Implementing the HR Codes of Practice:

Discipline

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Distinguishing poor performance and misconduct

Poor performance can arise (among other things) as a result of:
- misconduct or
- a lack of capability.

Misconduct is usually a willful or deliberate breach of College rules or standards of conduct. On the other hand, the legal definition of capability refers to the “skills, aptitude, health or any other physical or mental quality” of the employee. There would be no suggestion that the employee is deliberately or willfully doing things wrong.

Since service delivery is adversely affected by lack of capability, the Code of Practice on Remedying Poor Performance provides for staff to be warned or even dismissed for lack of capability. However, cases about capability, especially those involving ill-health require tact and sensitivity. Such warnings should focus on keeping staff informed and what the next steps would be if standards are not met.

Sub-standard work is a matter of capability if the employee appears:
- not to have the capacity or the ability to do the job
- unable to understand or follow broad managerial directions.

Sub-standard work is a matter of misconduct if the employee appears to:
- be negligent or careless
- ignore reasonable professional standards
- refuse to follow procedures or instructions
- be guilty of poor time-keeping or absenteeism
- breach the College’s, policies, procedures, rules or code of conduct
- refuse training, support or guidance aimed to enable them to remedy the poor performance.

If you are unsure if a case of under-performance is misconduct or capability, take competent advice.
Informal action

Always consider dealing informally with a breach of College rules - unless, of course, the matter is so serious as to make formal action a necessity. Acas has this to say about the value of informal action:

"In many cases the right word at the right time and in the right way may be all that is needed, and will often be a more satisfactory way of dealing with a breach of rules, or unsatisfactory performance, than a formal meeting. Additional training, coaching and advice may be needed, and both manager and employee should be aware that formal processes will start if there is no improvement or if any improvement fails to be maintained.

How should it be done?

- talk to the employee in private. This should be a two way discussion, aimed at pointing out the shortcomings in conduct or performance and encouraging improvement. Criticism should be constructive, with the emphasis being on finding ways for the employee to improve and for the improvement to be sustained.

- listen to whatever the employee has to say about the issue. It may become evident that there is no problem - if so make this clear to the employee.

- where improvement is required make sure the employee understands what needs to be done, how their performance or conduct will be reviewed, and over what period. The employee should be told that if there is no improvement then the next stage will be the formal disciplinary procedure. It may be useful to confirm the agreed action in writing.

- be careful that any informal action does not turn into formal disciplinary action, as this may unintentionally deny the employee certain legal rights, such as the right to be accompanied. If during the discussion it becomes obvious that the matter may be more serious, the meeting should be adjourned. The employee should be told that the matter will be continued under the formal disciplinary procedure.
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- keep brief notes of any agreed informal action for reference purposes. There should be reviews of progress over specified periods.

Mediation

In some cases, where the employer considers that formal disciplinary action is not appropriate, an independent mediator may help solve disagreements over disciplinary issues. A mediator won't take sides or judge who is right but can help the parties reach their own agreement where the employer and employee are unable to solve a disagreement alone. The mediator may also recommend a way forward if both parties agree that they want this.

More information about mediation is in the Key Concepts - Grievance section of this handbook.

What counts as gross misconduct?

Gross misconduct is a legal term. It is used to describe misconduct which would justify summary dismissal (see below). For gross misconduct, dismissal would be justified even for a first offence: no prior warning would be required.

Some examples of gross misconduct are given in Appendix 2 of the Code of Practice on Discipline. However, you will need to use sound judgement as it is impossible to give a complete list. (It is often helpful to consult other independent managers or HR advisors on this issue).

What is summary dismissal?

Summary dismissal may be warranted in cases of gross misconduct. The employee's conduct would repudiate their contract of employment and would justify a breach of their contractual rights - by dismissing without notice.

Summary dismissal does not mean firing on the spot. Avoid unfair and hasty judgements. Always investigate the matter, give the employee the opportunity to explain and be represented.
The College's Code of Practice on Discipline (and the law) provide that normally the employee would have 5 days notice of a formal hearing.

Dealing with suspension

Consider a brief period of suspension with pay whilst an unhindered investigation is conducted if, for example:
- the case involves gross misconduct and relationships have broken down, or
- it is considered that there are serious risks to College property or the security of evidence, or
- there are responsibilities to other parties.

Suspension needs to be a reasonable response in the circumstances. It is not automatic, even in cases where the allegation is clearly gross misconduct. If you do not have the authority to suspend, and you feel that immediate suspension is necessary, either:
- contact someone who does, or
- simply send the employee home and contact someone with authority to suspend as soon as possible.

As an alternative to suspension it may be useful to consider:
- transferring the employee to another work-place, or
- restricting their duties or arranging closer supervision to reduce risk, or
- instructing them to work from home, or
- transferring them to another suitable job.

