



DISCIPLINE AND
GRIEVANCE
PROCEDURE

2009

*SENIOR
POSTHOLDERS*

GRIEVANCE PROCEDURE FOR SENIOR POSTHOLDERS: GUIDANCE

1. If a Senior Postholder has a grievance relating to her/his employment she/he should discuss the matter initially with her/his line manager i.e. the Principal or the Chair or Vice Chair.
2. The line manager should reply orally to the grievance as soon as possible, and in any case within 5 working days. The Senior Postholder may, if she/he wishes, be accompanied by a trade union representative or workplace colleague when the matter is raised with the line manager and/or when the line manager replies.
- 3.1 If the complaint is not satisfactorily resolved at this stage the Senior Postholder may raise the matter in writing with the Chair or Vice Chair or, should she/he prefer, and if she/he is a member of a trade union or staff association, she/he may report the grievance to her/his trade union representative or other representative, who may then raise the matter in writing with the Chair or Vice Chair on her/his behalf.
- 3.2 If the Principal has a grievance concerning the Chair which is not satisfactorily resolved by the Vice Chair then the Vice Chair will arrange for it to be referred for consideration to an appropriate Committee of the Corporation.
4. Where the grievance concerns another person a copy of the complaint should be given to the other person concerned. Within 10 working days the person concerned should have the opportunity of submitting written observations. Unless she/he is the other person, the line manager should submit a written report to the Chair or Vice Chair together with any relevant documents.
5. Where a grievance concerns the Principal, the Senior Postholder concerned may raise the matter in writing with the Chair of the Corporation or, should she/he prefer and if she/he is a member of a trade union or staff association, she/he may report the grievance to her/his trade union representative or other representative, who may then raise the matter in writing with the Chair of the Corporation.
6. The Chair or Vice Chair should convene a meeting to consider the matter not less than 5 and not more than 10 working days after the submission of the line manager's report, or receipt of the grievance under paragraph 5. Where the grievance concerns another person both parties may, if they wish to, make submissions personally at the meeting. Where the grievance does not concern another person the Senior Postholder may, if she/he wishes, make submissions personally at the meeting. The Senior Postholder, and where the grievance concerns another person that person also, may be represented by a trade union representative or workplace colleague if they wish. Refusal of either party to attend should not invalidate the proceedings.
7. The Chair or Vice Chair should reply in writing as soon as possible and in any case within one calendar month of receiving written notification of the complaint.

Appeals

8. If the Senior Postholder is still dissatisfied she/he must be given the opportunity to appeal against the decision or lack of one. A meeting to discuss the appeal must be arranged and will be held by an Appeal Committee of the Corporation.

Post-employment Procedure

9. The above standard grievance procedure will generally apply even after the employee has left the employment of the college. However, a shorter procedure may be appropriate when an employee is no longer employed by the college and:

both parties agree in writing that it should apply; or
it is not reasonably practicable for one or other party to carry out the standard procedure. For example if one of them has left the country for an extended period or becomes seriously ill.

10. The decision of the Chair or Vice Chair in such cases is final. There is no right of appeal.

GRIEVANCE PROCEDURE: SUPPLEMENTARY NOTES FOR GUIDANCE

1. ***Paragraph 1***

If the Principal is the line manager of the other Senior Postholders then the Principal can deal with the initial stage, unless the grievance concerns the Principal, in which case paragraph 5 will apply. If the Principal has a grievance this will need to be dealt with by the Chair or Vice Chair. The Corporation may wish to consider whether the Vice Chair should deal with the initial stage so that the Chair can hold the meeting envisaged at paragraph 6.

If the grievance concerns the Chair it should in any case be referred to the Vice Chair.

2. ***Paragraphs 2 and 3***

Where practicable, the Chair or Vice Chair should attempt to resolve the grievance in discussion with the Senior Postholder and her/his representative and, if appropriate, with the other person(s) concerned and their representative(s).

3. ***Paragraph 4***

It is often helpful for the Senior Postholder to raise the grievance directly and informally with the other person concerned before submitting a formal written complaint.

Where the other person concerned submits written observations, a copy should normally be given to the Senior Postholder raising the grievance.

4. ***Paragraph 6***

Reasonable notice of the meeting to consider the grievance should be given to the parties. Where practicable, there should be 5 working days notice.

It will normally be appropriate for the grievance meeting to take the form of a hearing at which both parties hear each other's submissions and have an opportunity to respond. However, in certain cases the Chair or Vice Chair may consider that the nature of the grievance requires the submissions to be presented separately.

