

## DISCIPLINARY POLICY

### 1. Scope and Purpose

- 1.1 This procedure applies to all employees other than Senior Postholders (as defined in The College's Articles of Governance) and probationary employees; the Probation Policy sets out the arrangements for probationary employees. Protocol Associates, visiting lecturers, agency staff, contractors, consultants and those working under self employed arrangements are not employees of The College and so are not covered by the scope of this Policy.
- 1.2 The purpose of the Policy is:
- To help and encourage employees to achieve and maintain acceptable standards of conduct and job performance
  - To ensure that fair, consistent and reasonable action is taken where acceptable standards of conduct and job performance are not maintained
  - To ensure consistent and fair treatment for all in relation to disciplinary action taken in response to unacceptable conduct and job performance

### 2. General Guidance

- 2.1 These rules and procedures will be reviewed and revised periodically particularly in the light of any developments in employment legislation or good employment practice, in order to ensure their continuing relevance and effectiveness. Any revisions will be introduced only after consultation with Trade Union representatives and after reasonable notice has been given to all employees.
- 2.2 Employees will have the right to be accompanied by a workplace colleague or union representative of their choice at all formal stages of this Policy, and at any investigation meeting. Employees should notify their line manager if they are to be represented. The only exception to this is, in exceptional circumstances, the case of suspension where every effort has been demonstrated to contact a Trade Union official or workplace colleague, without success.
- 2.3 Line managers must consult the HR Department prior to any action being taken under this policy.
- 2.4 A copy of the Disciplinary Policy is available to all employees from the HR September. An explanation and copy of the Policy will be given to new staff at the induction with the HR representative.
- 2.5 Timescales given under this Policy may be varied by mutual consent. For example, an employee may request that a disciplinary hearing may be held earlier or later than the ten days specified under this Policy.

### 3. General Principles

- 3.1 In most cases where a disciplinary matter arises it should be resolved at an early stage through informal discussion between the employee and their line manager.
- 3.2 Where the matter is not resolved informally or is of a serious nature this Policy will be implemented.
- 3.3 Matters should be dealt with as quickly as possible.

- 3.4 No disciplinary action will be taken against an employee until The College has fully investigated the allegations against them.
- 3.5 To ensure fairness and objectivity The College will appoint a suitable Investigator to consider all the relevant facts about the alleged misconduct. The Investigator will normally be a manager from an area other than the one the employee works in. In exceptional cases the Investigator may be from a body external to The College.
- 3.6 It is essential that the investigatory process is fair and objective. The employee will be interviewed as part of the investigation. If there are witnesses, interviews will be carried out and signed statements obtained.
- 3.7 An investigatory meeting is **not** a formal disciplinary hearing. If, following an investigation, the appropriate senior manager believes that there may be a case to answer, a formal disciplinary hearing will be arranged in accordance with this Policy.
- 3.8 At every stage of this Policy the employee will be made fully aware of the nature of the complaint against them and have the opportunity to state their case before any decision is made.
- 3.9 No formal disciplinary action will be taken without a disciplinary hearing. Other than in cases of gross misconduct, when the penalty may be dismissal without notice or payment in lieu of notice, no employee will be dismissed for a first offence.
- 3.10 Normally, the procedure will be followed in the order of the stages set out below. However where the offence is potentially gross misconduct, it may be heard at any stage if management considers that the earlier stage would not be appropriate.
- 3.11 These stages do not operate independently, but are a cumulative system for dealing with problems. Once the disciplinary process has been initiated, subsequent breaches for any offence, within a warning period, will normally involve further action being taken.
- 3.12 When deciding whether or not to issue an employee with disciplinary action, the manager will take into account any live, formal warnings issued under any other procedure. If there is already current action against an employee, any disciplinary warning may be issued at the next or higher stage.
- 3.13 Although normal disciplinary standards apply, no disciplinary action will be taken against a recognised Trade Union representative until the circumstances of the case and representation have been discussed with the full-time Officer of the Trade Union concerned. The only exception to this is in the case of suspension, where significant effort has been made to contact a full-time official without success. In this circumstance suspension may take place and the matter will be discussed at the earliest opportunity.
- 3.14 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. Due regard will be given to the personal circumstances of all parties involved in the procedure.
- 3.15 The Capability Policy is closely linked to the Disciplinary Policy. In cases of alleged misconduct or capability the HR Department will advise which Policy and/or procedure should be followed. The employee will be managed under a fair management process at all times. In the course of a disciplinary case, where it becomes apparent that the matter is not one of discipline but is related to capability, then the disciplinary process will stop and the matter will be dealt with under the Capability Policy. However, if the poor performance is due to misconduct, the Disciplinary Policy will be followed.
- 3.16 If an employee becomes ill and is unable to attend an investigation meeting or a disciplinary or appeal hearing, the HR Department must be notified immediately. Where