Do not allow the period of suspension to drift. Aim to notify the employee of the date of any hearing within 20 working days of the first day they are suspended. If this is not possible, keep the employee informed of:
- the reason for any delay (for example, witnesses may be unavailable, the case may be complex, you may be waiting for an audit report or other evidence)
- the likely date that the investigation is to be completed.
Make it clear that the suspension is not itself considered to be disciplinary action. Explain to the employee:

- that they are required to stay away from work (or to transfer to another work-place, etc)
- suspension (or transfer) is not a punishment, does not imply guilt and that its purpose is simply to allow a smooth, fair and prompt investigation
- that suspension (or transfer) is paid as long as the employee is available to assist with, or respond to the disciplinary process
- they are required to book any leave or report any sickness. Annual leave is at the discretion of management. Sick leave while suspended attracts sick pay including any half pay or nil pay periods
- suspension on medical grounds attracts full pay not sick pay.
- that they must not contact College staff while they are suspended, unless such a person is:
  - contacting them as part of the inquiry
  - representing them in the case
  - assigned as a management contact
- that they may contact the College’s employee assistance scheme.

Keep in regular contact with the employee. You should ensure that you lift the suspension promptly if the investigation shows that:

- the employee has no case to answer; or
- the offence turns out not to be serious enough to warrant suspension.

**Difficult cases - criminal offences**

Some breaches of the College’s code of conduct may also be a criminal offence. Everyone has a legal duty to ensure that any criminal offence of which they are aware is reported to the police. However if the case is one of financial irregularity, you should contact the College’s audit section first as they may already be investigating the matter.

If the incident occurred at work:

- deal with the matter using the Code of Practice on Discipline
- consider summary dismissal and whether any brief period of suspension may be required.

If the incident did not happen at work (nor in the course of the employee’s duties), use the Code of Practice on Discipline if the
alleged crime would mean that the employee is unfit to hold their job or could affect public confidence in their integrity (for example a finance employee charged with fraud or a clinical academic charged with some drug offences).

Normally, you would:
- carry out your own investigation
- co-operate with the police, but refuse them the right to attend any disciplinary hearing or interview with the employee.
- evaluate and use any information or evidence supplied by outside sources
- treat the matter as an internal issue that is separate from any police investigation.

Normally there is no need to wait for a criminal investigation or court case to be completed before taking action. We expect our managers to deal promptly with any disciplinary matter. And the standard of proof in criminal cases is different to the standard the College requires.

In criminal courts the case has to be shown beyond reasonable doubt (the jury has to be sure) whereas in a disciplinary hearing the panel can decide which is the most likely explanation on the balance of probabilities.

So the College may rightly decide to discipline or dismiss someone for an alleged crime for which they are later rightly acquitted. It is not necessary to wait - provided that you have:
- carried out a reasonable investigation
- been consistent with College procedures
- taken into account all relevant factors known at the time
- sufficient reason for the decision you take.

Difficult cases - trade union representatives

Trade union representatives are subject to the same standards as other staff. To avoid any claim of victimisation, ACAS suggests that you should:
- contact a district official of the union (or if they cannot be contacted, a senior branch official)
- discuss the case with them before applying any sanctions (and preferably before initiating formal disciplinary action).
The College requires its managers to consult the Director of HR and discuss the case with a full-time trade union official before a formal hearing.

Principles of natural justice and reasonableness

**Reasonableness**
- consider only relevant evidence, discount anything irrelevant
- carry out a reasonable investigation
- you should genuinely believe that the misconduct or poor work occurred
- ensure that the action taken is proportionate to the employee’s misconduct or capability
- you should be fair and consistent.

**Fairness**
- comply with the principle of impartiality: you should not hear any case in which your impartiality is compromised
- be objective, keep an open mind
- do not prejudge the issues
- get as much evidence as you reasonably can
- evaluate the evidence carefully, fairly and reasonably on the balance of probability
- ensure that any decisions can be justified with reasons.

**Consistency**
- apply rules and sanctions consistently, taking into account precedents within the department and across the College as a whole
- ensure that any differences in the way people are treated:
  - relate to genuine material factors in the situations and people involved
  - can be justified
  - do not discriminate on any of the grounds set out in the College’s standards on equality of opportunity
  - are reasonable in all the circumstances.

**A fair hearing**
- ensure that staff have fair and reasonable opportunity to
  - be represented or accompanied
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- consider and respond to the allegations
- prepare for the hearing
- state their case before you reach a decision
- hear the case promptly before memories fade.

❖ consider any reasonable special measures
- to enable sick or distressed staff to attend the hearing or if not to enable their case to be considered in their absence
- to support staff where disability or equality of opportunity is an issue (for example, providing documents in braille or on tape, have interpreters available, and so on)
- to allow the evidence of anonymous witnesses to be tested.

Investigating the issues

**Investigating misconduct**
Ensure that you:
❖ talk to witnesses promptly before memories fade
❖ talk to the employee directly to get their version of events
❖ tell the employee that they can be accompanied by another person
❖ tell people you interview that you are investigating alleged misconduct
❖ get help or advice if you feel the scope or content of the investigation is beyond you
❖ do not involve senior managers in the detail of the case if they are likely to be involved in hearing the matter.
❖ take statements if necessary. The most useful are:
  - taken soon after the incident
  - hand-written by the witness (if possible)
  - in his or her own words
  - typed up later for ease of use
  - signed, dated and, if need be, witnessed by others.
❖ collect evidence
❖ keep top copies (if possible) of documents that can be used in evidence
❖ if there are any financial irregularities keep documents or records securely and contact audit for specialist help
❖ check the employee’s personal file for any current warnings.