5. This procedure should not apply to pension, National Insurance, income tax or health and safety matters.
6. The time limits referred to in the procedure may be varied provided that all parties agree.

DISCIPLINARY PROCEDURE FOR SENIOR POSTHOLDER GUIDANCE

Introduction

This guidance takes into account the requirements of the Instrument and Articles of Government and the ACAS Code of Practice.

1. Senior Postholders are the Principal and such other senior staff so designated in accordance with the Instrument and Articles of Government. The Clerk to the Corporation, if an employee of the College, is also subject to the disciplinary procedure for Senior Postholders, whether or not the post is designated as such.

Fundamental Requirements

2. The procedure should provide a framework to ensure consistent and satisfactory conduct and work performance, and be fair in its application and outcomes. To achieve this:
 - Problems should be raised at the earliest opportunity;
 - Concerns should be investigated promptly and thoroughly;
 - Any disciplinary hearing should not be conducted by the person who has carried out the investigation;
 - Senior Postholders must be accorded their right to be accompanied and represented by a trade union representative or workplace colleague;
 - Senior Postholders must be informed in writing of the alleged misconduct or unsatisfactory performance;
 - The opportunity to respond at a disciplinary hearing must be given;
 - Except in cases of serious or gross misconduct, the opportunity must be given to improve conduct or performance;
 - There must be a right of appeal against any disciplinary penalty imposed.

Investigation

4. Where there is a suspected breach of discipline in relation to a Senior Postholder other than the Principal then the Principal may conduct an investigation. If there are concerns about the Principal's conduct the investigation may be carried out by the Chair, the Vice Chair or an appropriate external adviser, as determined by the Chair. The purpose of this investigation is to establish the facts promptly and before memories fade, taking into account statements of any relevant witnesses. The Senior Postholder should have the opportunity to comment on the matter under investigation and to be accompanied by a trade union representative or workplace colleague.

Suspension

5. At any point, i.e. prior to or during the investigation, the Chair, or in the Chair's absence the Vice Chair, should consider whether the Senior Postholder should be suspended on full pay pending further investigation for serious or gross misconduct. If the Senior Postholder is so suspended the Chair or Vice Chair should give written notification of the suspension, setting out the

grounds on which the decision to suspend has been taken and inviting that person to a meeting to discuss the issues. A Senior Postholder who has been suspended may appeal in writing against the suspension. If a Senior Postholder does so appeal the suspension shall continue pending the determination of the appeal, which shall be considered as soon as practicable.

Disciplinary Hearing

6. Where it is decided that there is a case to answer, the Senior Postholder concerned should be informed in writing giving not less than 10 working days notice that she/he is being called to answer allegations (which will be specified in the letter) at a disciplinary hearing. Any documentary evidence to be considered in connection with the allegations should be circulated as soon as possible and at the latest 5 working days in advance of the hearing to both parties. She/he will also be informed of her/his right to be accompanied by a trade union representative or workplace colleague during the disciplinary hearing, and of the right to present her/his case, call relevant witnesses and give evidence.
7. The disciplinary hearing will normally be conducted by the Chair or Vice Chair, provided that neither has carried out the investigation, accompanied by at least one other governor/or a professional adviser. The decision on the outcome of the disciplinary hearing will be that of the Chair or Vice Chair.

Disciplinary Action

8. Where the case is upheld an oral warning may be issued for a minor offence and a note of this should be kept on file.
9. If the issue is more serious or a further offence occurs there could be a written warning (or even a final written warning) setting out the nature of the offence, the improvement required, the timescale allowed for this and the likely consequences of further offences. Details of such disciplinary action should be given in writing within 5 working days to the Senior Postholder and if desired to her/his trade union representative or workplace colleague. At the same time the employee should be informed of her/his right to appeal against the disciplinary action taken (see paragraph 15).
10. Where there is a further suspected breach of discipline or there is still a failure to improve following a formal written warning, the procedure set out in paragraphs 4-9 will be repeated. (If a final written warning has been given then the procedure should move on to paragraph 12).
11. Where the case of a further breach of discipline is upheld a further formal warning or final written warning may be issued. Other possible forms of disciplinary action that may be appropriate are alteration of duties and responsibilities, suspension with pay or transfer to another post. Demotion or suspension without pay are also possibilities.

