



# Ruskin College Oxford

## DISCIPLINARY PROCEDURE

**Approved:** Senior Leadership Team and JNC

**Last Reviewed:** March 2017

**Responsibility for Review:** HR

**Date of Next Review:** April 2020



## RUSKIN COLLEGE

### DISCIPLINARY PROCEDURE

#### 1 Scope and purpose

- 1.1 This procedure applies to all employees other than designated 'senior post holders' and staff serving a probationary period for whom separate procedures apply.
- 1.2 The College expects all staff to maintain high standards of behaviour at work. It accepts, however, that there may be occasions when individuals do not meet the standards expected.
- 1.3 This procedure applies to issues of alleged misconduct and establishes a framework for handling such situations. It is designed to ensure that all employees achieve and maintain acceptable standards of conduct. The aim is to ensure consistent and fair treatment for all.
- 1.4 The Capability Procedure is used to address issues of capability and competence and should be read in conjunction with this procedure.

#### 2 General principles

- 2.1 Managers are required to familiarise themselves with the disciplinary procedure.
- 2.2. The HR Manager can provide you with guidance on the policy
- 2.2 An employee has the right to be present and accompanied by a trade union representative or a fellow worker at investigatory interviews, formal disciplinary hearings and appeals (so long as a request by the employee to be accompanied is reasonable). The College will remind the employee of the right to be accompanied prior to a disciplinary hearing or appeal.
- 2.3 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 and may be amended as fits the particular circumstances. If it is not practicable to adhere to these time limits they may be amended, ideally by mutual agreement.
- 2.4 Although normal standards will apply to their conduct as employees, the College will at an early stage seek the agreement of an employee who is a trade union representative to discuss the circumstances of their case with an official employed by the trade union.
- 2.5 Informal action will be used, where appropriate, to resolve matters before moving to the formal disciplinary procedure.

- 2.6 Where appropriate, managers will consider alternative means of resolving problems - for example mediation, training, counselling or use of other more suitable College procedures - before implementing formal disciplinary action.
- 2.7 In certain circumstances, it may be necessary temporarily to redeploy an employee immediately from their normal job, e.g. employees against whom serious complaints of misconduct have been made by students or workplace colleagues.
- 2.8 For formal action, the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case at a disciplinary hearing, following an investigation, before any decision is made.
- 2.9 Both sides will be provided with any written copies of evidence and relevant witness statements in advance of a formal disciplinary hearing.
- 2.10 Any steps which the Principal can take may also be taken by a member of the Senior Leadership Team to whom the responsibility has been delegated by the Principal and the provisions of this procedure will be read accordingly.
- 2.11 In cases of serious or gross misconduct, dismissal may occur.
- 2.12 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be summary dismissal without notice or payment in lieu of notice.
- 2.13 An employee will have the right to appeal against any formal disciplinary action.
- 2.14 Individuals who are subject to this procedure will not normally be awarded a salary increment during the relevant period. Any annual increment which is payable, will always be subject to affordability and budget availability. However, an annual inflation pay award will be payable, but subject to the approval by the Governing Executive.

### **3 Investigation**

- 3.1 No disciplinary action will be taken against an employee until the College has investigated the complaint.
- 3.2 The College will inform the employee as soon as possible that an investigation is to be conducted and once the investigation has been concluded.
- 3.3 Where the individual fails to attend an investigatory interview, they will be invited to a re-arranged interview and will be told that if they do not attend that interview (or submit a statement of their case by the date of that interview), the matter will proceed to a disciplinary hearing in line with this procedure.
- 3.5 If appropriate, the College may suspend the employee while the investigation is carried out.
- 3.6 The College will ensure that the person conducting the investigation is different to the person chairing any subsequent disciplinary hearing. The College may use someone external to the College to conduct the investigation if the circumstances so dictate.