Take stock. Ask yourself:
❖ is the case about misconduct or capability?
❖ if it is misconduct, is it gross misconduct which would warrant summary dismissal?
is a brief period of suspension warranted to protect the interests of the College?
• has the employee broken any rules?
• where are they recorded?
• has the rule fallen into disuse?
• do you apply the rule consistently?
• is it reasonable to expect the employee to know that their conduct was wrong?
• does the employee admit liability?
• are there any temporary problems that may be affecting the employee’s work or attendance (for example, personal issues outside work)?
• are there any matters outside the employee’s control which affect work?
• does the case warrant formal action?

Avoiding allegations of constructive dismissal

Some people may prefer to resign rather than co-operate with a disciplinary or grievance procedure which may result in serious sanctions against them.

If you are called upon to meet with such an employee, it is important to avoid giving even the impression that such a resignation is “forced” rather than voluntary. The risk is that the employee may claim at an Employment Tribunal that in practice, what happened amounted to constructive dismissal.

Handling the discussion – things to do and say

Ensure that:
• you keep detailed notes of the meeting,
• a third party witnesses the exchange

Ensure that you say, and make a record that:
• you are committed to following proper procedure and are content to do so
• you are not driving any discussion about resignation - the employee is
• you have at no time requested their resignation
• you are committed to taking reasonable and appropriate actions that may assist in removing any issues and grievances that the employee raises.
If the employee resigns, make sure that the resignation is clear. You may want to say something like:

- “Though I respect your decision to resign, I will not act on it unless you choose to put it in writing.”
- “Though you have resigned, you have not given an effective date for your resignation. If you are giving contractual notice, this will expire after the date of your hearing and you would therefore be required to attend it.”

If the employee requests an “agreed” reference:

- take HR advice on the scope and content of such a reference
- balance any commitment you make to the employee with your duty of care to future employers. For example, in a case which raises child protection issues you must be truthful in the reference.

**Things to avoid doing and saying**

Never:

- request their resignation.
- allow ambiguity as to whether the employee has resigned or not.
- give the impression that they have no future in the organisation
- write or dictate their resignation letter for them.
- negotiate any payment or settlement without senior HR involvement.
- predict the outcome of a hearing. However, you may say, for example: “The disciplinary panel will decide whether to dismiss you on the basis of the evidence put in front of them. I cannot predict the decision. Clearly the Investigating Officer believes that there is a strong case to answer and has recommended dismissal/discipline.”

**Notification of allegations**

The officer who investigates the case should compile the case papers and ensure that the hearing is arranged.

The aim of notifying the employee is to give them enough information so that they can:

- understand the issue or allegation and respond to it
- understand how serious the matter is
- prepare for the case
- arrange to be represented.
Therefore:
- give a clear description of what the issues are and what the employee is said to have done: avoid generalisations (like “misconduct”, “dishonesty”, “harassment”, etc).
- be specific: give times, dates, places, names and so on
- say which of the College’s rules or standards have been breached
- tell the employee if their job is at risk.

Avoiding or dealing with delay

If you are unable to progress a case because there is a significant delay, for example, because the employee is ill or repeatedly misses meetings, take HR advice.

Remember:
- you can require your own staff to attend meetings at all stages of this procedure
- trade union representatives are expected to give priority to meetings called by managers over other trade union duties
- the employee has the right to postpone, for up to 5 days, a meeting for which their representative is not available.

Keep the employee informed about progress and make it clear that they are responsible for arranging to be represented. Tell them you expect to be informed in good time if they are having any difficulty in arranging to attend (or in getting a representative to attend). Any request to postpone a formal hearing is to be determined by the manager or panel hearing the case. There would have to be a compelling reason for any delay.

In fact, the law requires employees as well as employers to comply with the minimum disciplinary procedure. The Acas Code of Practice on Disciplinary and Grievance Procedures discusses what should happen when an employee fails to attend a formal disciplinary hearing without good reason. In such cases, the employer may hear and decide the case in the absence of the employee. The Acas Code goes on to say:

If the employee does have a good reason for non-attendance, the employer must re-arrange the meeting. If the employee does not attend the second meeting for good reason the employer need not arrange a third meeting.”
Thus, in practice, a panel or manager may hear and decide a case in the absence of the employee if the employee, either:
- fails to attend, without good reason, a hearing or appeal; or
- fails to attend, for any reason, a hearing or appeal that has been rearranged.

The Acas Code also says that a hearing attended by the employee or another step in the procedure may not be required if:

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“circumstances beyond the control of either party prevent one or more steps being followed within a reasonable period. This will sometimes be the case where there is a long-term illness or a long period of absence abroad.”
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So, in cases where the employee has a long term medical condition (including stress, or a stress-related condition) take medical advice from the OHS on the following issues:
- is attendance at a hearing likely to cause the employee serious physical or mental harm?
- if so, when will the risk of physical or mental harm be reduced to an acceptably low level?

