdraw the disciplinary action but may not substitute disciplinary action of a more serious nature than that originally imposed.
- 11.5 The employee should, if possible, be informed of the decision at the end of the appeal hearing and will, in any case, be informed in writing within seven calendar days. There will be no further right of appeal.
- 11.6 Appeals against disciplinary action or dismissal must be made in writing, stating the grounds for appeal. This should be submitted to the Chair of the Board within fourteen calendar days of the employee receiving written notification of the disciplinary action or the effective date of dismissal.
- 11.7 Appeals against disciplinary action or dismissal will normally be heard within twenty eight calendar days of receipt of the letter of appeal, or as soon as possible thereafter. The Chair of the Board, or a delegated representative, will convene a panel comprising three members from the Board of Directors including the Chair of the Planning and Resource Committee.

11.8 The decision of the panel will be conveyed in writing within ten working days and if it is not possible to respond within ten days, the employee will be given an explanation for the delay, in writing, and told when a response can be expected. There will be no further right of appeal.

12 RECORDS AND EXPIRY OF WARNINGS

12.1 Warnings and other disciplinary actions short of dismissal will normally be disregarded for disciplinary purposes after a period of satisfactory employment. The relevant periods are as follows:

- Verbal warnings - to be disregarded after six months.
- Written warnings - to be disregarded after twelve months.
- Final written warnings - to be disregarded after twenty four months.
- Disciplinary penalty short of dismissal in conjunction with a final warning - to be disregarded after thirty six months

12.2 All written reference to a formal warning on an employee's personal file shall be erased after the following periods:

- Verbal warnings - to be erased after twelve months
- Written warnings - to be erased after eighteen months
- Final written warnings - to be erased after thirty months
- Disciplinary penalty short of dismissal in conjunction with a final warning - will not be erased

12.3 A warning will not be erased however, if further disciplinary action is taken against an employee before the date the warning is due to be erased. In these circumstances the warning will remain on the employee's record for a further period commencing from the date the further disciplinary action was taken.

12.4 The provisions of the above paragraphs will not apply to a warning where both Manager and Personnel Adviser agree that because of the nature of the post and the sensitivity of the misconduct the warning should be available for future consideration. This decision should be notified to the employee at the time the warning is issued. The employee shall have a separate right of appeal against the issue of warnings.

- 12.5 The removal of all written reference to formal warnings on an employee's personal file will not prevent the College from retaining, in a separate, secure and confidential location, such information as is deemed necessary to ensure that the College can meet all its future responsibilities and obligations. Only in exceptional circumstances will these documents be further referred to for employment purposes concerning the employee.

13 OTHER MATTERS

- 13.1 Sometimes a member of staff or representative may raise questions during the course of a procedure about the way it is being applied. Where this happens the member of staff may use their statutory right to postpone the hearing for five days whilst these issues are addressed.
- 13.2 There may be rare occasions where the member of staff considers that the behaviour of a manager applying the procedure is wholly inappropriate and warrants a formal grievance. In these exceptional circumstances, it may be appropriate to suspend the disciplinary process for a short period until the grievance can be considered. Consideration may also be given to bringing in another line manager to deal with the disciplinary case. Any decision to suspend the disciplinary procedure must be taken by the Principal.

14 MONITORING AND REVIEW

The policy, including Appendix I and II will be reviewed in 3 years or whenever changes affect it.

APPENDIX 1

DISCIPLINARY CODE

1 INTRODUCTION

- 1.1 The College believes that discipline is essential for the conduct of the College's affairs and for the safety and well being of all its employees. The College also believes that all issues relating to the conduct and capability of staff at work should be dealt with equitably and sensitively.
- 1.2 In recognition of its responsibility as an employer to determine the standards of conduct and capability required by its employees, the College has drawn up a disciplinary code which details the types of misconduct which are considered to be in breach of College rules and will normally result in disciplinary action.
- 1.3 The College will take all reasonable steps to inform employees of the standards of conduct and capability expected of them. In turn all employees should familiarise themselves with the rules governing their employment as contained in;
 - their letter of appointment
 - the Statement of Particulars issued to employees in accordance with the requirements of the Employment Protection (Consolidation) Act 1978 and subsequent amendments and the Trade Union Reform and Employment Rights Act 1993
 - any scheme of Conditions of Service as adopted by the College
- 1.4 The College recognises that rules should be enforced in a fair and consistent manner. It is essential however, that each case is treated on its merits and that disciplinary decisions are taken which are reasonable in all circumstances. In this regard it is the intention of the College that in applying the guidance contained in this Disciplinary Code, due consideration will be given to an employee's general work record, length of service, personal and domestic circumstances .