#### **4 Suspension pending a disciplinary investigation**

- 4.1 There may be circumstances during an investigation where suspension from duty pending the holding of a formal disciplinary investigation may be appropriate. Examples of circumstances in which suspension may be appropriate include some gross misconduct cases, situations where there are risks to an employee's or the College's property or where there are reasonable grounds for concern that evidence has been tampered with, destroyed or witnesses pressurised.
- 4.2 The decision to suspend can only be made by a member of the Senior Leadership Team.
- 4.3 Suspension will only be imposed after careful consideration and it will be made clear to the employee that it is not considered a disciplinary act.
- 4.4 If the member of Senior Leadership Team decides to suspend an employee from duty, he/she will:
  - i. confirm the suspension in writing to the employee without unreasonable delay; and
  - ii. inform the employee in writing of the reasons for the suspension without unreasonable delay.
- 4.5 A period of suspension pending a disciplinary hearing will be kept as brief as possible and will be kept under regular review.
- 4.6 An employee who is suspended from duty will throughout the period of suspension continue to be entitled to his/her full pay.

#### **5 Informal procedure**

- 5.1 The College recognises that cases of minor misconduct are often best dealt with informally. Therefore, minor lapses from acceptable standards of conduct will usually be dealt with by the employee's manager having an informal discussion with the employee and giving informal oral warnings or written reprimands which will not be recorded on the individual's personal file held in the Human Resources (HR) Department.
- 5.2 It will not normally be appropriate to have informal discussions in the case of misconduct subsequent to a current warning or in the case of gross misconduct.
- 5.3 If, despite informal discussions (or if informal discussions are not appropriate), the employee's conduct does not meet acceptable standards, the formal procedure will be used.
- 5.4 Any Informal written reprimands that were previously issued under the informal procedure may be used as evidence as part of the formal procedure to demonstrate that every effort was made to resolve the matter informally.

#### **6 Formal procedure**

- 6.1 Normally, the formal stages of the procedure will be followed in the order of the

stages set out below. However, offences of a serious nature may be brought into the procedure at any stage. For example, there may be occasions when misconduct is considered not serious enough to justify dismissal, but serious enough to warrant only one written warning which will be both the first and final written warning. At every stage of the formal procedure, the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.

- 6.2 If, upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct, the College will invite the employee to attend a disciplinary hearing. The employee will be advised in writing of the nature of the alleged misconduct, the possible consequences of the hearing and provided with any relevant papers (such as written evidence and witness statements) to enable them to prepare for the hearing. The College will write to the employee with all the above information at least 5 working days before the hearing. The written notification will also detail the date and venue of the hearing and the employee's right to be accompanied.
- 6.3 The employee will be required to notify the HR Manager at least 2 working days before the hearing or appeal of the names of any witnesses they intend to call and/or any supporting written statement submitted and the employee will be notified of the names of any witnesses to be called by the College and/or any supporting written statement submitted.
- 6.4 The employee has the right to be accompanied at the hearing by a trade union representative or a fellow worker. Before the meeting takes place, the employee is required to inform the College who they have chosen as a companion.
- 6.5 Representatives of the College, the employee and the employee's companion are required to make every effort to attend the hearing. If the individual does not attend the hearing without good reason a further hearing will be re-arranged. If the individual fails to attend the first hearing (as described above), they will be told that if they do not attend the re-arranged hearing, the College reserves the right to hear the matter in their absence. If that happens, the employee's companion will be provided with the opportunity to present the employee's case. Any written submission by the employee will be considered before the decision of the hearing is taken. In other circumstances where it seems likely that the employee will be unable to attend a disciplinary hearing the College reserves the right to go ahead with that hearing, affording the employee the right to either submit written representations and/or be represented by a trade union representative, staff representative or fellow worker.
- 6.6 At any disciplinary hearing, the employee will be given an opportunity to state his or her case and will have the right to be accompanied by the trade union representative, staff representative or a fellow worker of his or her choice, subject to a reasonable request being made. However, if the chosen companion of the employee is unavailable on the date of the initial hearing, the employee may delay the date of that hearing once by up to 5 working days to enable the chosen companion to attend. The location and timing of any alternative hearing should be convenient to both the employer and the employee, but should not unduly delay the process.
- 6.7 The disciplinary hearing will be chaired by a member of the Senior Leadership Team who has the authority to dismiss.