If the OHS advice is that no serious mental or physical harm is likely, then arrange the hearing at a reasonable time.

If the OHS advice is that there is a substantial risk of serious mental or physical harm, then
1. arrange the hearing at a reasonable time, taking into account the medical advice on when the employee will be fit to attend. It may (or may not) be reasonable to delay hearing the case until the employee can attend. If recovery is imminent it would be better to hear the case with the employee there.
2. explore any options for reducing the stress (or other risks) of the hearing by, for example, arranging to:
   - hear the case in the absence of the employee
   - allow those participating to give evidence by phone; or
   - keep the parties to a dispute separate by allowing evidence from behind a screen, or another room, etc.
Hearing the matter

The hearing is not a court of law and should not be adversarial. Rather it should be conducted as a fact-finding process. The Chair/panel has authority to determine procedural questions and has the duty to:

- introduce those present, the purpose of the hearing and the nature of the complaint or the issues to be covered
- ensure that any evidence presented is material and relevant
- establish which, if any, facts of the case, are in dispute and which are accepted
- consider relevant evidence and question any explanations put forward
- allow the employee to present evidence and call witnesses
- decide whether further investigation is required and if it is, adjourn the hearing and reconvene when the investigation is completed.

A typical agenda might be as follows:

1. **Introduction** - the chair introduces those present and outlines the procedure and the allegations or issues to be considered. They ask if the employee accepts or denies any of the material facts of the case.

2. **Line manager’s presentation** - the manager presents the facts revealed in the investigation. Chair invites the employee to ask relevant questions to enable the chair to come to a considered view. Chair seeks any further clarification.

3. **Line manager’s witnesses** - the manager asks witnesses to give their evidence. Chair invites the employee to ask relevant questions to enable the chair to come to a considered view. Chair seeks clarification.

4. **Employee’s presentation** - The employee’s side states their case. Chair invites the manager to ask relevant questions to enable the chair to come to a considered view. Chair seeks clarification and ensures that any factors in mitigation are explored.

5. **Employee’s Witnesses** - the employee asks witnesses to give their evidence. Chair invites the manager to ask relevant questions to enable the chair to come to a considered view. Chair seeks clarification and ensures that any factors in mitigation are explored.
6. **Summaries** - after an adjournment (if needed) each side (management first) takes turns to summarise the case without introducing new evidence.

7. **Decision** - after an adjournment to consider the case, and any mitigating circumstance, the chair gives the decision.

### Making and giving the decision

Where possible give your decision on the day of the hearing. Except in very straightforward cases, call a brief adjournment before reaching a decision:
- come to a clear view about the facts
- if they are disputed, decide on the balance of probability what version of the facts is true

Before deciding any warning or other sanction consider:
- the gravity of any offence and whether the procedure gives guidance
- the individual’s employment record and general service
- any mitigating circumstances
- whether the proposed action is reasonable in all the circumstances
- the action taken in similar cases in the past.

You would normally dismiss only if:
- the employee has been warned in writing that a failure to meet the specified standard could result in dismissal, or
- the case amounts to gross misconduct.

You are not expected artificially to adopt the values and concerns of managers in a separate part of the College. However, it is important to enforce the college-wide standards and values set out in the rules (see Appendix 1 and 2 of the Code of Practice) and also the Code of Conduct for employees. To ensure that your decision is consistent with corporate practice, you should take advice (if necessary) from the College’s HR Department. You can do this in preparation for the hearing.
Reconvene the disciplinary hearing to:
- clearly inform the individual of the decision and the sanction
- explain the right of appeal and how it operates
- in the case of a warning, explain:
  - what improvement is expected
  - how long the warning will last
  - what the consequences of a failure to improve will be
  - any measures you are taking to minimise the likelihood of further misconduct. [For example, an employee who has abused the sickness reporting procedures may be required to report future sickness absence to named person.]

What is meant by “the balance of probabilities”?

Decide the facts of the case on the balance of probabilities. You do not have to be sure of what happened - you are entitled to prefer one version of events over another provided that you:
- genuinely believe the employee is guilty of misconduct
- have reasonable grounds to sustain that belief
- base your decision on a reasonable investigation into the matter

Once you have decided the facts of the case, you should consider separately what management action to take or sanctions to apply.

For example in cases of serious sexual harassment:
- it is often difficult to decide what happened
- if true, the matter would often warrant dismissal.

Some managers are tempted to reduce the severity of the sanction because their decision is based on the balance of probability rather than their being absolutely sure of the facts of the case. Reducing the severity of the sanction in this way is not good practice since it gives a false impression of how seriously the College views such offences.

