



DISCIPLINE
AND
GRIEVANCE
PROCEDURE

2009

STAFF

DISCIPLINARY PROCEDURE: MISCONDUCT

Investigation

1. Where there is a suspected breach of discipline an investigation will normally be carried out by an appropriate senior member of staff. The purpose of this investigation is to establish the facts promptly and before memories fade, taking into account statements of any relevant witnesses. The employee should have the opportunity to comment on the matter under investigation and to be accompanied by a work colleague or trade union representative.

Suspension

2. At any stage the Principal or designated alternate should consider whether the employee should be suspended on full pay pending further investigation. If the employee is so suspended the Principal or designated alternate should give written notification of the suspension, setting out the grounds on which the decision to suspend has been taken.. If suspension continues for more than three weeks and a disciplinary interview has not taken place the employee may appeal to the Corporation. If an employee does so appeal the suspension shall continue pending the determination of the appeal, which shall be considered as soon as practicable.

Disciplinary Interview

3. Where it is decided that there is a case to answer, the employee 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 interview. Any documentary evidence to be considered in connection with the allegations should be circulated as soon as possible and at the latest 48 hours in advance of the interview to both parties. She/he will also be informed of her/his right to be accompanied by a work colleague or trade union representative during the disciplinary interview, and of the right to present her/his case, call relevant witnesses and give evidence.
4. The disciplinary interview will normally be conducted by the Principal or delegated alternate, accompanied by at least one other member of/or adviser to the senior staff. The decision on the outcome of the disciplinary interview will be that of the Principal or delegated alternate.

Disciplinary Action

5. Where the case is upheld an informal oral warning may be issued for a minor offence and a note of this should be kept on file. An informal oral warning issued in this way is not part of the formal disciplinary procedures.

6. 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 employee and if desired to her/his work colleague or trade union representative. At the same time the employee should be informed of her/his right to appeal against the disciplinary action taken (see paragraph 11).
7. 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 1-6 will be repeated. (If a final written warning has been given then the procedure should move on to paragraph 9).
8. 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.
9. If conduct is still unsatisfactory and the employee still fails to reach the prescribed standards then, following a further interview, dismissal will normally result. If the Principal or delegated alternate does decide to dismiss, the employee and, if desired, her/his work colleague or trade union representative should be given written reasons for dismissal, the date on which employment will terminate and the right of appeal to the Corporation (see paragraph 11).
10. If the employee 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

11. The ACAS Code of Practice 1: Disciplinary and Grievance Procedures provides for an appeal against any formal disciplinary action (which would not, therefore, include informal oral warnings under paragraph 5 above) which must be to a higher authority. If action has been taken by the Principal, then the appeal must be to the Corporation (or a Committee of the Corporation or the Chairman of the Corporation if so delegated under the Articles). If, however, the Principal empowers another member of staff e.g. a Vice-Principal to take disciplinary action, then the appeal should be considered by the Principal. The employee may be accompanied by a work colleague or trade union representative at the appeal hearing. The appeal should be lodged in writing with [insert the title of the appropriate member of staff] within 10 working days of receipt of the letter informing the employee 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).

This list is not intended to be exhaustive.

3. All alleged cases of gross misconduct must be investigated without delay. The Principal or delegated alternate should suspend the employee on full pay pending further investigation and give written notification of the suspension, setting out the grounds on which the decision to suspend has been taken. The Principal or delegated alternate should then investigate the allegation and as part of this investigation the employee must be given the opportunity to see any documents relevant to the investigation and to submit her/his explanations if she/he so wishes. When submitting explanations the employee has the right to be accompanied by a work colleague or trade union representative. For gross misconduct the Principal or delegated alternate may dismiss an employee without notice or, if appropriate, any of the forms of disciplinary action referred to under the disciplinary procedure may be taken.

Appeal

4. Where an employee has been dismissed she/he may appeal against the dismissal to the Principal, Corporation (or a Committee of the Corporation or the Chairman of the Corporation if so delegated under the Articles). The employee may be accompanied by a work colleague or trade union representative at the appeal hearing. The appeal should be lodged in writing with [insert the title of the appropriate member of staff] within 10 working days of receipt of the letter informing the employee of the decision. The decision at appeal is final.