the illness is short-term, the meeting or hearing may be arranged for a later date. The College reserves the right to refer the employee to its' occupational health service at any time. Where the employee is too ill to attend a meeting or hearing in the reasonably near future, the investigation or disciplinary hearing may proceed in their absence and their trade union representative or nominated work colleague may represent them at the meeting or hearing.

- 3.17 Where an employee refuses to attend meetings in accordance with this Policy without good reason (for example, illness which is covered by a Medical Certificate) they are potentially in breach of their employment contract. The employee will be advised of this, in writing, and advised that unless they do attend, a disciplinary decision may be taken in their absence, on the basis of the information available.

#### **4. Record Keeping**

- 4.1 Accurate, timely and agreed records must be kept of all meetings and correspondence. Records must include details of the matter raised, the employee's response, any action taken and the reasons for it together with all correspondence.
- 4.2 Warnings will be kept but will normally be disregarded after a period of nine months for oral warnings, twelve months for written warnings and 18 months for final written warnings.
- 4.3 These records must be kept confidential and retained in accordance with the Data Protection Act 1998, (as amended). Copies of any meeting records should be given to the individual concerned, although in extreme circumstances specific information may be withheld, in certain cases anonymous statements may be used (for example to protect a witness).

#### **5. Responsibilities of Management**

- 5.1 It is the responsibility of managers to ensure that each member of their staff is familiar with the standards of performance and conduct expected of them by:
- a) Explaining fully the requirements of the job
  - b) Providing training as necessary to develop skills and knowledge required for the job
  - c) Providing regular appraisal and feedback on each individual's progress
- 5.2 Employees will be given every opportunity to improve performance or conduct through encouragement and relevant training.

#### **6. Stages of the Procedure**

##### **6.1 Advice, Counselling and Guidance**

- 6.1.1 Minor lapses from acceptable standards of conduct will usually be dealt with by the employee's line manager providing advice, counselling, guidance and support as required. This is a normal feature of the line manager's function and does not represent formal disciplinary action.
- 6.1.2 Advice, counselling and guidance are often more satisfactory methods of resolving problems than taking formal disciplinary action. This is an attempt to correct a situation and prevent it from becoming worse without using the disciplinary procedure. Advice, counselling and guidance should take the form of a confidential discussion to try to support and encourage the employee and their manager to improve the situation.

- 6.1.3 The line manager carrying out the advice, counselling and guidance will confirm with the employee what the problem is, identify what action needs to be taken and inform the employee of a reasonable timescale for action. The line manager will agree a review date with the employee to assess whether there has been an improvement in the conduct.
- 6.1.4 If, during such a discussion, the matter becomes more formal, the discussion should be adjourned. The line manager should make it clear that the matter will be pursued under the Disciplinary Policy.
- 6.1.5 The line manager and employee will keep an accurate record of any advice, counselling or guidance for reference purposes. The note will include any agreed action or support offered. It must not be confused with action taken under the Disciplinary Policy. The note will be deleted after six months from the employee's personal file. However, a copy may be kept on a separate HR file if necessary.

