

## DISCIPLINARY POLICY AND PROCEDURE

### Policy Statement

This policy has been developed with reference to the ACAS Code of Practice on Disciplinary and Grievance Matters (2015) and the ACAS guide on Discipline and Grievance at work (2020).

This procedure applies to all contracted non-academic employees who have successfully completed their probationary period, regardless of whether their contract is temporary or permanent. It will apply in the event that an employee's conduct falls below expected standards. Matters relating to conduct may also be managed under this policy if there is evidence of deliberate poor performance. Issues that arise during a probation period will be managed as part of the probation review process.

This policy is not contractual and may be reviewed and altered, in consultation the HR Committee and other appropriate staff groups.

This policy aims to:

- Provide guidance on what might constitute poor conduct; and
- Outline the process by which such matters will be addressed.

All employees subject to disciplinary action whether it be informal or formal, must treat as confidential, any information communicated to them in connection with an investigation or disciplinary matter. This also extends to any other individual involved in the process e.g. witnesses.

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### **Examples of poor conduct**

The below lists are not intended to be exhaustive and other matters similar in nature may be categorised as either Misconduct or Gross Misconduct, as deemed appropriate.

In most cases, Misconduct is likely to result in informal or formal action. Formal action will normally result in a formal written warning being issued, or in the event of repeated offences, dismissal may be warranted. Further details can be found under the 'disciplinary sanctions' section.

Gross Misconduct is a serious breach of contract and includes misconduct which, in our opinion, is likely to prejudice the college and/ or our reputation, or irreparably damage the working relationship and trust between both parties. Gross misconduct will normally lead to dismissal without notice or pay in lieu of notice (summary dismissal).

#### **Misconduct:**

- Persistent lateness or absenteeism.
- Unsatisfactory standards of work or poor productivity.
- Failure to abide by the college's dress code or Health and Safety procedures or associated regulations.
- Smoking in a non-smoking area.
- Disruptive behaviour.
- Abusive language or behaviour.
- Unauthorised use of college property or negligent damage/loss of property.

#### **Gross Misconduct:**

- Dishonesty.
- Deliberate fraud / falsification of information (including time sheets, deliberate misrepresentation).
- Serious insubordination / failure to follow a reasonable management instruction.
- Serious neglect of duties resulting in a risk of harm to others or damage to college property.
- Any action likely to bring the College into disrepute.
- Violent, abusive or intimidating behaviour.
- Deliberate damage to College property.
- Sexual, racial or other forms of harassment or victimisation.
- Incapacity at work due to the use of intoxicants or drugs.
- Possession, supply or use of illicit drugs.
- Accepting a significant gift which could be construed as a bribe.
- Failure to disclose correct and accurate information on your job application form or associated documents.
- Conviction for any serious criminal offence while an employee of the College.
- Unauthorised computer use or access.
- Serious misuse of College IT facilities.
- Deliberately providing confidential information to unauthorised parties without proper consent.
- Sleeping whilst on duty.

### **Suspension or other adjustments**

If the allegations are serious and may amount to gross misconduct, suspension will be considered in order for a full investigation to take place. Suspension is a neutral act and should only be used if the following criteria is met:

- The allegation(s) are serious and may amount to gross misconduct.
- It would pose a risk to colleagues if the employee was to remain in the place of work.
- The investigation process may be compromised if the employee was to remain in the place of work.

Redeployment or revised duties may be considered as an alternative to suspension and will be instigated at the direction of a Senior College Officer.

The assessment of what course of action is appropriate, will be managed by the HR Manager and a record kept as to why suspension may or may not be necessary. If the employee is suspended, they will be informed verbally and in writing by the HoD. The employee will continue to receive full pay for any period of suspension and the arrangement will be kept under review. If, during the course of an investigation there are grounds to either suspend, redeploy or lift such measures implemented at the outset, changes will be applied as soon as practicable.

### **Disciplinary investigations**

When a disciplinary matter arises and is brought to the attention of a Head of Department (HoD), they will seek to establish the facts promptly before recollections fade and, where appropriate, they will obtain initial statements from all relevant parties. Having established the relevant facts, the HoD will decide:

- (i) There is insufficient evidence of the matter having occurred and therefore it will not be taken further.
- (ii) There is evidence that the matter occurred and it warrants informal management advice being given as it is either the first time such misconduct has fallen short of expectations or it is minor misconduct.
- (iii) There is evidence that the matter occurred or is likely to have occurred and it should be fully investigated prior to a decision being taken as to what level of sanction may be appropriate.

The HoD will discuss the matter with the HR Manager at the earliest opportunity before further action is taken. If informal management advice is deemed appropriate, the HR Manager and HoD will agree the course of action to resolve the matter.

If formal action is a likely outcome to the process, a Senior College Officer or HoD will be assigned as a Disciplinary Manager. The role of the individual will be to consider the facts, most likely in a disciplinary hearing, and to decide on a proportionate sanction.

If a further detailed investigation is required, the following process will be followed:

- An investigating officer will be assigned. The investigating officer will be neutral to the process, having had no prior involvement in the alleged matter. Line managers or HoDs may fulfil this role provided they are not then the decision maker at a disciplinary hearing.
- The employee will be notified in writing of the allegations and the need for a formal investigation. They will be invited to attend a meeting with the investigating officer, to put forward their account of the incident/issue. The employee will have the right to be accompanied to the investigation meeting either by a trade union representative or work place colleague who is not a relative.
- The investigating officer will speak with any independent witnesses or other parties involved in the incident. They should ensure all reasonable lines of enquiry are followed up.

- Upon completion of the investigation, a report will be prepared and given to the Disciplinary Manager to consider the matter.
- The Disciplinary Manager will contact the employee to inform them whether there is a case to answer and the matter will be considered further at a disciplinary hearing. Depending on the circumstances, the matter may be resolved outside of a formal hearing.

