

Staff Disciplinary Policy & Procedure (Conduct)

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Date	November 2023
Person Responsible	Deputy Chief Executive
Approval/review bodies	SLT/JNC/Staff and Student Committee/Corporate Board
Frequency of Review*	36 months

** Policies will be reviewed more frequently if legal changes or good practice require*

Review History:		
Date of review	Reviewed by	Reason for review
January 2007	CS	Include capability
March 2010	HR Manager/ DCQHR	Change of person responsible
April 2011	HR Manager	Application of procedure consistency, change of approval route
February 2013	HR Manager	Additional detail added to Informal Process
February 2014	HR Manager	Additional detail added to Informal Process for clarification purposes
June 2018	HR Manager	Re-written
November 2023	Head of HR	Cyclical Review

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Related policies/documents: Staff Code of Conduct

1. Application and Scope

- 1.1. This procedure is used to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary. This procedure is used to deal with misconduct.
- 1.2. This procedure does not form part of any employee's contract of employment. It may be amended at any time, including any time limits, as appropriate in any case.
- 1.3. This procedure does not apply to members of staff who are in their probationary period, agency workers or self-employed contractors.
- 1.4. Adjustments to the formal processes for Senior Post Holders in respect of sections 4 and 7 are set out in Appendix B. These adjustments are required where Board Level input is necessary.
- 1.5. If a member of staff has difficulty at any stage of this procedure because of a disability or because English is not their first language, the member of staff should discuss the situation with their line manager or the HR Department as soon as possible.

2. General Provisions applicable to this procedure

- 2.1 Before disciplinary action is taken, any necessary investigation will be undertaken with the guidance of Human Resources ("HR") who will usually appoint an investigating officer to carry out the investigation. The purpose of an investigation is to establish a fair and balanced view of the facts relating to any disciplinary allegations against a member of staff, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements and/or reviewing relevant documentation. Staff are required to co-operate fully and promptly in any investigation. This will include informing HR of the names of any relevant witnesses, disclosing any relevant documents to use and attending investigative interviews if required.
- 2.2 Employees do not normally have the right to be accompanied by a trade union representative or a current work colleague ("a Companion") to an investigation meeting. However, if an employee makes a specific request to be accompanied by a Companion at this stage the college may accommodate this, providing this does not delay the investigation arrangements. In addition, the College may allow an employee to bring a Companion if it helps them to overcome a disability or any difficulty in understanding English.
- 2.3 Employees will have the right to be accompanied by a Companion if they are invited to a disciplinary and any subsequent appeal meeting(s). The role of the Companion is to support the employee, take a note of the proceedings, address the panel and confer with the Employee. A Companion is not entitled to answer questions for the Employee.

- 2.4 A Companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a Companion if they do not wish to do so. If a Companion is unavailable at the time a formal meeting is scheduled and will not be available for more than five working days afterwards, the College may ask you to choose someone else.
- 2.5 At any stage in the disciplinary process and in some circumstances we may need to suspend an employee from work. If you are suspended, HR will confirm the arrangement to you in writing and set out the reasons for your suspension. Suspension is not a disciplinary penalty and is not an indication of culpability. Suspensions will be reviewed periodically, at least monthly. During any such period of suspension, the member of staff will be expected to co-operate fully with any investigation and to be available for interview during their normal working hours. During such a period of suspension, the member of staff will not normally be entitled to access any College premises (except to attend meetings at the College's request), to use the College's intranet/SharePoint/e-mail facilities or to engage in normal day to day duties, without express written permission from a Senior Manager.
- 2.6 All staff involved in a disciplinary process must maintain the confidentiality of the process and of College documents. Any breach of confidentiality by the member of staff may be treated as a separate disciplinary offence. This is subject to an individual's right to seek and obtain appropriate confidential legal advice or make a disclosure under the Public Interest Disclosure Act 1998 or otherwise as required by law or any statutory authority.
- 2.7 Issues that arise will be dealt with promptly and meetings, decisions and confirmation of those decisions will be communicated, normally within ten working days. If we are unable to provide a decision to the member of staff within this period then the College will write to the member of staff to update them as to when they can expect to receive the decision.
- 2.8 Where a member of staff raises a grievance in the course of the investigation or disciplinary process under this procedure, the procedure may be temporarily suspended, so that the grievance can be dealt with, if considered appropriate. The relevant managers appointed to conduct the disciplinary meeting will take this decision. Where the grievance and the disciplinary issues are related, the two issues may be dealt with together.
- 2.9 Where witness evidence is relevant to a disciplinary procedure regarding a member of staff, that member of staff will normally be told the names of any witnesses whose evidence is relevant to the proceedings against them. This will be the case unless the College believes that the identity of a witness should remain confidential in order to protect the witness from any undue influence, harassment, bullying or inappropriate action.