- 6.8 The manager who conducted the investigation will not chair the disciplinary hearing, but may attend in order to present the findings of the investigation and any supporting material.
- 6.9 The outcome of the disciplinary hearing will be confirmed in writing to the employee. Where disciplinary action is the outcome, the employee will be informed of the nature of the action and the right of appeal under this procedure.

## **7 Penalty**

- 7.1 No formal disciplinary penalty will be imposed without a disciplinary hearing. Other than in cases of gross misconduct or gross negligence, when the penalty may be dismissal without either 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.
- 7.2 Except in agreed special circumstances, any disciplinary penalty will be disregarded for disciplinary purposes after a specified period of satisfactory conduct. However, although a decision to dismiss will not be based on an expired warning, the fact that there is an expired warning may allow for a lesser sanction not to be substituted.
- 7.3 Where a pattern emerges of an individual's conduct lapsing soon after the completion of a satisfactory penalty period, the individual's disciplinary record will be borne in mind in deciding how long any subsequent warning should last.
- 7.4 The following penalties may be given:

### **Written warning**

A WRITTEN WARNING may be given to the employee if the employee commits a serious offence of misconduct.

This written warning will give details of the decision reached; the change in conduct required; and the time limit for the warning to remain valid. The warning will state that, if the employee commits a further offence of misconduct during the period specified in the warning, further disciplinary action will be considered. The written warning will also advise the employee of the right of appeal.

A record of the written warning will stay in the employee's file for 6 months for a first warning

### **Final written warning**

A FINAL WRITTEN WARNING may normally be given to the employee if:

- (i) The employee fails to comply with a first written warning;
- (ii) Or despite having been given a first written warning as the result of misconduct, the employee commits a further offence of misconduct;

- (iii) Or the employee's misconduct, although not considered to be serious enough to justify summary dismissal, is sufficiently serious to warrant only one written warning (in effect both the first and a final written warning).

The final written warning will give details of the decision reached; the change in conduct required; and the time limit for the warning to remain. The warning will state that, if the employee commits a further offence of misconduct during the time limit specified in the warning, his or her employment may be terminated. The final written warning will also advise the employee of the right of appeal as set out below.

A record of the final written warning will stay in the employee's file for 12 months.

## **Dismissal**

The chair of a hearing, having had regard for any mitigating factors presented by the employee, may give notice of dismissal to the employee if:

- (i) The employee failed to comply with a final written warning; or
- (ii) Despite having been given a final written warning as the result of misconduct, the employee committed a further offence of misconduct; or
- (iii) The employee committed an act of gross misconduct.

The notice of dismissal will be in writing and will specify the reasons for dismissal, the date on which the employment will end, the appropriate period of notice and the right of appeal against the dismissal or the notice of dismissal. If the circumstances are such that the chair is entitled to do so by reason of the gross conduct (including gross negligence) of that member of staff, that dismissal may take immediate effect without any need for prior notice (i.e. summary dismissal).

As an alternative to dismissal, the individual may be given another penalty (e.g. downgrading, relocation, suspension without pay) together with a formal warning.

## **8 Gross misconduct**

8.1 A member of the Senior Leadership Team may summarily dismiss the employee without notice or pay in lieu of notice if, on completion of an investigation and a disciplinary hearing, it is established that the employee has been guilty of gross misconduct.

8.2 The following offences are examples of offences which are normally regarded as grounds for summary dismissal:

- Gross Negligence
- Theft or unauthorised possession of any property or facilities belonging to the College or to any employee or student or visitor.
- Serious damage deliberately sustained to College property.
- Inappropriate use of the internet or computer misuse (including deliberately accessing internet sites at work which contain pornographic, offensive or obscene material).
- Deliberate misuse of College policies and resources (including IT).
- Bringing the College into serious disrepute.
- Possession or trafficking of drugs or weapons.