Decision check list
You might find it helpful to record your answers to the following questions:
- has there been as much investigation as is reasonable?
- has the employee had reasonable notice of the matters to be considered at the hearing?
- has the College’s procedure been applied reasonably?
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- Have I paid sufficient regard to any explanation offered by (or for) the employee?
- What do I genuinely believe about the facts of the case?
- Is it reasonable to believe this (on the balance of probabilities) given the evidence I have heard?
- Are the issues serious enough to justify any management action, warnings or other sanctions that I am considering?
- Has the employee (and their manager) had full opportunity to present any points to consider in mitigation?
- Have I given due consideration to mitigation?
- Is the decision reasonable in all the circumstances of the case?

Issuing warnings

Managers should use warnings with the aim of:
- Securing an improvement in conduct
- Telling the employee directly and formally
  - What standards are required
  - What action the College will take if they are found to be involved in any further misconduct.

A final warning tells the employee that any further misconduct will result in dismissal. Other, less severe warnings tell the employee that further misconduct will result in a more serious disciplinary sanction.

Managers often apply warnings in sequence (for example, an oral warning, followed by a written warning, followed by a final warning). They do, however, have discretion to apply the level of warning warranted by the seriousness of the case.

It is an important principle of natural justice that managers do what they say they will. Therefore, always disregard spent warnings for disciplinary purposes. If an employee’s conduct lapses soon after a warning expires, Acas says that if there is evidence of abuse, you may consider the disciplinary record in deciding the period of any later warning but spent warnings should not be used to escalate the severity of the sanction. You may also rely on spent warnings or the lack of them to evaluate any claims of previous good conduct over the period of service with the College.

Requirements for handling records of lapsed warnings and unproven allegations are set out in the Introduction to the Codes of Practice.
Considering transfers of staff

Normally, you would consider a transfer only where:
- you are taking action to minimise the likelihood of further misconduct; and
- this is best achieved in another job. You might for example, decide to transfer employee to a job where they can:
  - be more closely supervised, or
  - not be required to handle cash, supervise staff, have personal contact with particular individuals, care for particular clients, teach particular students and so on.

In practice, a transfer will work best if:
- there is a known genuine vacancy, normally in the same department. (Transfer is not an opportunity to export problems to other managers. The employee should not normally be transferred to temporary work.)
- the transfer can be achieved in a reasonable time-scale. Do not let the matter drift.
- the employee has the range of skills required to do the new job
- the job is a suitable alternative to the current job in terms of hours, pay and status. Where the job is not suitable the transfer would require the agreement of the employee - unless the transfer is an alternative to dismissal.

Consider demoting the employee only where the case would normally warrant dismissal but where there is substantial mitigation. Pay would not be protected: the employee would paid the rate for the lower graded job. Because demotion is reserved for very serious cases as an alternative to dismissal, it may be accompanied by a final warning.
Giving notice of dismissal

The notice period depends on the reason for dismissal:

<table>
<thead>
<tr>
<th>Reason for Dismissal</th>
<th>Notice Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross misconduct or gross negligence</td>
<td>Dismissal without notice</td>
</tr>
<tr>
<td>Dismissal following a final warning (or any other dismissal short of gross misconduct)</td>
<td>Notice period as set out in the employee’s contract, or pay in lieu of notice</td>
</tr>
</tbody>
</table>

Though any dismissed employee has a right of appeal, the decision of the original panel is implemented with the appropriate notice. The employment is not extended to enable any appeal to be heard.

Hearing any appeal

The opportunity to appeal against the decision is essential to natural justice. The chair must hear any appeal where the grounds are clear and specific, even if they are not persuaded by the merit of the arguments in the appeal papers.

The hearing, where possible, should only examine the grounds of appeal that the employee raises - not re-hear the case. The appellant must therefore be clear and specific about the grounds for appeal. An appeal form is on page ??.

Normally, appeals can be raised on one or more of the following grounds:
- **the procedure**
  - a failure to follow procedure had a material effect on the decision
- **the facts of the case**
  - the evidence did not support the conclusion of the hearing officer
- **the sanction**
  - too severe given the circumstances of the case.
The employee may support any appeal made on the above grounds by bringing new evidence. Such evidence should not have been available at the original hearing. The appeal should not be used to re-argue the case with different (rather than new) evidence.

The grounds of appeal need to be considered when deciding the extent of any appeal hearing (or investigation if there is new evidence). When an appeal is limited to, for example:
- the severity of the sanction imposed; or
- the procedure; or
- some aspects of the evidence on fact
the appeal panel should be able to consider presentations from both sides that relate only to the grounds of appeal. In some cases, however, the panel may decide that justice is best served by a complete rehearing of the case. The parties to the appeal must be told clearly when the appeal is to take the form of a rehearing.