3. Informal Process

- 3.1 Minor conduct issues can often be dealt with informally. When a member of staff's conduct is called into question, their line manager will usually discuss the issue with the employee informally, with or without a member of the HR department being present. This will be an informal discussion aimed at addressing any shortcomings in conduct and finding ways for the member of staff to make a sustained improvement going forward. No formal penalty will result from an informal discussion. However, the need for additional training, coaching or advice may be identified and agreed.
- 3.2 In some cases where appropriate a Letter of Concern and agreed actions will be issued. The Letter of Concern will remain on the personnel file for six months following the informal meeting. The line manager will continue to review and monitor the member of staff's progress on an informal basis during this time. Due to the informal nature of this process, there is no right of appeal against any informal action taken.

4. Formal Procedure

- 4.1. Where an informal process has not led to improved conduct, or where an informal discussion is not appropriate because of the severity of the allegation this formal procedure will be followed.
- 4.2. HR and/or an appropriate Senior Manager will appoint an internal or external person at their discretion to investigate the circumstances of the case (the "Investigating Officer") and will write to inform the member of staff accordingly.
- 4.3. Where an Investigating Officer has been appointed, they will undertake an appropriate investigation.
- 4.4. If the Investigating Officer considers that there are grounds to indicate that misconduct may have occurred, HR will appoint two Managers of an appropriate level of seniority (Disciplinary Officers) to hear the case and will write to the member of staff informing them who the Disciplinary officers are, the date, time and place of the disciplinary hearing and provide the following information:
 - 4.4.1. the allegations;
 - 4.4.2. the basis of the allegations;
 - 4.4.3. what the likely range of consequences will be in the event that the allegations are found to be true;
 - 4.4.4. a summary of relevant information gathered during the investigation (investigation report);
 - 4.4.5. a copy of any relevant documents which will be used at the disciplinary hearing;

- 4.4.6. a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.
- 4.5. Employees will be given reasonable time to prepare their case based on the information that has been given to them. At the disciplinary meeting the employee will have the opportunity to respond and state their case. In some circumstances, it may be appropriate for the Investigating Officer to attend the disciplinary hearing to present their findings to the Disciplinary Officers. HR will attend the disciplinary hearing in an advisory capacity.
- 4.6. The Disciplinary Officers conducting the disciplinary hearing will inform the member of staff of their decision in writing, usually within 10 working days of the meeting. In the event that further time is needed because of the requirement for further investigations, the College will write to the member of staff to update them as to when they can expect to receive the decision.
- 4.7. If a disciplinary sanction is given, the letter will set out the period during which the warning will remain active and what change of behaviour and/or other measures (if any) will apply (for example, a requirement that the member of staff attends training) and within what timescale. It will also set out the member of staff's right of appeal against the decision.

5. Disciplinary penalties

- 5.1. The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. The College aims to treat all staff fairly and consistently and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own facts and merits.
- 5.2. A member of staff disciplined for misconduct will not normally be dismissed for a first act of misconduct, unless a manager hearing the matter decides it amounts to gross misconduct. For examples of misconduct and gross misconduct see Appendix A.
- 5.3. **Stage 1 - First written warning.** A first written warning will usually be appropriate for a first act of misconduct where there are no other active written warnings on the member of staff's disciplinary record.
- 5.4. **Stage 2 – Final written warning.** A final written warning will usually be appropriate for:
 - 5.4.1. misconduct where there is already an active warning on the member of staff's record; or
 - 5.4.2. misconduct that is found to be sufficiently serious to warrant a final written warning even though there are no other active warnings on the member of staff's record.

- 5.5. **Stage 3 Dismissal.** Dismissal will usually only be appropriate for:
- 5.5.1. further misconduct where there is an active final written warning on the member of staff's record; or
 - 5.5.2. any gross misconduct, regardless of whether there are any active warnings on the member of staff's record. A finding of gross misconduct may result in summary dismissal without notice or payment in lieu of notice.
- 5.6. **Alternatives to dismissal.** In some cases, the College may at its discretion consider alternatives to dismissal. The decision to make an alternative sanction to dismissal is at the absolute discretion of the disciplinary officers or the Chief Executive and Executive Principal (or designate) conducting any appeal and will usually be accompanied by a final written warning. Examples include:
- 5.6.1. demotion to a post of a lower grade; or
 - 5.6.2. transfer to another department or job; or
 - 5.6.3. a period of suspension without pay; or
 - 5.6.4. reduction in pay; or
 - 5.6.5. loss of future pay increment; or
 - 5.6.6. the removal of any title or office held in addition to the substantive appointment.

