

Christ The King Sixth Form College

Staff Disciplinary Procedures: Misconduct

Investigation

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

Suspension

- 2 At any stage the Principal or designated alternate should consider whether the employee should be suspended on full pay pending further investigation. Under the Articles of Government suspension on full pay is possible 'for misconduct or other good and urgent cause'. If the employee is so suspended, the Principal or designated alternate should give written notification of the suspension, setting out the grounds on which the decision to suspend has been taken. Any employee, who has been under suspension for three weeks or more and has not been notified of a proposal to dismiss, may appeal in writing to the Governing Body (or delegated subcommittee) against the suspension. If any employee does so appeal, the suspension shall continue pending the determination of the appeal, which shall be considered as soon as practicable.

Disciplinary Interview

- 3 Where it is decided that there is a case to answer, the employee concerned should be informed in writing giving not less than ten working days' notice that she/he is being called to answer allegations (which will be specified in the letter), at a disciplinary interview. Any documentary evidence to be considered in connection with the allegations should be circulated as soon as possible and at the latest two working days in advance of the interview to both parties. She/he will also be informed of her/his right to be accompanied by a friend during the disciplinary interview, and of the right to present her/his case, call relevant witnesses and give evidence.
- 4 The disciplinary interview will normally be conducted by the Principal or delegated alternative, accompanied by at least one other member of/or adviser to the senior staff. The decision on the outcome of the disciplinary interview will be that of the Principal or delegated alternate.

Disciplinary Action

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

- 6 If the issue is more serious or a further offence occurs, there could be a written warning (or even a final written warning) setting out the nature of the offence(s), the improvement required and timescales allowed for this and the likely consequences of further offences. Details of such disciplinary action should be given in writing within five working days to the employee, and if desired, to her/his friend. At the same time the employee should be informed of her/his right to appeal against the disciplinary action taken (see paragraph 11).
- 7 Where there is a further suspected breach of discipline or there is still a failure to improve following a formal written warning, the procedure set out in paragraphs 1-6 will be repeated. (If a final written warning has been given, then the procedure should move on to paragraph 9).
- 8 Where the case of a further breach of discipline is upheld a further formal warning or final written warning may be issued. Other possible forms of disciplinary action, which may be appropriate, are alteration of duties and responsibilities, suspension with pay or transfer to another post. Demotion or suspension without pay are also possibilities.
- 9 If conduct is still unsatisfactory and the employee still fails to reach the prescribed standards then, following a further interview, dismissal will normally result. If the Principal or delegated alternate does decide to dismiss, the employee and. If desired, her/his friend should be given written reasons for dismissal, the date on which employment will terminate and the right of appeal to the Governing Body (see paragraph 11).
- 10 If the employee does decide to appeal to the Governing Body against the notice to dismiss, then the dismissal shall not take effect until the appeal has been determined.

Appeal

- 11 The ACAS Code of Practice on Disciplinary Procedures provides for an appeal against any formal disciplinary action (which would not, therefore, include oral warnings under paragraph 5 above) which must be to a higher authority. If action has been taken by the Principal, then the appeal must be to the Governing Body (or a Committee of the Governing Body or the Chairman of the Governing Body if so delegated under the Articles). If, however, the Principal empowers another member of staff e.g. Vice Principal to take disciplinary action, then the appeal should be considered by the Principal. The employee may be accompanied by a friend at the appeal hearing. The appeal should be lodged in writing with the Clerk to Governors within ten working days of receipt of the letter informing the employee of the decision. The decision at appeal is final.

Gross Misconduct

- 1 Gross Misconduct is misconduct at work or outside work; serious enough to destroy the employment contract and make any further working relationship and trust impossible.
- 2 Some examples of the kinds of offence likely to be treated as gross misconduct are:
 - ✚ Drunkenness or disorderly conduct sufficient to have an effect on the employee's ability to carry out their duties.
 - ✚ Fighting, violence towards others or destruction or damage of equipment or premises.
 - ✚ Fraud or deliberate falsification of records for personal gain.
 - ✚ Theft of employer's or colleagues' property.
 - ✚ Gross negligence or dereliction of duties.
 - ✚ Serious breaches of health and safety procedures or regulations.
 - ✚ Gross insubordination.
 - ✚ Serious breaches of confidence (subject to the Public Interest (Disclosure) Act 1998).

This list is not intended to be exhaustive.