DISCIPLINARY PROCEDURE: CAPABILITY

Stage I

It is the responsibility in the first instance of the immediate supervisors (eg Heads of Department for teaching staff) to offer suitable help and advice to employees 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 materials (eg for teaching staff, curricular guidelines and programmes);
- (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 employee's performance is still unsatisfactory, the immediate supervisor must inform the Principal or delegate alternate and advise the employee in writing that her/his performance is still unsatisfactory. The Principal or delegated alternate will establish the facts and seek ways of improving the employee's performance.

Where, after a reasonable time, there has been no marked improvement in performance, or improvement has not been maintained, the Principal or delegated alternate 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.

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.

DISCIPLINARY PROCEDURES: CAPABILITY: NOTES FOR GUIDANCE

1. The employee concerned may be accompanied by a friend 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 interview(s) and warning(s) as appropriate in accordance with that Procedure. Support, advice and assistance to the employee 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)
4. Where the sub-standard performance is due to negligence or lack of application on the part of the worker then some form of disciplinary action will normally be appropriate.

DISCIPLINARY PROCEDURE: NOTES FOR GUIDANCE

General Guidance

1. Important decisions need to be taken about the responsibilities of the Principal, the Corporation and other members of staff throughout these procedures. The Principal has the power to suspend or dismiss staff (other than the holder of a senior post) but may delegate this responsibility to the holder of a senior post. Where appropriate we have therefore referred in the model to the Principal or a delegated alternate. Such decisions on who has this power to act will then determine the appropriate appeal body. If disciplinary action has been taken by another member of staff then the Principal would be the appropriate person to consider the appeal..

Good practice would indicate that probably the most appropriate arrangement is for the delegated alternate to have responsibility for all stages of the procedure, short of dismissal, for the Principal then to retain the power of dismissal and for appeals against dismissal to be considered by an appropriate Committee of the Corporation.

2. These procedures have regard to the principles and standards set out in the ACAS Code of Practice 1: Disciplinary and Grievance Procedures (see ACAS website at www.acas.org.uk)
3. The procedures are designed to ensure that when a complaint or allegation is made against an employee, 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 employees 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 employee will have the right to be accompanied by a:
 - a work colleague i.e. another of the college's workers; 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 employee 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. Where a case is withdrawn or not upheld any reference to the alleged disciplinary offence will be expunged from the employee's personal file except where this conflicts with Statutory Regulations.
6. Colleges are advised that no disciplinary action beyond an informal 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. Except in agreed special circumstances, any disciplinary action taken should be disregarded after a specified period of satisfactory conduct or performance. (see *Discipline and Grievances at Work: The ACAS guide* at www.acas.org.uk)
9. 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 1: Disciplinary and Grievance Procedures)

Detailed Notes of Guidance

10. *Paragraph 2*

The right to appeal against suspension has been retained in the interest of natural justice even though this entitlement is no longer contained in the Articles of Government and is not a requirement of the ACAS Code.

11. *Paragraph 3*

The letter calling the employee to a disciplinary interview should specify the level of the procedure under which it is being convened.

To ensure that the employee has every opportunity to respond, the employer should ensure that the member of staff has 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 interview. Only in exceptional cases will it be necessary to circulate documents in accordance with the stated minimum disclosure period of 48 hours before the interview. In such circumstances, the stated minimum of 48 hours should be treated as two working days.

12. *Paragraphs 5 and 6*

The employee 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 employee's file.

13. *Paragraph 8*

Demotion and suspension without pay are included as 'possibilities'. These 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 employee 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.

14. *Paragraph 9*

The further interview prior to consideration of dismissal should be a formal disciplinary interview in accordance with paragraph 3 of the Procedure. The Principal or delegated alternate should notify the employee in advance that dismissal is being contemplated.

15. *Paragraph 11*

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.

16. 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 employee concerned. This will involve convening a disciplinary interview with reasonable notice, advance disclosure of details and documents and an opportunity for the employee to be represented and to call witnesses. A minimum of 5 working days notice of the interview will normally be appropriate. Any appeal should again be convened without delay, but with reasonable notice to the employee concerned, which should not normally be less than 5 working days.