6. Disciplinary sanctions (less than dismissal)

- 6.1. HR will issue written confirmation of disciplinary action. A record of the disciplinary action/sanction will be placed on the member of staff's HR file for the appropriate time specified below:
- | | | | |
|-------|-----------------------|-----------------|-----------|
| 6.1.1 | Letter of Concern | Informal Action | 6 months |
| 6.1.2 | Written Warning | Formal Action | 12 months |
| 6.1.3 | Final Written Warning | Formal Action | 12 months |
- 6.2. If a further disciplinary offence is committed within the period, the previous disciplinary action remains in place and the next level of disciplinary action may be imposed.

7. Appeals

- 7.1. If a member of staff feels that disciplinary procedure taken against them is wrong or unjust, they have a right to appeal the outcome, in writing, stating the full grounds of appeal. The letter of appeal should be sent to HR within 10 working days of the date of the disciplinary or dismissal letter.
- 7.2. An appeal meeting will be conducted by the Chief Executive and Executive Principal or designate.

- 7.3. If a member of staff appeals against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful and the member of staff is reinstated any lost pay and benefits will be repaid.
- 7.4. HR will write to the member of staff who wishes to appeal confirming the date and time of the appeal meeting.
- 7.5. The appeal will consider the grounds of the appeal; it will not be a full re-hearing of the case, although the Chief Executive and Executive Principal (or designate) reserves the right to consider this. Appeal grounds may include:
 - 7.5.1 severity of disciplinary penalty;
 - 7.5.2 procedural flaw; and/or
 - 7.5.3 new information (not presented at the Hearing).
- 7.6. Following the appeal hearing the Chief Executive and Executive Principal (or designate) may:
 - 7.6.1. confirm the original decision;
 - 7.6.2. revoke the original decision; or
 - 7.6.3. substitute a different penalty.
- 7.7. The appeal decision is final. There is no further right of appeal. HR will notify the member of staff of the outcome in writing normally within ten working days.

8. Cases involving a Court of Law/Legal Proceedings

- 8.1. If a member of staff is charged with or convicted of a criminal offence, this is not normally in itself reason for disciplinary action. However, consideration will be given to the effect that the charge or conviction has on the member of staff's suitability to do their job and the effect of it on their relationship with the College, work colleagues, students and the wider public. The member of staff has a duty to inform their line manager as detailed in the Staff Code of Conduct. The College reserves the right to dismiss a member of staff convicted in a court of law if the matter is likely to affect their suitability for ongoing employment at the College.
- 8.2. If a disciplinary offence in the College is to be the subject of a prosecution in a court of law, the College may take disciplinary action before Court proceedings are opened or completed. The staff member will have the right to a panel hearing at the discretion of the Chief Executive and Executive Principal (or designate).
- 8.3. In the case of an acquittal, or if a subsequent judicial appeal succeeds, the College will, if the individual so desires, consider a request for re-engagement or re-appointment on their merits.

9. Review

- 9.1. This procedure will be reviewed every three years, or earlier in the light of any changes in legislation. Substantive changes will be subject to formal staff consultation.

Appendix A – Examples of Misconduct and Gross Misconduct

1. Misconduct

1.1 The following are examples of matters that will normally be regarded as misconduct and will be dealt with under our Disciplinary Procedure:

- 1.1.1 minor breaches of our policies including the Sickness Absence Policy, Electronic Information and Communications Systems Policy, and Health and Safety Policy;
- 1.1.2 minor breaches of your contract;
- 1.1.3 damage to, or unauthorised use of, our property;
- 1.1.4 poor timekeeping;
- 1.1.5 time wasting;
- 1.1.6 unauthorised absence from work;
- 1.1.7 refusal to follow instructions;
- 1.1.8 excessive use of our telephones for personal calls;
- 1.1.9 excessive personal e-mail or internet usage;
- 1.1.10 obscene language or other offensive behaviour;
- 1.1.11 negligence in the performance of your duties; or
- 1.1.12 smoking in no-smoking areas.

This list is intended as a guide and is not exhaustive.

2. Gross misconduct

2.1 Gross misconduct is a serious breach of contract and includes misconduct that, in the College's opinion, is likely to prejudice the College or its reputation or irreparably damage the working relationship and trust between us.

