



## DISCIPLINARY PROCEDURE FOR SENIOR POSTHOLDERS

<b>Purpose of Policy/Document</b>	This document details the procedure which applies to issues of alleged misconduct and establishes a framework for handling such situations. It is also designed to ensure that all Senior Post Holders achieve and maintain acceptable standards of conduct
<b>Target Audience (staff/students/visitors/contractors)</b>	The policy applies to all Senior Post Holders
<b>Particular Legal Requirements/Issues outside of EDD</b>	Equality Act 2010 Health & safety at Work Act 1974
<b>Links with Other Policies/Documents</b>	Professional Standards of Conduct Policy Prevention of Bullying and Harassment Policy Safeguarding Policy College's Acceptable use Policy

For completion by The Executive	
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<b>Owner (job title)</b>	<b>Clerk to the Corporation</b>
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<b>Communicated via/Location: (Policy Acceptance software/website/ portal etc)</b>	<b>Staff Portal Governor Portal</b>
<b>Equality Impact Assessment Statement</b>	The Equality Act 2010 does not require public authorities to carry out EIAs by law. The College does however, carefully consider the impact, when creating or amending its policies, on all concerned parties regarding Equality, Diversity and Inclusion and records this at SLT meetings in order to demonstrate compliance with Public Sector Equality Duty (PSED).

## **1 Scope and purpose**

- 1.1 This procedure applies to designated 'Senior Post Holders'.
- 1.2 The Corporation 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 Senior Post Holders achieve and maintain acceptable standards of conduct. The aim is to ensure consistent and fair treatment for all.
- 1.4 Where the Clerk to the Corporation is a Senior Post Holder and where there is a need to invoke the Disciplinary Policy, the Corporation shall appoint an appropriate person to fulfil the tasks of the Clerk to the Corporation detailed in this policy.

## **2 General principles**

- 2.1 Members of the Corporation are required to familiarise themselves with this Disciplinary Policy and procedures.
- 2.2 A Senior Post Holder has the right to be present and accompanied by a trade union representative, staff representative or a fellow worker at investigatory interviews, formal disciplinary hearings and appeals (so long as a request by the Senior Post Holder to be accompanied is reasonable). The Corporation will remind the Senior Post Holder 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 Senior Post Holders, the Corporation will at an early stage seek the agreement of a Senior Post Holder 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, the Corporation Chair will consider alternative means of resolving problems - for example with 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 a Senior Post Holder immediately from their normal job, e.g. Senior Post Holders against whom serious complaints of misconduct have been made by students or workplace colleagues.

- 2.8 For formal action, the Senior Post Holder 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 Corporation Chair can take may also be taken by another member of the Corporation and the provisions of this procedure will be read accordingly.
- 2.11 In cases of serious or gross misconduct, action against an individual (including dismissal) may occur at any stage of this procedure.
- 2.12 No Senior Post Holder 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 A Senior Post Holder 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.

### **3 Investigation**

- 3.1 No disciplinary action will be taken against a Senior Post Holder until the Corporation has investigated the complaint.
- 3.2 The Corporation will inform the Senior Post Holder as soon as possible that an investigation is to be conducted and once the investigation has been concluded.
- 3.3 Depending on the circumstances of the allegations, it may not always be necessary to conduct an investigatory interview with the Senior Post Holder.
- 3.4 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 Corporation may suspend the Senior Post Holder while the investigation is carried out.
- 3.6 The Corporation will ensure that the person conducting the investigation is different to the person chairing or hearing any subsequent disciplinary hearing or appeal. The Corporation may use someone external to the College to conduct the investigation if the circumstances so dictate. The investigation should be conducted by an appropriate individual. This could be the Principal (where the Principal is not the senior post-holder in question), a Governor or an independent external investigator.

### **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 the Chair of the Corporation.
- 4.3 Suspension will only be imposed after careful consideration and it will be made clear to the Senior Post Holder that it is not considered a disciplinary act.
- 4.4 If the Chair of the Corporation decides to suspend a Senior Post Holder from duty, he/she will:
- i. confirm the suspension in writing to the Senior Post Holder without unreasonable delay; and
  - ii. inform the Senior Post Holder 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 A Senior Post Holder 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 Corporation 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 Senior Post Holder's manager (the Corporation Chair or the Principal as appropriate) having an informal discussion with the Senior Post Holder 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 Senior Post Holder'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 Senior Post Holder 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 a Senior Post Holder has committed an act of misconduct, or is not meeting acceptable performance standards the Corporation will invite the Senior Post Holder to attend a disciplinary hearing. The Senior Post Holder 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 Corporation will write to the Senior Post

Holder with all the above information at least 3 working days before the hearing. The written notification will also detail the date and venue of the hearing and the Senior Post Holder's right to be accompanied.

- 6.3 The Senior Post Holder will be required to notify the Clerk to the Corporation at least 2 working days before the hearing or appeal of the names of any witnesses they intend to call and the Senior Post Holder will be notified of the names of any witnesses to be called by the Corporation.
- 6.4 The Senior Post Holder has the right to be accompanied at the hearing by a trade union representative, a staff representative or a fellow worker. Before the meeting takes place, the Senior Post Holder is required to inform the Clerk to the Corporation who they have chosen as a companion.
- 6.5 Representatives of the Corporation, the Senior Post Holder and the Senior Post Holder'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 panel reserves the right to hear the matter in their absence. If that happens, the Senior Post Holder's companion will be provided with the opportunity to present the Senior Post Holder's case. Any written submission by the Senior Post Holder will be considered before the decision of the hearing is taken. In other circumstances where it seems likely that the Senior Post Holder will be unable to attend a disciplinary hearing the panel reserves the right to go ahead with that hearing, affording the Senior Post Holder 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 Senior Post Holder 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 Senior Post Holder is unavailable on the date of the initial hearing, the Senior Post Holder 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 Senior Post Holder, but should not unduly delay the process.
- 6.7 The hearing will be heard by a disciplinary panel of the Corporation consisting of 3 Governors (excluding the Principal, Staff and Student Governors) with the panel members and chair to be appointed by the Corporation.
- 6.8 The individual who conducted the investigation will not chair the disciplinary hearing, nor be a member of it 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 Senior Post Holder. Where disciplinary action is the outcome, the Senior Post Holder 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 Senior Post Holder will be dismissed for a first offence. A Senior Post Holder 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 – Stage 1**

