

HUNTINGDONSHIRE REGIONAL COLLEGE
DISCIPLINARY RULES AND PROCEDURES
FOR MISCONDUCT & GROSS MISCONDUCT
For all Staff, other than holders of Senior Posts

1. Introduction

1.1 Disciplinary rules and procedures are necessary for promoting fairness and order in the treatment of individuals and in the promotion of good employer/employee relations. The rules set standards of conduct; the procedure helps to ensure that the standards are adhered to and also provides a fair method of dealing with alleged failure to observe them.

1.2 It is important that staff know what standards of conduct are expected of them by the Corporation. The law now requires employers to set down in writing for their employees any disciplinary rules applying to them.

1.3 A distinction can be, and is made between "gross misconduct", "misconduct" and "capability". A separate procedure is provided for dealing with issues of capability. However, it is not possible to define every act in advance, as being one or the other because the judgement as to which it is will vary according to circumstances. In addition to offences committed at work, it may sometimes be necessary to dismiss an employee unsuitable for his or her type of work, or unacceptable to colleagues. If conviction for a criminal act results in a prison or similar custodial sentence, and if the contract is not thereby frustrated, the employee may be dismissed on the grounds that he/she is unable to continue in his/her job.

1.4 Representation

Employees have the right to be present and be accompanied and represented by a representative of a recognised Trade Union or workplace colleague at any formal stages of the disciplinary procedure, unless they fail to attend the meeting without informing the Principal. Preliminary investigation meetings are not part of the formal procedure.

1.5 Time Limits

In the interest of ensuring that disciplinary matters are resolved as speedily as possible, time limits are given for appropriate stages in this procedure. These are for guidance. If it is not practicable to adhere to these time limits, they may be amended, ideally by mutual agreement. It is intended that wherever possible the procedures in this policy will be carried out quickly. Due regard will be given to the personal circumstances of all parties involved in the procedure.

1.6 Trade Union Officials

The provisions of the relevant ACAS code shall be adopted where the representative of a trade union is being disciplined under these procedures. Although normal disciplinary standards apply to their conduct as employees, disciplinary action against a trade union official can be construed as an attack on the union. Such problems can be avoided by early discussion with a full-time official or senior representative of the trade union.

1.7 Investigations

Prior to any action being taken the college will conduct a prompt and thorough investigation. This may involve a meeting/s with members of staff. If appropriate, the College may suspend the employee, in accordance with the procedure set out at Appendix 1, whilst the investigation is carried out.

1.8 Penalty

No formal disciplinary penalty will be imposed without a formal disciplinary hearing. Other than in cases of gross misconduct, or gross negligence, when the penalty may be dismissal without notice or payment in lieu of notice, no employee will be dismissed for a first offence. An employee will have the right to appeal against any disciplinary penalty imposed as described in Appendix 2.

2 **Misconduct**

Misconduct is of a degree less serious than that which would warrant immediate suspension from duty for a first offence, but which could nevertheless lead to dismissal if persistent. The College will investigate the circumstances of the misconduct (refer to 1.7). If after proper investigation it is decided that the employee has committed an act of misconduct the formal disciplinary procedure must be followed in all cases. Some more serious acts of misconduct may be subject to the VARIATION IN PENALTIES described in the procedure. Only when it can be shown that the warnings have not been heeded will misconduct lead to action being taken which will lead to an employee's dismissal. The list of examples below is not intended to be exclusive or exhaustive and offences of a similar gravity will receive the same treatment.

2.1 Absenteeism and lateness, for example:

- a) Failure to remain at the place of work during normal working hours without permission or sufficient cause for absence.
- b) Frequent failure to attend work punctually.
- c) Failure to provide medical certificates in accordance with the Corporation's rules for the notification and verification of sickness.

2.2 Dishonesty – petty wrongs, for example:

- a) Making unauthorised private telephone calls and/or sending personal mail at the College's expense.
- b) Failure to report any loss and/or damage to any property issued to or by the employee in connection with his/her employment.

2.3 Neglect of duty, for example:

- a) Failure to adopt safe working practices/use protective equipment where required by law or management.
- b) Negligent use of Corporation property in such a way as is likely to cause serious damage or loss.
- c) Failure to discharge without sufficient cause the obligations which statute or the contract of employment places on the employee.
- d) Insubordination.
- e) Failure to exercise proper control or supervision of students.