## 6.2 The Formal Procedure

If minor lapses from acceptable standards of conduct reoccur or if the matter is more serious, then the following disciplinary penalties may be applied:

### 6.2.1 Stage 1 - Oral Warnings

- a) If conduct does not meet acceptable standards and is considered, by the Line Manager to be minor, the employee will normally be given a formal ORAL WARNING by their line manager. The warning will give details of the complaint, the improvement or change in behaviour or conduct required, the timescale allowed for this and the right of appeal.
- b) A brief note of the oral warning will be placed on the employee's personnel file. After nine months, the warning will be spent and the note will be removed from the personnel file, subject to the employee's conduct having been satisfactory throughout that period.

### 6.2.2 Stage 2 - Written Warnings

- a) A WRITTEN WARNING will be given to the employee if:
  - The employee commits a more serious offence of misconduct
  - The employee fails to comply with a formal oral warning given under Stage 1, or
  - Despite having been given, under Stage 1, a formal oral warning as the result of misconduct, the employee commits a further offence of misconduct
- b) A written warning will give details of the complaint, the improvement or change in conduct required, the timescale allowed for this and the right of appeal. The written warning must also inform the employee of the consequences if there is no satisfactory improvement or change.
- c) A copy of the written warning will be placed on the employee's personnel file. The warning will be spent after twelve months, subject to the employee's conduct having been satisfactory throughout that period.

### 6.2.3 Stage 3 - Final Written Warnings

- a) A FINAL WRITTEN WARNING will normally be given to the employee if:
  - The employee fails to comply with a written warning given under Stage 2

- Despite having been given a written warning under Stage 2, the employee commits a further offence of misconduct or
  - The employee's misconduct, although not considered to be serious enough to justify dismissal, is sufficiently serious to warrant a final written warning
- b) A final written warning will give details of the complaint, the improvement or change in conduct required, the timescale allowed for this and inform the employee that failure to improve or modify their conduct, or if another offence is committed, the employee may be liable to dismissal or to some other action short of dismissal. It will also include a statement of the employee's right of appeal.
- c) A copy of the final written warning will be placed on the employee's personnel file. The warning will be spent after eighteen months, subject to the employee's conduct having been satisfactory throughout that period.

#### 6.2.4 Stage 4 – Dismissal

- a) Following a formal hearing, the employee may be dismissed if;
- They have failed to comply with a final written warning given under Stage 3 or
  - Despite having been given, under Stage 3, a final written warning as the result of misconduct, they have committed a further offence of misconduct or
  - They commit an act of gross misconduct. In such cases the dismissal will be without notice i.e. summary dismissal. Examples of gross misconduct, gross negligence and gross incompetence are given at Appendix One.
- b) The employee will be provided with a written reason for dismissal, the appropriate period of notice (or pay in lieu of notice), the date on which employment was terminated, and the employee's right of appeal together with the date by which the appeal must be submitted. Under the Instruments and Articles of Governance the dismissal of an employee can only be undertaken by the Principal/Chief Executive.

#### 6.3 Disciplinary Action Short of Dismissal

Action as an alternative to dismissal will only take place where a member of the Executive believes the circumstances are such that alternative sanctions will work and there will not be a repetition of the misconduct or behaviour in question.

#### 6.4 Suspension of Staff

6.4.1 In the case of suspected gross misconduct in accordance with Health and Safety procedures, (where there is a danger or potential danger to themselves or others), the continuing attendance of the employee at the College cannot be permitted; the employee may be suspended from duty immediately. The suspension will normally be carried out in a face to face meeting with the employee, but, exceptionally, may be notified in writing, using Recorded Delivery.

6.4.2 The employee will be given every opportunity to contact their Trade Union representative or a workplace colleague to allow them representation at a suspension meeting where this will not delay the meeting.