2 GROSS MISCONDUCT

2.1 The Disciplinary procedure defines *Gross Misconduct* as behaviour of such a nature that the College is unable to tolerate the continued employment of the individual concerned.

2.2 The following list is neither exhaustive nor exclusive but is indicative of the types of misconduct that will normally result in dismissal.

- Dishonesty, theft or fraud involving College property or unauthorised possession of property belonging to other members of staff
- Theft of property not belonging to the College whilst engaged, or purporting to be engaged on College business
- Wilful damage to, or misuse of College property or resources
- Insubordination or the discharge of activity likely to seriously undermine the efficiency and integrity of the College
- Falsification of documents including expenses claims or other official documents
- Illegal use of, or copying of IT equipment or software (including viewing , copying or sending pornographic material or violent images from the internet)
- Physical or indecent assault or threatening behaviour towards any person whilst engaged or purporting to be engaged on College business
- Fighting
- Incapable of performing normal duties through the consumption of alcohol or illegal drugs
- Negligence or recklessness which endangers the health and safety of other staff, students or others, or causes (or might cause) loss, damage or injury.

- Conviction for a criminal offence which makes the employee unsuitable for their job
- Racial or sexual harassment or bullying
- Wilful provision of false or misleading information, or wilful non disclosure of information , either during the recruitment process or in subsequent employment, which materially affects the contract of employment
- Misuse of the College's property or name
- Discriminatory acts or omissions contrary to College Policy involving;
 - the selection or non selection of any person for a post within the College
 - the provision or non-provision of any rights or benefits to any person employed by, or having contact with the College; or
 - other forms of less favourable treatment, including any form of harassment, victimisation or intimidation

3 OTHER TYPES OF MISCONDUCT

- 3.1 There are other types of misconduct which will normally result in disciplinary action short of dismissal being taken in the first instance. This disciplinary action may take the form of a verbal warning, a written warning, a final warning, the withholding of an annual increment, suspension from duty without pay, or demotion and / or transfer to another post. The action taken in any particular case will depend on whether the misconduct is serious or minor it will also depend on the employee's previous record and any other relevant factors.
- 3.3 The following lists are neither exclusive nor exhaustive but are examples of serious and minor misconduct.

3.4 Minor Misconduct may include:

- poor timekeeping
- discourtesy or rudeness to colleagues, customers, students or visitors
- abuse of flexi-time (where the abuse is significant it can be treated as serious or gross misconduct as it may constitute fraudulent behaviour)
- improper use of telephone or email
- improper use of IT equipment

3.5 Examples of serious misconduct may include:

- a failure to respond to repeated warnings for minor misconduct
- unauthorised absence from duty
- refusal to comply with reasonable management instructions or fulfil the contractual obligations of the post
- acceptance of gifts from contractors or others who have been awarded work in the College
- carelessness or negligence in carrying out the duties and responsibilities of the post
- inappropriate behaviour towards staff or students
- sexual or racial harassment
- bullying
- failure to comply with College rules, policies or procedures
- being under the influence of alcohol or drugs whilst at work or on College premises
- unauthorised use of College property
- breaches of safety rules
- persistent bad timekeeping
- persistent and unrelated short-term sickness absences
- unauthorised disclosure of personal information in breach of College policy and/or data protection legislation

APPENDIX 2

STAGES OF THE DISCIPLINARY PROCEDURE FOR THE POST OF PRINCIPAL

1 DEALING WITH CASES OF POOR PERFORMANCE, POOR ATTENDANCE AND MINOR MISCONDUCT

Hearings to do with poor performance, poor attendance and minor misconduct will be conducted using the same procedures as for other staff. The difference however will be that the Chair of the Board of Directors, or, if more appropriate the Chair of another sub committee to the Board will administer the formal procedures. Refer to Section 7 for the procedures which should be followed i.e.