- Deliberate falsification of College registers, reports, accounts, expense claims or self-certification forms.
  - Deliberate falsification of application form information, including qualifications during recruitment and selection and at any subsequent time during College employment.
  - Bribery or corruption or fraud.
  - Deliberate refusal to carry out duties or reasonable instructions or to comply with College rules.
  - Serious acts of insubordination.
  - Serious negligence/incompetence which causes or might cause unacceptable loss, damage or injury.
  - Serious incapability and/or misconduct as a result of being intoxicated by reason of alcohol or illegal drugs.
  - Contravention of the College's No Smoking Policy or removing or defacing 'no smoking' signs
  - Violent, dangerous or intimidatory conduct.
  - Any abuse of the Harassment Policy or serious act of illegal discrimination.
  - Violation of the College's rules and procedures concerning health and safety at work.
  - A criminal 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 he or she is employed by the College to perform or his or her acceptability to other employees or to students.
  - Serious breach of confidence.
  - Serious breaches of Data policy.
  - Data violation such as downloading of data.
- 8.3 In the above examples, references to the College should be read more widely where an individual commits misconduct in the course of their employment at a location away from College sites.
- 8.4 The above examples are not exhaustive or exclusive and offences of a similar nature will be dealt with under this procedure.

## **9 Appeal**

- 9.1 An employee who wishes to appeal against a disciplinary decision must do so within 5 working days of the date of the decision. To do so, the employee is required to inform the HR Manager in writing, stating the grounds for appeal.
- 9.2 Where the appeal is against a written warning, it will be heard by a member of Senior Leadership Team who has not been involved in the disciplinary process in question so far. Wherever possible, the manager hearing the appeal will be senior to the manager who chaired the original disciplinary hearing.
- 9.3 Where the appeal is against dismissal (including summary dismissal), it will be heard by either:
- i. the Principal, where the decision to dismiss was made by a member of Senior Leadership Team; or



- ii. the Assistant Principal to whom the responsibility has been delegated, but who has not been involved in the disciplinary process; or
  - iii. a committee of the Governing Executive, where the decision to dismiss was made by the Principal. The committee will not include the Principal, staff members or student members.
- 9.4 The appeal hearing will be held as soon as reasonably practicable after the notice to appeal has been received. The employee will be given at least 5 working days' notice of the hearing date time and place fixed for the appeal hearing to allow him or her to prepare for the hearing.
- 9.5 At the appeal hearing, the employee will be given the opportunity to state his or her case and has the right to be accompanied by a trade union representative, staff representative or a fellow worker. The chair of the earlier disciplinary hearing will also be in attendance in order to explain the disciplinary decision made.
- 9.6 If the chosen companion of the employee is unavailable on the date of the initial hearing, the employee may delay the date of that hearing once by up to 5 working days to enable the chosen companion to attend. The location and timing of any alternative hearing should be convenient to both the employer and the employee, but should not unduly delay the process.
- 9.7 At the appeal, the disciplinary penalty imposed will be reviewed, but it cannot be increased. If the director or manager hearing the appeal is presented with different evidence against the individual from that presented at the disciplinary hearing, a further disciplinary procedure will be instigated. However, if the employee raises new evidence in their appeal this will be considered at the appeal hearing.
- 9.8 As an alternative to dismissal, the individual may be given another penalty (e.g. downgrading, relocation, suspension without pay) together with a formal warning.
- 9.9 The appeal decision will be notified to the employee (and, where it is a decision of a committee of the Governing Executive, also notified to the Principal) in writing without unreasonable delay following the appeal hearing. The appeal decision is final.