12. If conduct is still unsatisfactory and the senior Postholder still fails to reach the prescribed standards the Chair, or in the Chair's absence the Vice Chair, or a majority of governors, may consider that it could be appropriate to dismiss the Senior Postholder. In these circumstances the matter will be referred to a Special Committee of the Corporation to examine and determine the case for dismissal.
13. If the Committee's decision is the dismissal of the Senior Postholder written reasons for it, the effective date of termination and notification of the right of appeal to the Corporation must be provided. There will also be a right of appeal to the Corporation in the event that a lesser penalty is imposed.
14. If the Senior Postholder does decide to appeal to the Corporation against the notice to dismiss, then the dismissal shall not take effect until the appeal has been determined.

Appeal

15. The ACAS Code of Practice 1: Disciplinary and Grievance Procedures provides for an appeal against any formal disciplinary action which should, where practical, be to a higher authority. As formal disciplinary action short of dismissal can only be taken against Senior Postholders by the Chair or Vice Chair then the appeal must be to the Corporation (or a Committee of the Corporation) or, provided the Chair did not conduct the investigation or hearing, the Chair of the Corporation. The Senior Postholder may be accompanied by a trade union representative or workplace colleague at the appeal hearing. The appeal should be lodged in writing with the Clerk to the Corporation within 10 working days of receipt of the letter informing the Senior Postholder of the decision. The decision at appeal is final.

DISCIPLINARY PROCEDURES: GROSS MISCONDUCT

1. Gross misconduct is misconduct at work or outside work serious enough to destroy the employment contract and make any further working relationship and trust impossible.
2. Some examples of the kinds of offence likely to be treated as gross misconduct are:
 - drunkenness or disorderly conduct sufficient to have an effect on the employee's ability to carry out their duties;
 - fighting, violence towards others or destruction or damage of equipment or premises;
 - fraud or deliberate falsification of records for personal gain;
 - theft of employer's or colleagues' property;
 - gross negligence or dereliction of duties;
 - serious breaches of health and safety procedures or regulations;
 - gross insubordination;
 - serious breaches of confidence (subject to the Public Interest (Disclosure) Act 1998);
 - Discrimination, victimisation or harassment;
 - Unauthorised use, or misuse, of IT systems.

This list is not intended to be exhaustive.

3. All alleged cases of gross misconduct must be investigated without delay. The Chair, or in the Chair's absence the Vice Chair, should suspend the Senior Postholder on full pay pending further investigation. Written notification of the suspension, setting out the grounds on which the decision to suspend has been taken must be provided and the Senior Postholder must be invited to a meeting to discuss the issues. The Chair, the Vice Chair, the Principal or an appropriate external adviser, as determined by the Chair should then investigate the allegation and as part of this investigation the Senior Postholder must be given the opportunity to see any documents relevant to the investigation and to submit her/his explanations if she/he so wishes. The procedure set out in 12 – 13 will normally apply and it will only be in the most exceptional circumstances that dismissal will be effected by the Chair without a referral to the Special Committee. For gross misconduct the Senior Postholder may be dismissed without notice or pay in lieu of notice or, if appropriate, any of the forms of disciplinary action referred to under the disciplinary procedure may be taken.

Appeal

4. Where a Senior Postholder has been dismissed she/he may appeal against the dismissal to the Corporation and may be accompanied by a trade union representative or workplace colleague at the appeal hearing. The appeal should be lodged in writing with Clerk to the Corporation within 10 working days of receipt of the letter informing the senior Postholder of the decision. The decision at appeal is final.

DISCIPLINARY PROCEDURE: SUPPLEMENTARY NOTES FOR GUIDANCE

General

1. The Corporation may wish to consider how investigations are carried out bearing in mind that if the Chair or Vice Chair investigates they will not be able to be involved in the decision making. It may also be advisable (if this has not already been done) to have 3 or more governors nominated in advance to form a Special Committee should the need arise and to have approved terms of reference in place for that committee and the Appeal Committee.
2. These procedures have regard to the principles and standards set out in the most recent *ACAS Code of Practice 1: Disciplinary and Grievance Procedures* (see ACAS website at www.acas.org.uk)
3. The Chair or other governors who are required to deal with disciplinary matters relating to Senior Postholders may wish to seek professional advice before commencing any proceedings.
3. The procedures are designed to ensure that when a complaint or allegation is made against a Senior Postholder, she/he is given every opportunity to respond before it is decided whether any disciplinary action is appropriate. The procedure aims to ensure that all Senior Postholders are dealt with in a fair and equitable manner. All stages of the procedure should be carried out as promptly as possible.
4. At all stages the Senior Postholder will have the right to be accompanied by
 - Workplace colleague i.e. another of the college's employees; or
 - a full-time official employed by a trade union, or a lay trade union official who is certified in writing by their union as having experience of, or as having received training in, acting as a workers' companion at disciplinary or grievance hearings;referred to throughout as a 'work colleague or trade union representative.'
5. No Senior Postholder should be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be dismissal without notice. A written or final written warning shall normally remain in force for a period of 12 months **unless** it is decided that the nature of the offence requires a longer period. Except in agreed special circumstances, any disciplinary action taken should be disregarded after a specified period of satisfactory conduct or performance. (see *ACAS booklet "Discipline and Grievances at Work: the ACAS Guide"* at www.acas.org.uk)