- Informal Counselling and support
- Verbal warning
- First written warning
- Second written warning
- Final written warning

Definitions of what constitutes minor, serious and gross misconduct are set out in the Disciplinary Code (Appendix 1)

The procedures for administering disciplinary penalties, the recording and expiry of warnings and appeals will be the same as the College Disciplinary procedures.

2 DEALING WITH CASES OF SERIOUS OR GROSS MISCONDUCT

Hearings to deal with serious or gross misconduct will be conducted in accordance with the principles and processes outlined in section 8 in the College Disciplinary Procedures and the Code of Conduct.

Guidance on what constitutes serious and gross misconduct is outlined in the Disciplinary Code (Appendix 1). The major difference between the two types is that gross misconduct can lead to summary dismissal without notice. For the purpose of this procedure gross misconduct is behaviour of such a nature that the

College is unable to tolerate continued employment of the individual concerned.

- 2.1 Where gross or serious misconduct is alleged, the Board of Directors may suspend the Principal on full pay:
- pending further investigations into the circumstances of the case, and/or
 - when it is considered undesirable for the employee to remain at work prior to the disciplinary hearing

Written confirmation of the suspension will be forwarded to the Principal by recorded delivery within three working days and will state the reasons for the suspension. Suspension in these circumstances will not be regarded as a form of disciplinary action. Where the investigation is not concluded within one month of the suspension being enacted, the suspension should be reviewed at that time and at monthly intervals thereafter. The Principal will be notified of the review outcome.

- 2.2 Full pay during the period of suspension will be awarded. For this purpose full pay will consist of the normal salary or wage, including all contractual payments and entitlements.
- 2.3 The Chair of the Board of Directors or his nominated representative may then instigate a formal investigation. The Principal must be told in writing that an investigation is to begin, with a broad indication of timescales.
- 2.4 The investigation will be undertaken by delegated representatives of the Chair of the Planning and Resource Committee, the Chair of the Audit Committee and the Chair of the Learning and Teaching Committee. In cases of alleged fraud or financial irregularity, advice should be taken from the appropriate College financial auditor or advisor.
- 2.5 The remit of the investigating committee is to establish facts and collect as much relevant information as possible. The committee can interview anyone they believe relevant to the allegations. They should not form a judgement on whether a disciplinary hearing is appropriate but they should try to reach conclusions about whether

or not, on the balance of probability, the alleged offence took place.

- 2.6 At the end of the investigation the investigating committee should send the report with its reasons and conclusions about the alleged offence, plus witness statements to the Chair of the Board. The Principal plus a trade union representative or work colleague will **not** receive a copy of the report (including witness statements) unless the Chair of the Board decides that a disciplinary hearing is appropriate. The Chair of the Board will convey their decision in writing to the investigating committee.
- 2.7 In exceptional circumstances the Chair of the Board can reconvene the investigating committee if more information is to be collected before making a decision. The Chair of the Board should then decide whether to proceed with a disciplinary hearing. The decision should then be conveyed in writing to the Principal.
- 2.8 The disciplinary hearing for serious and gross misconduct will be held before a Disciplinary Panel of the Board of Directors. It will be convened by the Chair of the Board of Directors and comprise the Chair of the Planning and Resource Committee and the Chair of the Learning and Teaching Committee and the Chair of the Audit Committee or their delegated representatives.

3 APPEALS

- 3.1 Appeals against the decisions for poor performance, attendance or minor misconduct will be the same as in the College Disciplinary procedures.
- 3.2 Appeals against punitive disciplinary action or dismissal must be made in writing, stating the grounds for appeal. This should be submitted to the Chair of the Board within fourteen calendar days of receiving written notification of the disciplinary action or the effective date of dismissal.
- 3.3 Appeals against punitive disciplinary action or dismissal will normally be heard within twenty eight calendar days of receipt of the letter of appeal, or as soon as possible thereafter. The Chair

of the Board, or his delegated representative, will convene a panel comprising three members from the Board of Directors.

- 3.4 The decision of the panel will be conveyed in writing within ten working days and if it is not possible to respond within ten days, an explanation for the delay together with when a response can be expected will be given in writing. There will be no further right of appeal.

Newbattle Abbey College	POLICY/PROCEDURE
Title: Disciplinary	File ref: Employment
Prepared by: M Teale	No of pages: 25
Approved by: Board	Revision date: 2011
Date approved: Jan 04	Date last modified: May 08 JR/NF