- 6.4.3 This suspension period allows the manager to conduct a thorough and proper investigation.
- 6.4.4 Suspension from duty is **not** a disciplinary action or sanction.
- 6.4.5 The period of suspension will be on normal pay inclusive of regular or contractual allowances and enhancements and will be periodically reviewed. Continuity of service will be preserved.
- 6.4.6 Suspension will normally be carried out by the Executive Director of HR (or their deputy) with the Principal (or their deputy).
- 6.4.7 Suspension will be confirmed in writing within **five working days**, and will include a statement as to the nature of the suspected misconduct, or allegations. It will also state that the period of suspension will be as short as possible. Where necessary, the suspension will be extended after an initial three-week period and this will be confirmed in writing to the employee.
- 6.4.8 Suspended employees must only contact other employees through a named HR contact. This does not prevent suspended employees from contacting their trade union representative, where they are an employee of The College.
- 6.4.9 As suspension from duty is not a disciplinary action or sanction, The College will make every effort to ensure confidentiality. The employee is also required, as far as possible, to also maintain confidentiality in this respect and to not knowingly publicise information about the allegations that led to the suspension.

## 6.5 Appeals Against Suspension

An employee who has been under suspension for **three weeks** or more may appeal in writing to the Principal against the suspension. Notice of such appeal shall be made in writing by the employee to the Executive Director of Human Resources and the appeal shall be heard within **five working days** or as soon as practicable. The suspension will continue to operate pending the determination of the appeal.

## 7. **Appeals Against Disciplinary Action**

- 7.1 An employee has the right to appeal against any disciplinary penalty imposed under this procedure. Appeals may be against:
  - a. The perceived unfairness of the judgement
  - b. The severity of the penalty
  - c. Procedural irregularities
  - d. Because of new evidence coming to light
- 7.2 A manager not previously involved in the original hearing who will normally be at a more senior or the same level as the manager who imposed the original penalty will conduct the appeal hearing.
- 7.3 **Appeals for actions short of dismissal** shall be made in writing to the Executive Director of HR stating the grounds for the appeal and be received within five working days of receipt of the letter notifying the employee of the decision.
- 7.4 **Appeals against dismissal** must be made in writing to the Clerk to the Corporation within **fourteen working days** of the receipt of the letter notifying the employee of the action taken. A Panel of Board Members will hear appeals against dismissal. The Panel will meet to consider the appeal within **fourteen working days** of the date on which the appeal was made or as soon as practicable thereafter (Article 13.3 and 13.4).

- 7.5 A representative from HR will be present at appeal hearings. Normally this will be the Executive Director of HR. The Clerk to the Corporation will normally be present at appeals against dismissal.
- 7.6 Notification of the appeal hearing must be made in writing to the employee giving **ten working days** notice (unless otherwise agreed). This notice will advise the employee of their right to representation by a Trade Union representative or work colleague.
- 7.7 Appeals will be dealt with as quickly as possible and normally within **fifteen working days** of receipt of the appeal notification.
- 7.8 The Chair of the disciplinary hearing will normally present the management case at the appeal hearing.
- 7.9 No new evidence may be presented at an appeal hearing without the prior agreement of all the parties. Where new evidence is pertinent to the case, agreement to submitting it will not be unreasonably withheld.
- 7.10 The Chair of the appeal hearing may endorse the original decision, may substitute a lesser penalty or remove the disciplinary action against the employee. The Chair may not substitute a higher level of penalty against the employee.
- 7.11 The purpose of an appeal is to review the decision made by the Chair of the disciplinary hearing, rather than re-hear the disciplinary hearing in full. However, all relevant evidence will be heard.
- 7.12 This decision will be confirmed in writing to the employee within **five working days**, which will include the following:
  - (i) Confirmation of the outcome of the appeal, any disciplinary penalty imposed and the reasons for this
  - (ii) Confirmation that the decision is final and that there is no further internal right of appeal