Where a case is withdrawn or not upheld any reference to the alleged disciplinary offence will be expunged from the Senior Postholder's personal file except where this conflicts with Statutory Regulations.

6. Colleges are advised that no disciplinary action beyond an oral warning should be taken against an official of a recognised trade union until the circumstances of the case have been discussed with a senior trade union representative or full-time official.
7. It is important that at all stages of these procedures, detailed written records are kept. It is good practice to have agreed notes signed by all the relevant parties. All records should be kept confidential and retained in accordance with the Data Protection Act 1998.
8. Criminal charges or convictions outside employment should not be treated as automatic reasons for disciplinary action. The main consideration should be whether the offence is one that makes workers unsuitable for their type of work. (see ACAS Code of Practice)

Detailed Notes

9. *Paragraph 6*

The letter calling the Senior Postholder to a disciplinary hearing should specify the level of the procedure under which it is being convened.

To ensure that the Senior Postholder has every opportunity to respond, the employer should ensure that they have a reasonable opportunity to consider the full details of the complaints or allegations. This will enable her/him to prepare a response and to arrange for the attendance of any appropriate witnesses. Accordingly, the Procedure requires any documentary evidence to be circulated as soon as possible. It may be possible for this evidence to accompany the letter convening the disciplinary hearing. Only in exceptional cases will it be necessary to circulate documents in accordance with the stated minimum disclosure period of 5 working days before the hearing.

10. *Paragraphs 8 and 9*

The Senior Postholder who receives a warning may wish to set down her/his comments upon it in writing. This may present an acceptable alternative to lodging an appeal. Such responses should be kept with the warning on the personnel file.

11. *Paragraph 11*

Demotion and suspension without pay are included as 'possibilities'. However these are unlikely to be suitable for a Senior Postholder and will arise only in very serious cases when dismissal is being contemplated. Where they are under consideration, these sanctions should be discussed with, and accepted by, the Senior Postholder concerned before their implementation as an alternative to dismissal. Both of these penalties need handling very carefully, and suspension without pay should not normally be for a prolonged period.

12. *Paragraph 12*

If a Special Committee is convened the Senior Postholder must be notified in advance that dismissal is being contemplated.

13. *Paragraph 14*

This is no longer a requirement of the Articles but it could be seen as good practice.

14. *Paragraph 15*

Appeal hearings should be convened without undue delay, but with reasonable notice to the employee concerned, which should not be less than 5 working days.

15. **Gross Misconduct**

Allegations of gross misconduct should be investigated and considered promptly and will normally be accompanied by immediate suspension. However, the seriousness of the allegation should not obscure the importance of acting fairly and reasonably towards the Senior Postholder concerned. This will involve convening the Special Committee with reasonable notice, advance disclosure of details and documents and an opportunity for the Senior Postholder to be represented and to call witnesses. A minimum of 5 working days notice of the hearing will normally be appropriate. Any appeal to the Corporation should again be convened without delay, but with reasonable notice to the employee concerned, which should not normally be less than 5 working days.

16. **Fixed Term Contracts**

When a college is considering taking disciplinary action against a Senior Postholder working under a fixed-term contract, the college must apply the same procedures as would be applied for a permanent Senior Postholder. That is, requisite notice must be provided in writing, a hearing must take place between the Senior Postholder and employer and the Senior Postholder must be given the opportunity to appeal against any decision taken.