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


Appeal

- 4 Where an employee has been dismissed she/he may appeal against the dismissal to the Governing Body (or a Committee of the Governing Body). The employee may be accompanied by a friend at the appeal hearing.


The appeal should be lodged in writing with the Clerk to Governors within ten working days of receipt of the letter informing the employee of the decision. The decision at appeal is final.

NOTES FOR GUIDANCE

- 1 These procedures have regard to the principles and standards set out in the most recent ACAS code of Practice on Disciplinary and Grievance Procedures (see ACAS website at www.acas.org.uk)
- 2 The procedures are designed to ensure that when a complaint or allegation is made against an employee, she/he is given every opportunity to respond before it is decided whether any disciplinary action is appropriate. The procedure aims to ensure that all employees are dealt with in a fair and equitable manner. All stages of the procedure should be carried out as promptly as possible.
- 3 At all stages the employee will have the right to be accompanied by a:

 Fellow worker i.e. another of the College's workers.

OR

 A full-time official employed by a trade union, or a lay trade union official who is certified in writing by their union as having experience of, or as having received training in, acting as a workers' companion at disciplinary or grievance hearings.

referred to throughout as "a friend".

- 4 No employee should be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be dismissal without notice. A written or final written warning shall normally remain in force for a period of 12 months unless it is decided that the nature of the offence requires a longer period. Where a case is withdrawn or not upheld any reference to the alleged disciplinary offence will be expunged from the employee's personal file except where this conflicts with Statutory Regulations.
- 5 No disciplinary action beyond an oral warning will be taken against an official of a recognised trade union until the circumstances of the case have been discussed with a senior trade union representative or full-time official.

- 6 It is important that at all stages of these procedures, detailed written records are kept. It is good practice to have agreed notes signed by all the relevant parties. All records should be kept confidential and retained with the Data Protection Act 1998.
- 7 Except in agreed special circumstances, any disciplinary action taken should be disregarded after a specified period of satisfactory conduct or performance. (see ACAS Advisory Handbook on Discipline and Grievances at Work at www.acas.org.uk)
- 8 Criminal charges or convictions outside employment will not be treated as automatic reasons for disciplinary action. The main consideration will be whether the offence is one that makes workers unsuitable for their type of work. (see ACAS Code of Practice).

Detailed Notes of Guidance

- 9 Paragraph 2

The “proposal to dismiss” in the fourth sentence refers to a proposal to dismiss following a disciplinary interview (Articles of Government, article 10(4)a).

- 10 Paragraph 3

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

To ensure that the employee has every opportunity to respond, the College will ensure that the member of staff has a reasonable opportunity to consider the full details of the complaints or allegations. This will enable her/him to prepare a response and to arrange for the attendance of any appropriate witnesses. Accordingly, the Procedure requires any documentary evidence to be circulated **as soon as possible**. It may be possible for this evidence to accompany the letter convening the disciplinary interview. Only in exceptional cases will it be necessary to circulate documents with the stated minimum disclosure period of 48 hours before the interview. In such circumstances, the stated minimum of 48 hours should be treated as two working days.

- 11 Paragraphs 5 and 6

The employee who receives a warning may wish to set down her/his comments upon it in writing. This may present an acceptable alternative to lodging an appeal. Such responses should be kept with the warning on the employee’s file.

12 Paragraph 8

Demotion and suspension without pay are included as “possibilities”. These will arise only in very serious cases when dismissal is being contemplated. Where they are under consideration, these sanctions should be discussed with, and accepted by, the employee concerned before their implementation as an alternative to dismissal. Both of these penalties will be handled carefully, and suspension without pay should not normally be for a prolonged period.

13 Paragraph 9

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

14 Paragraph 11

Appeal hearings should be convened without undue delay, but with reasonable notice to the employee concerned, which should not be less than 5 working days.

15 **Gross Misconduct**

Allegations of gross misconduct should be investigated and considered promptly and will normally be accompanied by immediate suspension. However, the seriousness of the allegation should not obscure the importance of acting fairly and reasonably towards the employee concerned. This will involve convening a disciplinary interview with reasonable notice, advance disclosure of details and documents and an opportunity for the employee to be represented and to call witnesses. A minimum of 5 working days notice of the interview will normally be appropriate. Any appeal should again be convened without delay, but with reasonable notice to the employee concerned, which should not normally be less than 5 working days.