## Appendices

Appendix One: Guidance on What Constitutes Misconduct and Gross Misconduct

**This policy will be reviewed by the Joint Negotiating and Consultative Committee by February 2009.**

**This policy was adopted by The Bournemouth & Poole College on [date].**

Signed \_\_\_\_\_ Name \_\_\_\_\_

**On behalf of the Corporation**

**Please print**

Date \_\_\_\_\_

Signed \_\_\_\_\_

On behalf of UNISON

Name \_\_\_\_\_

Please print

Date \_\_\_\_\_

Signed \_\_\_\_\_

On behalf of UCU

Name \_\_\_\_\_

Please print

Date \_\_\_\_\_

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On behalf of ACM

Name \_\_\_\_\_

Please print

Date \_\_\_\_\_

## **APPENDIX ONE: GUIDANCE ON WHAT CONSTITUTES MISCONDUCT/GROSS MISCONDUCT**

### **1. Introduction**

- 1.1 The ACAS Code of Practice 'Disciplinary Practice and Procedures in Employment' recommends that written guidance be issued to employees explaining the standard of conduct expected of them at work.
- 1.2 The following notes are intended to assist employees in appreciating the type of behaviour, which The College considers to be unacceptable, and can lead to disciplinary action.

### **2. Examples of Misconduct**

- 2.1 Examples of acts and behaviour, which render an employee liable to disciplinary action, fall into two broad categories, namely misconduct and gross misconduct. In the case of gross misconduct The College may summarily dismiss the employee, that is, dismissal without notice or pay in lieu of notice.
- 2.2 Examples of misconduct and gross misconduct are given below, but it must be stressed that these examples are neither exclusive nor exhaustive and there will be other offences of similar gravity that are not listed. These may also be supplemented by examples specific to the nature of a particular job.

### **3. Indicative examples of misconduct warranting disciplinary action:**

- a. Failure to maintain acceptable standards of timekeeping
- b. Absence from work without prior permission or authorisation given in accordance with The College procedures
- c. Failure to follow working practices, procedures and instructions
- d. Failure to maintain an adequate and acceptable standard of work as a result of negligence and carelessness
- e. Failure to take reasonable care of College property, goods and vehicles
- f. Failure to maintain acceptable standards of interpersonal behaviour
- g. Minor breaches of Health and Safety regulations (including breaches of car parking rules)
- h. Unauthorised use, destruction, mutilation, alteration or disclosure of official information, documents or records including those held on computerised systems

### **4. Indicative examples of gross misconduct that may result in summary dismissal:**

The following list is recommended by ACAS as being examples of offences which are normally regarded as gross misconduct:

- a. theft, fraud, deliberate falsification of records
- b. fighting, assault on another person
- c. deliberate damage to organisational property
- d. serious incapability through alcohol or being under the influence of illegal drugs
- e. serious negligence which causes unacceptable loss, damage or injury
- f. serious act of insubordination
- g. unauthorised entry to computer records

- h. physical violence or bullying
- i. deliberately accessing internet sites containing pornographic, offensive or obscene material
- j. a serious breach of health and safety rules
- k. a serious breach of confidence

In addition, The College would normally regard the following offences as being gross misconduct:

- a. wilful damage to property of The College, its suppliers, members of the public or other employees
- b. Bribery or corruption including taking and giving inducements
- c. Falsification of College documents such as timesheets, bonus sheets, claims for reimbursement of expenditure, registers and self certificate forms
- d. Deliberate failure to comply with statutory or regulatory requirements or College rules, policies or procedures that has a major impact on The College's business
- e. A criminal activity or offence (whether committed during or outside normal working hours) of such a nature that the employee is obviously unable or unsuitable to continue to carry out the duties for which he/she is employed
- f. Serious unauthorised disclosure of confidential information (subject to the Public Interest [Disclosure] Act 1998) or any serious breach of duty, which is prejudicial to The College
- g. Serious unauthorised use or misuse of The College computer system, email system or internet including serious data protection breaches, downloading pornography or offensive materials or accessing unsuitable chat rooms