- 2.4 Abusive behaviour/offensive language which arises directly out of or in connection with work and which is directed at members of the Corporation, colleagues, students or members of the public.
- 2.5 Victimisation of other employees in the course of duty.
- 2.6 Unlawful discrimination against other employees or members of the public in the course of duty by reference to the Corporation's Equal Opportunities policy.
- 2.7 Discrimination, whether lawful or not, in the course of duty against other members of the public on the grounds of sex, marital status, ethnic origin, disability or sexual orientation, by reference to the Corporation's Equality and Diversity policy.
- 2.8 Undertaking additional employment outside normal working hours, which would be detrimental to the work to be performed as an employee of the College or in breach of contract.

3 Gross Misconduct

Gross misconduct is the committing of an act which renders it inadvisable for the employee to be allowed to remain at work. Any employee suspected of committing an act of gross misconduct, as indicated in the list below, will be suspended with full pay pending investigation (refer to 1.7). If after proper investigation it is decided that the employee has committed an act of gross misconduct or if the act is admitted by the employee he/she will be dismissed without further warning, unless there are mitigating circumstances. The formal disciplinary procedure must be followed in all cases. The list of examples below is not intended to be exclusive or exhaustive and offences of a similar gravity will receive the same treatment.

- 3.1 Dishonesty associated with place of work or job being undertaken:
 - a) Theft or unauthorised possession of property belonging to the Corporation, an employee or student.
 - b) Deliberate falsification of timesheets or expenses claims for pecuniary advantage.
 - c) Demanding or accepting monies or other considerations as a bribe for the use of property, provision of service or the showing of favour on behalf of the Corporation.
 - d) Falsification of any information given on an application form for a post to gain advantage whether pecuniary or otherwise.
 - e) Failure to disclose criminal convictions.
 - f) Falsification of registration of students for pecuniary gain.
- 3.2 Deliberate refusal to carry out a reasonable, lawful and safe instruction or the normal agreed defined duties of the post.
- 3.3 Gross negligence in failing to attend to or carry out the agreed duties of the post or in breach of contract.

- 3.4 Wilfully ignoring responsibilities/ instructions, thus placing other employees/students in danger, eg ignoring handling instructions/safety regulations in respect of radioactive materials.
- 3.5 Wilful unauthorised disclosure of information, classified as confidential, by employees who, in the course of their duties, have access to such information, which by its release could be harmful to the Corporation, other employees or students.
- 3.6 Acts of violence or vandalism in the course of employment:
- a) Malicious damage to Corporation/Corporation Contractor/other employees/students property.
 - b) Actual physical violence towards members of the Corporation/members of the College staff/students/other members of the public.
- 3.7 Sexual misconduct at work:
- a) Sexual misconduct whether criminal or not.
- 3.8 Off-duty misconduct:
- a) An act of criminal sexual misconduct by an employee who, in the course of duty, has contact with young people.
 - b) Drug offences committed by employees whose jobs bring them into contact with young people.
- 3.9 Serious incapability as a result of being intoxicated by reason of alcohol.
- 3.10 Deliberate misuse of drugs whether committed at work or outside of work but subsequently under the influence of drugs at work.
- 3.11 A criminal offence, (or aiding or abetting an offence) which may (whether it is committed during or outside the employee's hours of work for the College) adversely affect the College's reputation, the employee's suitability for the type of work for the College he or she is employed by the College to perform or his or her acceptability to other employees or to students.

Note: Any allegations by a child (defined as under the age of 18) brought against a member of staff under 3.6 and 3.7 above will be dealt with under the Child Protection Policy and Procedure for Dealing with Allegations made Against a Member of Staff.

4 Definitions

- 4.1 The term "Principal" also refers to an Acting Principal, or any Senior member of staff acting for the Principal or Acting Principal with the authority of the Corporation.
- 4.2 The term "employee" refers to any member of staff employed to work at the College.