Ask yourself:
- are the grounds of appeal detailed enough to form the case statement for the appeal hearing?
- is it necessary to clarify the grounds with the employee before the hearing?
- are any of the facts of the case in dispute?
- is it best to restrict the hearing to consideration of the grounds of appeal, or is natural justice best served by allowing a complete rehearing of the case?
Section 2: Model Letters

- Suspension - Written confirmation: 23
- Notice of Disciplinary Hearing: 25
- Notice of a Panel Hearing: 27
- Decision letter - Warnings: 29
- Decision letter - Dismissal: 31
- Decision letter - Appeal Decision: 33
Model Letter D1

<table>
<thead>
<tr>
<th>Topic:</th>
<th>Written confirmation of suspension</th>
</tr>
</thead>
<tbody>
<tr>
<td>From:</td>
<td>A manager with authority to suspend</td>
</tr>
<tr>
<td>To:</td>
<td>The employee to be suspended</td>
</tr>
<tr>
<td>When:</td>
<td>Within 3 working days of the decision to suspend</td>
</tr>
</tbody>
</table>

Private and Confidential

Dear [employee’s name],

Confirmation of suspension

I met with you and your representative on [date] to tell you that it had been alleged that you had [say what rules or standards have been breached and, if appropriate where they are recorded].

My decision is that this is a matter that warrants further investigation. I also decided that you should not attend work [or some other action that protects the interests of the College] until a reasonable investigation has been carried out.

This action is designed to protect your interests as well of those of the College until this very serious matter is resolved. Suspension is not intended as a punishment, and does not mean that a decision in this matter has already been made.

The investigation
I expect the investigation to be complete by [date]. If the College finds that there are allegations that warrant disciplinary action, you will be given them in full, and in writing.

The College expects its managers to deal with disciplinary matters promptly. Its normal targets are that:
- the investigation is to be completed within 20 working days; and
- any hearing are to be heard within 20 working days of the decision that there is a case to be heard.

I will keep progress in the investigation under review. If it becomes possible to lift your suspension I will do so. In any case, I will review the reason for your suspension after 20 working days.

September 2006
Pay, leave and sickness
While you are away from work, you will be paid as usual provided that:-
- you make yourself available to assist with the investigation
- you report any sickness in the normal way to the person assigned as your management contact.
- you book any leave you wish to take, giving 7 days notice to the person assigned as your management contact.
- your actions do not cause an unreasonable delay in dealing with the matter.

Contact with other staff
While you are away from work, you must normally have no contact at work with College employees other than:
- the person who is representing you in order to prepare your case
- College staff who need to contact you as part of the inquiry into the case
- any manager assigned as a management contact.

If you wish to resolve any queries about the case, please raise them with your representative or [give a name, perhaps the manager investigating the case]. May I also remind you that the College offers a free counselling service through its Employee Assistance Programme. For assistance, call:
- (Daytime) 01895 237071
- (24 Hour) 0800 243458.

Yours sincerely,
Principal [or another person they nominate]

Copy to:
Personal file
Employee’s manager
Employee’s representative [if known]
Model Letter D2

<table>
<thead>
<tr>
<th>Topic</th>
<th>Notice of Disciplinary Hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>From:</td>
<td>A manager with authority to hear the case</td>
</tr>
<tr>
<td>To:</td>
<td>The employee being disciplined</td>
</tr>
<tr>
<td>When:</td>
<td>Normally at least 5 working days before the hearing</td>
</tr>
</tbody>
</table>

Private and Confidential

Dear [employee’s name],

Notice of Disciplinary Hearing

Following an investigation into alleged misconduct involving you, I have decided to convene a formal hearing with you under the College’s Code of Practice on Discipline.

The procedure is described at the “Hearing” stage of the Code of Practice. I am also enclosing information for staff about the process. [Do so]

Allegations

At the hearing, I wish to discuss with you the following allegations. [State the rules or standards that the employee appears to have breached and set out the specifics of these in sufficient detail (names, dates, places, incidents, etc) to enable the employee to respond.]

Documents

I wish to rely on the attached documents at the hearing. [Attach them]

Witnesses

I intend to call the following witnesses: [List them]

Purpose of the hearing

The purpose of the hearing is to allow me to decide what happened, and if necessary take disciplinary action.

You will have the opportunity to:
- hear the case against you
- put your side of events
- question the evidence of witnesses.
Model Letters:
Discipline

Possible Outcome

[Either:]
If the College finds against you at the hearing you may be given a warning as to your future conduct.

[Or:]
You have a current warning on file and therefore if the College finds against you in this case, you may be given a further or final warning.

Your responsibilities

[Consult the employee about the date and time of the meeting and the availability of their representative.]

I have consulted you about an appropriate time for the meeting and have therefore arranged it for [time and date] at [address]. It is up to you to:
- to take advice and arrange to be represented at the hearing at the set time
- submit to me any documents you wish to use as evidence at least 2 working days before the meeting
- attend the meeting.

If you are having any difficulty in meeting your obligation to attend the hearing, please let me know in good time and keep me informed.

Yours sincerely,

Senior manager (with authority to hear the case)
Copy to:
Personal file
Employee’s manager
Employee’s representative [if known].
Model Letter D3

<table>
<thead>
<tr>
<th>Topic:</th>
<th>Notice of Panel Hearing for a Disciplinary Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>From:</td>
<td>The secretary to the panel</td>
</tr>
<tr>
<td>To:</td>
<td>The employee being disciplined</td>
</tr>
<tr>
<td>When:</td>
<td>Normally at least 5 working days before the panel hearing</td>
</tr>
</tbody>
</table>

*Private and Confidential*

Dear [employee’s name],

**Notice of Panel Hearing – Code of Practice on Discipline**

**Panel Members**

Following an investigation into alleged misconduct involving you, the College has arranged a Panel Hearing under its Code of Practice on Discipline. The members of the panel will be: [Name them]

If you have good reason to believe that any of these panel member will not be able to consider the case impartially, you should give your reason in writing by [date].