At all stages, individuals are expected to comply with reasonable requests to meet or provide information in order for the investigation to be carried out.

Reasonable notice of formal meetings associated with an investigation or a hearing will be given and individuals must make best efforts to attend.

### **Disciplinary hearing**

If the Disciplinary Manager considers that formal disciplinary action for misconduct or gross misconduct may be necessary, they will write to the employee to inform them they are required to attend a disciplinary hearing. At least 5 working days' notice will be given.

The invitation letter will include:

- The date, time and place of the disciplinary hearing.
- The allegation(s) and the possible sanction.
- The employee's right to be accompanied.
- The titles of enclosed copies of any documents to be used as evidence.
- The names of any witnesses to be called by the Disciplinary Manager.
- The employees' right to call witnesses on their behalf.
- The name and position of any others parties who will be present, e.g. HR Manager, note taker.

The employee must advise the Disciplinary Manager of the following at least 3 working days' in advance of the hearing:

- The name and position of their companion.
- Any documentation they wish to be considered that has not previously been available.
- The names of any witnesses at that they wish to call.
- Any special requirements (e.g. disability, language requirements).

### Disciplinary hearing agenda

At the disciplinary hearing, the employee (and their companion) will be given the opportunity to:

- State their case
- Question the investigating officer on matters relating to the process of the investigation and their findings, where applicable
- Call and / or question any witnesses and to raise points about any information provided by witnesses.

The investigating officer will provide a summary of the process they followed to investigate the matter, along with a summary of their findings. If they have made recommendations as part of their report (e.g. recommendations for a change in practices or training), they will be invited to expand on such matters.

Where required, either party may request an adjournment to the hearing.

### Disciplinary hearing outcome

Once all parties have had the opportunity to deliver their summaries, the Disciplinary Manager will adjourn to consider the details. Where possible, they will reconvene and confirm their decision verbally to the employee. In all cases, the outcome will be confirmed in writing to the employee as soon as possible, and usually within 5 working days of the hearing. The outcome letter will include:

- The sanction (if any) and the period this will remain current.
- The reason(s) for the decision.
- The change in behaviour required (if relevant) and the likely consequences of further misconduct.
- The right of appeal and process arrangements.

### **Disciplinary outcome: informal action**

#### **Management advice**

If this level of informal action is deemed necessary, the individual will be informed verbally of how their conduct has fallen short of expectations and how there should be no repeat of the behaviour. If support or training is required to help them achieve an acceptable level of conduct, that should be identified and the individual informed of when it should be completed by.

There is no right of appeal against an informal warning and the letter of expectation will be disregarded after 2 years from the date the decision was taken. If similar misconduct occurs during that time, the management advice may be referred to.

### **Disciplinary outcome: formal action**

#### **First Written Warning**

If, following informal management advice, there is further similar misconduct or if the issue is deemed more serious but there have been no prior conduct concerns, a written warning may be given to the employee. The written warning letter will outline:

- the issue and the level of improvement required.
- there could be further formal disciplinary action taken if there is no satisfactory improvement or if there is a repetition of misconduct.
- the right of appeal and the process.

A copy of the written warning will be held on the employee's personnel file for a period of 12 months from the date of the decision.

#### **Final Written Warning**

In the event of further misconduct, or failure to improve or to achieve satisfactory results, or in the case of misconduct, not amounting to gross misconduct but sufficiently serious to warrant only one warning (in effect, both a first and final written warning), a final written warning will normally be given to the employee. The written warning will outline:

- the issue and the level of improvement required.
- That their employment could be at risk if there is no satisfactory improvement or if there is a repetition of the misconduct.
- the right of appeal and the process.

A copy of the written warning will be held on the employee's personnel file for a period of 12 months from the date of the decision.

**Disciplinary process outcome: dismissal**

If conduct continues to be unsatisfactory or the matter is so serious it is deemed as gross misconduct, the employee will normally be dismissed. In exceptional circumstances, or if there are any genuine mitigating circumstances, alternative action may be taken e.g. redeployment.

In cases of misconduct, an employee will normally be dismissed with notice as per their contractual entitlement.

In cases of gross misconduct, an employee will normally be dismissed without notice, or pay in lieu of notice.

Payment for any outstanding leave entitlement will be made up to the date of dismissal.

**Appeals**

If an employee is dissatisfied with any formal disciplinary decision affecting them, they must submit the grounds of their appeal to the HR Manager within 5 working days' of receipt of the outcome letter. The HR Manager will arrange for a Senior College Officer, previously unconnected with the proceedings, to hear the appeal.

Appeals will not be a re-hearing of the original case but will be limited to the individual appealing the decision made by the Disciplinary Manager.

If the individual raises any new matters as part of their appeal, the college may need to carry out further investigation. If that is required, the individual will be informed and may be required to participate in a further brief investigation, prior to the appeal hearing.

If new information or documentation is obtained, it will be circulated to all parties, prior to the appeal hearing. Appeal hearings will normally take place between 2 and 5 working days' after the notice of the hearing is issued, to allow relevant parties time to prepare.

Following the appeal hearing, the Senior College Officer may:

- confirm the original decision; or
- revoke the original decision; or
- substitute a different penalty

Following the conclusion of the appeal process, there is no further recourse to have the matter considered further under this policy.

**Implementation, Monitoring and Review of this Policy and Procedure**

The HR Manager has overall responsibility for implementing and monitoring this policy.

This policy takes effect from 1 April 2021 and will be reviewed every 3 years unless changes in legislation require that to take place sooner.

Any queries or comments about this policy should be addressed to the HR Manager.