17. Fixed Term Contracts

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

DISCIPLINARY PROCEDURES: APPEALS PROCEDURE

1. The Chairman of the Committee will call in both parties, introduce the Committee and state the function of the Committee. The Chairman 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 employee and her/his work colleague or trade union representative and may call witnesses.
3. The employee (or her/his work colleague or trade union 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 employee (or her/his work colleague or 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 employee and her/his witnesses.
7. The Committee may ask questions of the employee, her/his work colleague or trade union representative and witnesses.
8. The employers' representative and then the employee (or her/his work colleague or trade union representative) will have an opportunity to sum up their cases if they so wish.
9. The Chairman will then ask the employers' representative and the employee (and her/his work colleague or trade union representative) to withdraw.
10. The Committee will consider the case in private, only recalling the employers' representative and the employee 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:
NOTES FOR GUIDANCE**

1. The purpose of this model 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 48 hours (2 working days) in advance of the hearing.
6. The model 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 Principal, in which case the procedure should be adapted as necessary.

GRIEVANCE PROCEDURE

1. If an employee has a grievance relating to her/his employment she/he should discuss the matter initially with her/his immediate supervisor e.g. Head of Department or other appropriate senior member of staff.
2. The immediate supervisor should reply orally to the grievance as soon as possible, and in any case within 5 working days. The employee may, if she/he wishes, be accompanied by a work colleague or trade union representative when the matter is raised with the supervisor and/or when the supervisor replies.
3. If the complaint is not satisfactorily resolved at this stage the employee may raise the matter in writing with the Principal 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 Principal on her/his behalf.
4. Where the grievance concerns another person a copy of the complaint should be given to the other person concerned by the Principal. Within 10 working days the person concerned should have the opportunity of submitting written observations. Unless she/he is the other person the immediate supervisor e.g. Head of Department or other member of staff should submit a written report to the Principal together with any relevant documents. Where the immediate supervisor is the other person concerned in the complaint a written report should be submitted to the Principal, together with any relevant documents, by another appropriate member of staff.
5. The Principal should convene a meeting to consider the matter not less than 5 and not more than 10 working days after the submission of the supervisor's report. Where the grievance concerns another person both parties may, if they wish to, make submissions personally to the Principal. Where the grievance does not concern another person the employee may, if she/he wishes, make submissions personally to the Principal. The employee, and where the grievance concerns another person that person also, may be represented by a work colleague or trade union representative if they wish. Refusal of either party to attend should not invalidate the proceedings.
6. The Principal should reply in writing as soon as possible and in any case within one calendar month of receiving written notification of the complaint.
- 7(a). Where a grievance concerns the Principal, the grievance should be heard in the first instance by another appropriate senior member of staff. If this senior member of staff decides that it is necessary then, subject to the agreement of the Chairman of the Corporation, the grievance should be referred for final decision to an appropriate Committee of the Corporation.

Or alternatively

- 7(b). Where a grievance concerns the Principal, the employee concerned may raise the matter in writing with the Chairman 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 Chairman of the Corporation. The Chairman of the Corporation will then arrange for the grievance to be referred for consideration to an appropriate Committee of the Corporation.

Appeals

8. If the employee 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. It will be held by either:

a Committee of the Corporation (if paragraph 6 (above) applies); or the full Corporation (if paragraph 7(a) or (b) (above) applies).

If paragraph 7(a) or 7(b) applies, members of the Committee that made the initial decision can be present at the appeal hearing for the purpose of explaining the decision but they must not be involved in the final appeal decision.

Post-employment Procedure

9. It is good practice to provide for the hearing of grievances after an employee has left the employment of the college. The above standard grievance procedure will generally apply even after the employee has left. 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.

Where this is the case paragraphs 3, 4 and 6 of the standard procedure will apply. The decision of the Principal in this case will be final. There is no right of appeal.

GRIEVANCE PROCEDURE: NOTES FOR GUIDANCE

1. *Paragraphs 2 and 3*

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

2. *Paragraph 4*

It is often helpful for the employee 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 employee raising the grievance.

3. *Paragraph 5*

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 Principal may consider that the nature of the grievance requires the submissions to be presented separately.

4. *Paragraph 7a*

The role of the senior member of staff should normally be to clarify the issues and, where practicable, resolve the grievance before it becomes necessary to refer it to the appropriate Committee of the Corporation for formal consideration.

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.

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