#### **PROCEDURE FOR A DISCIPLINARY HEARING**

1. During the hearing, adjournments may be requested by either party or by the chair and will not be refused unreasonably.
2. The chair will ask whether any new evidence has been made available that could not be circulated prior to the hearing and will make a judgement as to whether an adjournment is necessary to allow consideration of such evidence.
3. The chair will introduce all those present.
4. The chair will set out that the employee's companion may:
  - address the hearing to put the employee's case;
  - confer with the employee during the hearing;
  - sum up the employee's case;

- respond on the employee's behalf to any view expressed at the hearing

but may not answer questions on the employee's behalf.

5. The chair may ask questions at any time.

Not every hearing will be conducted in exactly the same way and will depend on the particular circumstances and nature of the allegations. However, a typical procedure to be followed at a disciplinary hearing is outlined below.

#### **Hearing procedure**

- (a) The Investigating Officer (IO) will present the details of the allegation and on the investigation undertaken.
- (b) The IO may be questioned by the employee and his/her companion and afterwards by the manager conducting the hearing.
- (c) If appropriate, the IO may call witnesses\* individually and ask questions of them. The employee or companion and the manager may then question the witness(es).
- (d) The employee and/or companion will present the case against the allegations and explain any special circumstances which may exist.
- (e) The manager may ask the IO if he/she has any comments on what has been said by employee or the witness(es).
- (f) The manager may question the employee.
- (g) If appropriate, the employee and/or companion may call witness(es).
- (h) The manager may question the witness(es). The manager may ask the IO if he/she has any comments on what has been said by the witness(es).
- (i) The IO will summarise the case against the employee without introducing any new factors.
- (j) The employee and/or companion will summarise the case against the allegation.
- (k) The manager will conclude the hearing.
- (l) After the hearing, the manager will decide whether or not an offence has been committed. The manager may seek guidance from the HR Manager on procedural matters.
- (m) If, in the opinion of the manager conducting the hearing an offence has been committed, any relevant factors will be considered before deciding upon an appropriate disciplinary sanction.
- (n) Once that decision is made, written confirmation of the decision will be sent to the employee without unreasonable delay.
- (o) The employee will be advised of their right to appeal against the decision and informed who that appeal should be lodged with and in what timescale.

\* Each witness will attend only for his/her own evidence and will withdraw once his/her evidence is given.

## PROCEDURE FOR APPEALS

1. During the hearing, adjournments may be requested by either party or by the chair and will not be refused unreasonably.
2. The chair will ask whether any new evidence has been made available that could not be circulated prior to the hearing and will make a judgement as to whether an adjournment is necessary to allow consideration of such evidence.
3. The chair will introduce all those present.
4. The chair will set out that the employee's companion may:
  - address the hearing to put the employee's case;
  - confer with the employee during the hearing;
  - sum up the employee's case;
  - respond on the employee's behalf to any view expressed at the hearing

but may not answer questions on the employee's behalf.

5. The chair may ask questions at any time.

Not every hearing will be conducted in exactly the same way and will depend on the particular circumstances and nature of the allegations. However, a typical procedure to be followed at a disciplinary hearing is outlined below.

### Hearing procedure

- (a) The employee or companion will state the precise nature of the appeal. He/she will then explain his/her case and any special circumstances which may exist.
- (b) Where appropriate, the employee or companion may introduce any witnesses.
- (c) The chair of the hearing may question any witness(es).
- (d) Each witness will attend only for his/her own evidence and will withdraw once his/her evidence is given.
- (e) If necessary, the chair of the hearing may call the manager who made the original disciplinary decision in order to ask any relevant questions.
- (f) The employee or companion may question the manager who made the original disciplinary decision.
- (g) The manager who made the original disciplinary decision will withdraw.
- (h) The employee or companion will summarise the appeal, with no new factors to be introduced.
- (i) After the hearing, the chair will review case before making decision, taking account of the original disciplinary decision and the employee's representations from the appeal hearing.
- (j) Once that decision is made following the hearing, written confirmation of the decision will be sent to both parties without unreasonable delay.