5 Informal Disciplinary Procedure

- 5.1 Informal guidance may be a more satisfactory method of resolving problems than a disciplinary meeting. However, where it is thought that an act of gross misconduct has been committed, the disciplinary process should commence with formal action.
- 5.2 A meeting should be held in private and should be a two-way discussion, aimed at pointing out the shortcomings in conduct and encouraging improvement. The meeting should be constructive, with the emphasis being on finding ways for the employee to improve and for the improvement to be sustained.
- 5.3 The employee will be given a reasonable opportunity to comment and explain.
- 5.4 Where improvement is required the delegated line manager should make sure the employee understands what needs to be done, how their performance or conduct will be reviewed, and over what period. A clear review date should be given.
- 5.5 The employee should be told that if there is no improvement then the next stage will be the formal disciplinary procedure.
- 5.6 The line manager should prepare a written record of the meeting and of the agreed outcomes, a copy of which should be sent to the individual and to Human Resources for filing (not in personal file).
- 5.7 If during the discussion it becomes obvious that the matter may be more serious, the meeting should be adjourned and the employee told that the matter will be continued under the formal disciplinary procedure.
- 5.8 Informal guidance will normally take place between a line manager and staff member alone, in order to enable the meeting to be as informal as possible.
- 5.9 If, despite informal discussions the employee's conduct does not meet acceptable standards, the following formal procedure will be used.

6 Formal Disciplinary Procedure

6.1 First Formal Hearing

- 6.2 As a result of investigation and where the Principal considers on the preliminary facts that formal disciplinary action is necessary, he/she will write to the employee to inform him/her, at least 5 working days in advance, about:
 - a) the date, time and place of the disciplinary hearing;
 - b) full details of the nature of the complaint;
 - c) the employee's right to be accompanied by an accredited trade union representative or a work colleague; the Principal's right to be accompanied by an adviser of his/her choice
 - d) copies of any documents to be used as evidence or in any other way;
 - e) the names of any witnesses to be called by the Principal;

- f) the employees right to call witnesses on his/her behalf.
- 6.3 At the employee's request an extra copy of this notice, together with any enclosures, should be provided for his/her representative.
- 6.4 The names and roles of all individuals attending shall be disclosed to all individuals attending)
- 6.5 In the case of an employee who fails to attend the meeting without informing the Principal a decision may be made in their absence. If the employee cannot attend a meeting at the time arranged, another meeting will be arranged within five working days.
- 6.6 At the disciplinary hearing, the employee (and his/her representative) will be given a reasonable opportunity to state his/her case and to question the Principal and any witnesses. The Principal will also ask questions of the employee, representative or any witnesses, as well as refer to any documentation previously circulated, in order to ensure that a full investigation is carried out
- 6.7 In most cases the Principal will require time to consider the facts and for further checking of any matters raised during the meeting before deciding whether to take any action. A decision will be made as soon as possible and will be confirmed in writing to the employee, usually within five working days.
- 6.8 If he/she decides the complaint was justified, the Principal may give the employee a first written warning which will include a statement that any further complaint of misconduct occurring within the next twelve months and found justified after a disciplinary hearing, will lead to a final warning, unless there are mitigating circumstances.
- 6.9 If the employee is given no further written warning of misconduct within twelve months of the date of the first written warning, then this warning is disregarded and the warning letter will make this clear.
- 6.10 The employee shall have the right of appeal to any warning given which should be made in accordance with the Appeal Procedure at Appendix 2.

7 Final Written Warning

- 7.1 If a further complaint is made about the employee's conduct within twelve months of the date of the first written warning, the same procedure (as at 6.1, 6.2 and 6.3 above) will be followed.
- 7.2 If the Principal decides at the conclusion of the disciplinary hearing that this further complaint is justified, he/she may give the employee a final written warning, which will include a statement that any further complaint of misconduct occurring within the next twelve months and found justified after a disciplinary hearing, will lead to dismissal, unless there are mitigating circumstances.
- 7.3 The employee shall have the right of appeal to any warning given which should be made in accordance with the Appeal Procedure at Appendix 2.