16 **Fixed Term Contracts**

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

DISCIPLINARY PROCEDURE: CAPABILITY

Stage 1

It is the responsibility in the first instance of the immediate supervisors (e.g. Heads of Department for teaching staff) to offer suitable help and advice to employees where alleged incompetence such as a lack of skill, aptitude and/or ability or unsatisfactory performance is identified. The nature of the alleged shortcoming will determine the nature of the help to be provided. The help could include one or more of the following:

- (i) counselling;
- (ii) a review of commitments and responsibilities;
- (iii) availability of suitable materials (eg for teaching staff, curricular guidelines and programmes);
- (iv) availability of training;
- (v) opportunities to see good practice within the College or other appropriate establishments.

Stage II

If, after help and advice given under Stage 1 the employee's performance is still unsatisfactory, the immediate supervisor must inform the Principal or delegate alternate and advise the employee in writing that her/his performance is still unsatisfactory. The Principal or delegated alternate will establish the facts and seek ways of improving the employee's performance.

When, after a reasonable time, there has been no marked improvement in performance, or improvement has not been maintained, the Principal or delegated alternate will inform the employee in writing that adverse criticism persists. She/he will also be informed of the areas where improvement is still necessary and the period for which appropriate support will continue to be made available.

Disciplinary Procedures

If, after receiving the counselling and support outlined above, the employee's performance continues to be unsatisfactory it may become necessary to initiate formal action under the Disciplinary Procedures.

NOTES FOR GUIDANCE

- 1 The employee concerned may be accompanied by a friend at the discussions in Stage II if she/he so wishes.
- 2 Where formal action under the Disciplinary Procedures is found necessary, this should involve disciplinary interview(s) and warning(s) as appropriate in accordance with the Procedure. Support, advice and assistance to the employee as in Stages 1 and II of the Capability Procedure should continue to be offered.
- 3 When dealing with absence a distinction should be made between absences on grounds of medically certificated illnesses, both physical and mental, that may eventually result in the use of the capability procedures and those that may call for disciplinary action. (see ACAS Code of Practice)
- 4 Where the sub-standard performance is due to negligence or lack of application on the part of the worker then some form of disciplinary action will normally be appropriate.

DISCIPLINARY PROCEDURES: APPEALS PROCEDURE

- 1 The Chairman of the Committee will call in both parties, introduce the Committee and state the function of the Committee. The Chairman will remind both parties and the Committee that the proceedings shall remain confidential until a final decision has been taken.
- 2 The employer's representative will present the employer's case in the presence of the employee and her/his friend and may call witnesses.
- 3 The employee (or her/his friend) will have the opportunity to ask questions of the employer's representative on the evidence given by her/him and any witnesses whom she/he may call.
- 4 The Committee may ask questions of the employer's representative and witnesses.
- 5 The employee (or her/his friend) will put the case in the presence of the employer's representative and call such witnesses as she/he wishes.
- 6 The employer's representative will have the opportunity to ask questions of the employee and her/his witnesses.
- 7 The Committee may ask questions of the employee, her/his friend and witnesses.
- 8 The employer's representative and then the employee (or her/his friend) will have an opportunity to sum up their cases if they so wish.
- 9 The Chairman will then ask the employer's representative and the employee (and her/his friend) to withdraw.
- 10 The Committee will consider the case in private, only recalling the employer's representative and the employee to clear points of uncertainty on evidence already given. If a recall is necessary both parties are to return.
- 11 The Committee may announce its decision to the parties personally but in any event will confirm its decision in writing within 5 working days.

Disciplinary Procedure: Appeals Procedure: Notes for Guidance

- 1 The purposes of this procedure is to ensure that the proceedings at appeals hearings are conducted in an orderly and impartial fashion, offering both parties an opportunity to present their case.
- 2 It is very important that no person with a direct interest or a prior involvement in the matter in question should take any part in considering the appeal.
- 3 Witnesses should only be present to give evidence and answer questions. They should not be present for instance when the parties are presenting their case.
- 4 The outcome of the appeal may be to confirm, vary or dismiss the decision that has given rise to the appeal.
- 5 Parties to the hearing may prepare a written statement of their case. Such submissions, together with other relevant documentation, will be circulated to all parties as soon as possible and, at the latest 48 hours (2 working days) in advance of the hearing.
- 6 The assumption has been made that the appeal is being considered by an appropriate Committee. However, it may be that the appeal is being heard by the Principal, in which case the procedure should be adapted as necessary.

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