**Procedure**

I am attaching a copy of the Code of Practice and some further information for staff about the process [Do so.]

You will of course have the right to:
- be represented by a trade union or another person
- hear what your manager has to say
- put your side of events
- question the evidence and bring your own.

**Allegations**

The panel will consider the following allegations: [State the rules or standards that the employee appears to have breached and set out the specifics of these in sufficient detail (names, dates, places, incidents, etc) to enable the employee to respond.]
Presenting the case
The management case will be put by [name the manager].

Documents
Management will rely on the attached documents at the hearing. [Attach them and if appropriate number each page and provide a contents page.]

Witnesses
Management also intends to call the following witnesses: [List them or say if there are none]

Possible Outcome
[Either:]
The allegations against you amount to gross misconduct. This means that the College would be justified in dismissing you without notice for a first offence if it finds against you.

[Or:]
You have a final warning on file and therefore if the College finds against you in this case, you may be dismissed.

Your responsibilities
[Consult the employee about the date and time of the meeting.]

I have consulted you about an appropriate time for the meeting and have arranged it for [time and date] at [address]. It is up to you to:
- to take advice and arrange to be represented at the hearing at the set time
- submit to me any documents you wish to use as evidence at least 2 working days before the meeting
- attend the meeting.

If you are having any difficulty in meeting your obligation to attend the hearing, or if there is any other matter that you wish to raise, please let me know in good time and keep me informed.

Yours sincerely,
Secretary to the Panel [for the Chair]

Copy to
Personal file
Employee’s manager
Employee’s representative [if known]
Model Letters: Discipline

Model Letter D4

<table>
<thead>
<tr>
<th>Topic:</th>
<th>Warning as a result of a disciplinary hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>From:</td>
<td>The manager hearing the case</td>
</tr>
<tr>
<td>To:</td>
<td>The employee being disciplined</td>
</tr>
<tr>
<td>When:</td>
<td>Within 5 working days of the end of the hearing</td>
</tr>
</tbody>
</table>

Private and Confidential

Dear [employee’s name],

Disciplinary Warning

Following the hearing on [date] at which you were represented by [name and role], I decided to give you a [state the severity of the warning, verbal, first written or final warning]

Evidence and findings
At the hearing, we considered the evidence that you had [Briefly say what the allegations were and the management evidence.]

You explained that:
[Briefly say what]

My conclusion was that;
[Briefly say what]

Effect of warning
I hope that as a result of this warning, your conduct will improve and that it will not be necessary to raise the matter again. However; this warning will be effective for [Say how long]

If, within that time it becomes necessary to discipline you again [Say what will happen, either a more severe sanction will be considered or the College will consider dismissing you]

Right of Appeal
You may appeal against this decision and I am enclosing a disciplinary appeal form. The form is designed to enable you to set out the grounds of your appeal.
If you wish to appeal, your appeal must be lodged, within 10 working days of your receipt of this letter, with:
[for an appeal against a decision made by a manager; give the name of the manager's manager]
[for an appeal against a decision made by a panel, give the name of the Director of HR]

Yours sincerely,

Senior manager [who heard the case] [or]
Chair to a panel
Copy to
Personal file
Employee’s manager
Employee’s representative [if known].
Model Letters:
Discipline

Model Letter D5

Topic: Dismissal following a disciplinary hearing
From: The Principal [but drafted by the secretary to the disciplinary panel]
To: The employee being dismissed
When: Within 5 working days of the end of the hearing

Private and Confidential

Dear [employee’s name],

Disciplinary Decision

Following careful consideration of the matters presented at the hearing on [date] at which you were represented by [name and role], the panel that heard the case has decided that you should be dismissed.

Evidence and findings

On [date] you were told in writing that it had been alleged that [Briefly set out the allegations and how serious they are.]

At the hearing, your managers’ case was that [Set out the evidence, briefly.]

You explained that [Set out the evidence, briefly.]

The panel’s conclusion is that: [Briefly say what you have decided about the facts of the case, and why].

The panel took into account the mitigating circumstances that you raised at the hearing. [Say what and explain the effect, if any on the sanction]

Decision to dismiss

The panel decided that you should be summarily dismissed with effect from [Give the date the decision was communicated to the employee, normally at the hearing].

[Or for other cases where the employee is dismissed after a final warning and the matter is not gross misconduct]
The panel decided that you should be dismissed with notice. Your service with the College entitles you to [a number of] weeks’ notice. Therefore, your last day of service will be [give the exact date]. You will be expected to take any outstanding annual leave in this time. You [will or will not] be expected to work during your notice period. You will also need to return your ID card and any College property that may be in your possession.