DISCIPLINARY PROCEDURES: APPEALS PROCEDURE

1. The Chair of the Committee as appropriate will call in both parties, introduce the Committee and state the function of the Committee. The Chair will remind both parties and the Committee that the proceedings shall remain confidential until a final decision has been taken.
2. The employers' representative will present the employers' case in the presence of the Senior Postholder and her/his trade union representative or workplace colleague and may call witnesses.
3. The Senior Postholder (or her/his representative) will have the opportunity to ask questions of the employers' representative on the evidence given by her/him and any witnesses whom she/he may call.
4. The Committee may ask questions of the employers' representative and witnesses.
5. The Senior Postholder (or her/his representative) will put the case in the presence of the employers' representative and call such witnesses as she/he wishes.
6. The employers' representative will have the opportunity to ask questions of the Senior Postholder and her/his witnesses.
7. The Committee may ask questions of the Senior Postholder, her/his representative and witnesses.
8. The employers' representative and then the Senior Postholder (or her/his representative) will have an opportunity to sum up their cases if they so wish.
9. The Chair will then ask the employers' representative and the Senior Postholder (and her/his representative) to withdraw.
10. The Committee will consider the case in private, only recalling the employers' representative and the Senior Postholder to clear points of uncertainty on evidence already given. If a recall is necessary both parties are to return.
11. The Committee may announce its decision to the parties personally but in any event will confirm its decision in writing within 5 working days.

DISCIPLINARY PROCEDURE: APPEALS PROCEDURE: GUIDANCE

1. The purpose of this procedure is to ensure that the proceedings at appeals hearings are conducted in an orderly and impartial fashion offering both parties an opportunity to present their case.
2. It is very important that no person with a direct interest or a prior involvement in the matter in question should take any part in considering the appeal.
3. Witnesses should only be present to give evidence and answer questions. They should not be present for instance when the parties are presenting their case.
4. The outcome of the appeal may be to confirm, vary or dismiss the decision that has given rise to the appeal.
5. Parties to the hearing may prepare a written statement of their case. Such submissions, together with other relevant documentation, will be circulated to all parties as soon as possible and at the latest 5 working days in advance of the hearing.
6. The procedure has been written as if the appeal is being considered by an appropriate Committee. However, it may be that the appeal is being heard by the Corporation, in which case the procedure should be adapted as necessary.

CAPABILITY PROCEDURE FOR SENIOR POSTHOLDERS: GUIDANCE

Stage I

It is the responsibility, in the first instance of the line manager i.e. the Principal or the Chair, as appropriate, to offer suitable help and advice to Senior Postholders where alleged incompetence such as a lack of skill, aptitude and/or ability or unsatisfactory performance is identified. The nature of the alleged shortcoming will determine the nature of the help to be provided. The help could include one or more of the following:

- (i) counselling;
- (ii) a review of commitments and responsibilities;
- (ii) availability of suitable resources;
- (iv) availability of training;
- (v) opportunities to see good practice within the college or other appropriate establishments.

Stage II

If after help and advice given under Stage I the performance of a Senior Postholder other than the Principal is still unsatisfactory, the Principal must inform the Chair and advise the Senior Postholder in writing that her/his performance is still unsatisfactory. The Principal, in consultation with the Chair, will establish the facts and seek ways of improving the Senior Postholder's performance.

Where, after a reasonable time, there has been no marked improvement in performance, or improvement has not been maintained, the Principal, following consultation with the Chair, will inform the employee in writing that adverse criticism persists. She/he will also be informed of the areas where improvement is still necessary and the period for which appropriate support will continue to be made available.

If there remain concerns about the performance of the Principal the Chair should follow the Stage II steps set out above and may seek external advice.

Disciplinary Procedures

If, after receiving the counselling and support outlined above, the employee's performance continues to be unsatisfactory it may become necessary to initiate formal action under the Disciplinary Procedures.

**CAPABILITY PROCEDURE:
SUPPLEMENTARY NOTES FOR GUIDANCE**

1. The Senior Postholder concerned may be accompanied by a trade union representative or workplace colleague at the discussions in Stage II if she/he so wishes.
2. Where formal action under the Disciplinary Procedures is found necessary, this should involve disciplinary hearing(s) and warning(s) as appropriate in accordance with that Procedure. Support, advice and assistance to the Senior Postholder as in Stages I and II of the Capability Procedure should continue to be offered.
3. When dealing with absence a distinction should be made between absences on grounds of medically certificated illnesses, both physical and mental, that may eventually result in the use of the capability procedures and those that may call for disciplinary action. (see ACAS Code of Practice 1: Disciplinary and Grievance Procedures.
4. Where the sub-standard performance is due to negligence or lack of application on the part of the Senior Postholder then some form of disciplinary action will normally be appropriate.

Approved by the Policy Committee November 2009

Approved by the Corporation December 2009

“This policy has been impact assessed to ensure it complies with all aspects of Equality and Diversity. Members are reassured that this policy is compliant with current equality legislation”.

Policy Owner: Debra Todd – HR Manager

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