2.2 The following are examples of matters that are normally regarded as gross misconduct:

- 2.2.1 theft or fraud;

- 2.2.2 unauthorised removal of our property belonging to the College, contractor, visitor or member of the staff;
- 2.2.3 forgery or other dishonesty, including fabrication of expense claims and time sheets;
- 2.2.4 physical violence including threatened violence, or behaviour which provokes violence;
- 2.2.5 bullying;
- 2.2.6 deliberate and serious damage to College property to include our buildings or equipment;
- 2.2.7 serious misuse of College property or name;
- 2.2.8 deliberately accessing internet sites including websites involving gambling, pornography, offensive or obscene material.
- 2.2.9 serious insubordination;
- 2.2.10 repeated or serious failure to obey instructions, or any other serious act of insubordination
- 2.2.11 unlawful discrimination or harassment;
- 2.2.12 bringing the organisation into serious disrepute;
- 2.2.13 being under the influence of alcohol, illegal drugs or other substances during working hours;
- 2.2.14 causing loss, damage or injury through serious negligence;
- 2.2.15 serious or repeated breach of health and safety rules;
- 2.2.16 serious breach of confidence to include the unauthorised use or disclosure of confidential information or failure to ensure that confidential information in your possession is kept secure;
- 2.2.17 accepting or offering a bribe or other secret payment;
- 2.2.18 conviction for a criminal offence that in our opinion may affect our reputation or our relationships with our staff, students or the public, or otherwise affects your suitability to continue to work for us;

- 2.2.19 unauthorised use, processing or disclosure of personal data contrary to our Data Protection Policy;
- 2.2.20 harassment of, or discrimination against, employees, contractors, students or members of the public, related to gender, marital or civil partner status, gender reassignment, race, colour, nationality, ethnic or national origin, disability, religion or belief or age contrary to our Equal Opportunities Policy or our Anti-harassment and Bullying Policy;
- 2.2.21 refusal to disclose any of the information required by your employment or any other information that may have a bearing on the performance of your duties;
- 2.2.22 giving false information as to qualifications or entitlement to work (including immigration status) in order to gain employment or other benefits;
- 2.2.23 making a disclosure of false or misleading information under our Whistleblowing Policy maliciously, for personal gain, or otherwise in bad faith;
- 2.2.24 making untrue allegations in bad faith against a colleague;
- 2.2.25 serious misuse of our information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of e-mail and the internet) contrary to our Information and Communications Systems Policy; and
- 2.2.26 undertaking unauthorised paid work that will conflict with, or is to the detriment of, the College's interest without the College's permission.

This list is intended as a guide and is not exhaustive.

Appendix B – Amendments to Procedure for Senior Post-holders Only

1. General

- 1.1. The staff disciplinary policy and procedure (conduct) applies to all staff, including the Chief Executive and Executive Principal and all Senior Post-holders and the Clerk to the Corporation (if not already designated as a Senior Post-holder). This appendix B sets out amendments to the main policy for Senior Post-holders only.
- 1.2. In the event of disciplinary action against the Chief Executive and Executive Principal or a Senior Post-holder the Clerk to the Corporation will support the process, normally undertaken by HR, which is referenced in sections 1 to 7 of the main policy. In these circumstances references to 'HR' throughout this policy should be read as 'Clerk to the Corporation'.
- 1.3. In the event that the disciplinary procedure should apply to the Clerk, the Corporation shall appoint an appropriate person to fulfil the tasks that are normally performed by the Clerk to the Corporation under this process.
- 1.4. Informal stages of the policy (set out in section 3 of the main policy) will be dealt with by the Chief Executive and Executive Principal, or if they are the Senior Post-holder concerned, by the Chair of the Corporation (or designate in their absence).
- 1.5. Formal stages of the main policy normally require actions or decisions to be made by a manager/senior manager or the Chief Executive and Executive Principal. In relation to Senior Post-holders, the Clerk will refer such matters to the relevant individual of the Corporation (this may be the Chief Executive and Executive Principal if nominated by the Corporation).
- 1.6. All procedural communication, notes of meetings and written outcomes of decisions made in respect of formal action will be issued by (or issued through, in the case of decisions made) the Clerk to the Corporation.

2. Formal Disciplinary and Appeal Meetings

- 2.1 The general provisions for Senior Post-holders, including the right to be accompanied by a Companion at any formal meeting, are as set out in section 2 of the main policy.
- 2.2 The composition of formal meetings concerning Senior Post-holders vary from the main policy (sections 4 and 7) and are set out below:

Level of Action	Disciplinary Hearing	Appeal
Formal Disciplinary action short of dismissal (misconduct)	Disciplinary Panel chaired by The Chief Executive and Executive Principal, (or Board Member if SPH is The Chief Executive and Executive Principal) plus one or two members of Corporation.	Appeal Committee (at least three members of the Corporation. This excludes the Chief Executive and Executive Principal and the staff and student members of the Board and any other members investigating or chairing a disciplinary meeting earlier in the procedure)
Formal Disciplinary action which may lead to dismissal (gross misconduct)	Special Committee (at least three members of the Corporation. This excludes the Chair, Vice-Chair, the Chief Executive and Executive Principal and the staff and student members of the Board)	Appeal Committee (if the Corporation has delegated the power to hear the appeal)

- 2.3 The appeal decision concerning Senior Post-holders is final, as set out in section 7.7. of the main policy.