A WRITTEN WARNING may be given to the Senior Post Holder if the Senior Post Holder 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 Senior Post Holder 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 Senior Post Holder of the right of appeal.

### **Final written warning – Stage 2**

A FINAL WRITTEN WARNING may normally be given to the Senior Post Holder if:

- (i) The Senior Post Holder fails to comply with a first written warning;
- (ii) Or despite having been given a first written warning as the result of misconduct, the Senior Post Holder commits a further offence of misconduct;
- (iii) Or the Senior Post Holder'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 Senior Post Holder 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 Senior Post Holder of the right of appeal as set out below.

### **Dismissal – Stage 3**

The Chair of a hearing, having had regard for any mitigating factors presented by the Senior Post Holder, may give notice of dismissal to the Senior Post Holder if:

- (i) The Senior Post Holder had failed to comply with a final written warning; or
- (ii) Despite having been given a final written warning as the result of misconduct, the Senior Post Holder committed a further offence of misconduct; or
- (iii) The Senior Post Holder 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 / Dismissal**

- 8.1 The Chair of the Corporation may dismiss the Senior Post Holder without notice or pay in lieu of notice if, on completion of an investigation and a disciplinary hearing, it is established that the Senior Post Holder 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 Senior Post Holder 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 Senior Post Holder's hours of work for the College) adversely affect the College's reputation, the Senior Post Holder's suitability for the type of work he or she is employed by the College to perform or his or her acceptability to other Senior Post Holders or to students.
  - Serious breach of confidence.
- 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 A Senior Post Holder 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 Senior Post Holder is required to inform the Clerk to the Corporation in writing, stating the grounds for appeal.
- 9.2 Where the appeal is against a written warning, it will be heard by a panel of 3 Governors who have not been involved in the disciplinary process in question so far with the panel members and chair to be appointed by the Corporation. The panel will not include the Principal, Staff or Student Governors.
- 9.3 The appeal hearing will be held as soon as reasonably practicable after the notice to appeal has been received. The Senior Post Holder will be given at least 3 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.
- 9.4 At the appeal hearing, the Senior Post Holder 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.
- 9.5 If the chosen companion of the Senior Post Holder is unavailable on the date of the initial hearing, the Senior Post Holder 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 Senior Post Holder, but should not unduly delay the process.
- 9.6 At the appeal, the disciplinary penalty imposed will be reviewed, but it cannot be increased. If the chair of 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 Senior Post Holder 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 Senior Post Holder 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 Senior Post Holder's companion may:
  - address the hearing to put the Senior Post Holder's case;
  - confer with the Senior Post Holder during the hearing;
  - sum up the Senior Post Holder's case;
  - respond on the Senior Post Holder's behalf to any view expressed at the hearing



but may not answer questions on the Senior Post Holder's behalf.

5. The Chair and Panel Members 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 Senior Post Holder and his/her companion and afterwards by the panel members
- (c) If appropriate, the IO may call witnesses\* individually and ask questions of them. The Senior Post Holder or companion and the panel members may then question the witness(es).
- (d) The Senior Post Holder and/or companion will present the case against the allegations and explain any special circumstances which may exist.
- (e) The Chair may ask the IO if he/she has any comments on what has been said by Senior Post Holder or the witness(es).
- (f) The panel members may question the Senior Post Holder.
- (g) If appropriate, the Senior Post Holder and/or companion may call witness(es).
- (h) The Panel Members may question the witness(es). The panel members 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 Senior Post Holder without introducing any new factors.
- (j) The Senior Post Holder and/or companion will summarise the case against the allegation.
- (k) The Chair will conclude the hearing.
- (l) After the hearing, the panel will decide whether or not an offence has been committed. The panel may seek guidance from an HR representative on procedural matters.
- (m) If, in the opinion of the panel 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 Senior Post Holder without unreasonable delay.
- (o) The Senior Post Holder 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 Senior Post Holder's companion may:
  - address the hearing to put the Senior Post Holder's case;
  - confer with the Senior Post Holder during the hearing;
  - sum up the Senior Post Holder's case;
  - respond on the Senior Post Holder's behalf to any view expressed at the hearingbut may not answer questions on the Senior Post Holder's behalf.
5. The Panel Members 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.

### **Appeal procedure**

- (a) The Senior Post Holder 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 Senior Post Holder or companion may introduce any witnesses.
- (c) The panel members 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 appeal hearing may call the chair of the hearing that made the original disciplinary decision in order to ask any relevant questions.
- (f) The Senior Post Holder or companion may question the chair of the hearing that made the original disciplinary decision.
- (g) The chair of the hearing that made the original disciplinary decision will withdraw.
- (h) The Senior Post Holder or companion will summarise the appeal, with no new factors to be introduced.
- (i) After the hearing, the panel will review the case before making a decision, taking account of the original disciplinary decision and the Senior Post Holder'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.