8 Gross Misconduct

Where the Principal considers on the preliminary facts that formal action for gross misconduct applies, paragraphs 6, 7, and 9 apply where all reference to "misconduct" should read "gross misconduct". Appendix 1 should also be referred to in cases where the Principal considers that the employee should be suspended. In cases of gross misconduct the Principal may decide that the first and final written warnings should be issued simultaneously or that immediate dismissal should be given.

9 Dismissal

- 9.1 The Principal may dismiss an employee other than a Senior Postholder for repeated acts of misconduct or gross misconduct. The notification of dismissal must include a statement of the reason/s for the dismissal, the date of the dismissal, and the right of the employee to appeal to the Corporation.
- 9.2 The Principal shall immediately notify Members of the Corporation of his/her decision to suspend or dismiss an employee. Such notification shall not include any statement of the reason(s) for the dismissal or suspension, other than "on grounds of gross misconduct/repeated misconduct within the terms of the Corporation's disciplinary procedure". A statement of reasons shall only be provided at the hearing of any appeal.
- 9.3 The employee shall have the right of appeal to any warning given which should be made in accordance with the Appeal Procedure at Appendix 2.

10 Variations in Penalties

- 10.1 At any stage of the procedure it may be decided that there has been no breach of discipline.
- 10.2 The Principal may decide to issue informal guidance instead of a first written warning, or to issue no form of warning at all.
- 10.3 The Principal may decide that the first misconduct is so serious that first and final written warnings will be issued simultaneously.
- 10.4 The Principal may decide to issue a further final written warning rather than proceeding to a proposal for dismissal, or to issue no form of warning at all.
- 10.5 The person/persons appointed to hear an appeal on behalf of the Corporation may decide to rescind a proposal for dismissal and issue a further final written warning, or issue no form of warning at all.
- 10.6 An Appeal Body may decide to rescind a dismissal or a proposed dismissal, or to issue a further final written warning, or to issue no form of warning at all.
- 10.7 In every case covered by clauses 10.1 to 10.6 a written record of reasons for variations shall be made and shall be available to all parties involved at any subsequent stage of the disciplinary procedure affecting the same employee.

HUNTINGDONSHIRE REGIONAL COLLEGE

APPENDIX 1: SUSPENSION FROM DUTY

All staff, other than holders of Senior Posts

1. When the Principal is of the view that an employee may have been guilty of gross misconduct, or that because of some other good and urgent cause, the continuing attendance of the employee at the College cannot be permitted, the Principal may suspend the employee from duty pending an investigation and the holding of a formal disciplinary hearing.
2. Suspension is not a penalty for the breach of discipline. It is precautionary and protective of the employee's and the Corporation's interests. The employee is not entitled to advance warning or to representation when informed of his/her suspension. If suspension is being considered for a representative of a recognised trade union, in advance of any action being taken the Principal will alert the regional union office.
3. Any employee under suspension is entitled to receive normal payment while suspended.
4. Any employee who is suspended shall be entitled to receive written notification of the suspension, setting out the grounds on which the decision to suspend has been taken.
5. Any employee who is suspended shall not be entitled to enter the College premises other than when they are required to attend a disciplinary meeting.
6. Any employee who has been suspended may appeal in writing to the Corporation immediately. The suspension shall continue to operate pending the determination of any appeal.
7. Where an appeal is made to the Corporation for the suspension, the disciplinary procedure will continue to be in operation whilst the appeal is being made.

HUNTINGDONSHIRE REGIONAL COLLEGE

APPENDIX 2: APPEAL TO THE CORPORATION

All staff, other than holders of Senior Posts

1. In the event that the employee is not prepared to accept the decision of the Principal in a disciplinary procedure including suspension and dismissal, there shall be a right of appeal. Written notification of appeal, setting out the basis for appeal, must be submitted to the Clerk to the Corporation and copied to the Principal within ten working days of the employee's receipt of the Principal's decision.
2. The Clerk to the Corporation shall, within ten working days of receipt of notification of appeal, establish a meeting of the Appeal Body to hear the appeal.
3. Each of the parties should be present throughout the proceedings. However, a refusal by either party to attend shall not invalidate the proceedings.
4. The employee has the right to be accompanied by a representative of their choice; the Appeal Body has the right to be accompanied by an adviser of their choice and the Clerk to the Corporation.
5. The decision of the Appeal Body shall be final.