**Right of appeal**
You may appeal against this decision and I am enclosing a disciplinary appeal form. The form is designed to enable you to set out the grounds of your appeal.

If you wish to appeal, your appeal must be lodged, within 10 working days of your receipt of this letter, with the Director of HR.

Yours sincerely,

The Principal

Copy to
Personal file
Employee’s manager
Employee’s representative [if known]
Each panel member
Model Letter D6

<table>
<thead>
<tr>
<th>Topic:</th>
<th>Decision of an appeal panel</th>
</tr>
</thead>
<tbody>
<tr>
<td>From:</td>
<td>The Principal [but drafted by the secretary to the appeal panel]</td>
</tr>
<tr>
<td>To:</td>
<td>The employee being dismissed</td>
</tr>
<tr>
<td>When:</td>
<td>Within 5 working days of the end of the hearing</td>
</tr>
</tbody>
</table>

Private and Confidential

Dear [employee’s name],

Appeal Panel Decision

Following careful consideration of the matters presented at the appeal hearing on [date] at which you were represented by [name and role], the panel that heard the case has decided to [Either] [reject your appeal]

[Or] [change the decision of the original panel, and substitute another decision.]

Findings on the grounds of appeal

On [date] you set out your grounds of appeal as follows. [Briefly set out the grounds.]

At the hearing, you explained that [Set out the evidence, briefly.]

At the hearing, your managers’ response was that [Set out the evidence, briefly.]

The panel’s conclusion is that: [Briefly say what you have decided about the grounds of appeal]

Effect of Decision

The panel decision means that [State the effect of the decision on the employee, eg., still dismissed, reinstated, a final warning substituted, etc.]

There is no further right of appeal against the panel’s decision.

Yours sincerely,
The Principal

Copy to
Personal file
Employee’s manager
Employee’s representative [if known]
Each panel member
Section 3: Forms and Documents

Code of Practice on Discipline: Guidance for Employees  37
Disciplinary appeal form  41
Code of Practice on Discipline: Guidance for Employees

This guidance note is designed for staff who are the subject of formal disciplinary action. Your manager will normally give you a copy, either when they meet with you as part of an investigation, or when you are notified of a formal hearing.

You can get the full Code of Practice on Discipline from your manager or trade union, or from the intranet in the HR web-site. This note gives a brief summary of the procedure and some notes on how it is applied.

Aim of the procedure

The College has agreed the disciplinary process with its unions. It is designed to enable managers to:
- put right promptly and effectively any serious problems with the conduct of staff
- inform staff of the action they face if they fail to meet the College's standards
- deal with disciplinary matters fairly and with justice.

Can I be dismissed?

The College does not normally dismiss people for a first offence, unless the matter is very serious. Of course, the sanction given depends on what the disciplinary panel decides. They will take into account the facts of the case and how serious the matter is.

The College uses a range of disciplinary sanctions. Staff who are found to have breached the College’s standards of conduct may be given a warning (oral, written or final), or they may be transferred, demoted or dismissed. Warnings are normally progressive: for example, a written warning would be followed by final warning. But in very serious cases there may be a final warning or dismissal for a first offence.

Your manager will say if they consider the matter to be gross misconduct: this would mean that you might be dismissed even for a first offence.
Employee Guide

Code of Practice on Discipline:
Guidance for Employees

What to expect during an investigation

Expect the manager to:
- investigate, collect evidence and take witness statements
- arrange to meet with you to hear your version of events
- decide whether there is a case to answer
- tell you in writing of their decision.

You have the right to:
- know the purpose of any interviews or meetings you are called to
- be accompanied by another person
- be told of any allegations against you
- explain your side of the matter.

You have the responsibility for:
- attending meetings
- arranging to be accompanied if you wish
- being open, honest and co-operative.

What to expect if you are suspended

Suspension is normally only required in very serious cases, or where there is some other good reason. It is not a punishment and does not imply that you are guilty. Its purpose is simply to allow a smooth, fair and prompt investigation. If a manager is considering suspending you, expect them to:
- meet you to give a brief outline of the allegation
- give you the opportunity to respond
- decide whether the case warrants a brief period of suspension and tell you their decision
- indicate how long the investigation is likely to last.

You have the right to:
- be accompanied by another person
- be told promptly in writing if there is no case to answer
- a full hearing if they decide there is a case to answer.

If you are suspended, you will be:
- required to stay away from work (or to transfer to another work-place)
- paid as normal - provided that you make yourself available to assist with, or respond to the disciplinary process.
Staff who are suspended:
- must not contact other College staff, except for:
  - a person they have chosen to represent them, such as a trade union representative;
  - the manager investigating the case, to give or seek information or evidence;
  - their line manager, to report sickness or book leave.
- are required to book any leave or report any sickness in the usual way.
  Annual leave may be taken at the discretion of management. Sick leave while suspended attracts sick pay - including any half pay or nil pay periods.

What to expect at a disciplinary hearing

Following an investigation, the College may decide that there is a case for you to answer in a formal disciplinary hearing. Expect the College to:
- notify you in writing of:
  - the time and place of the hearing; and
  - any allegations against you;
- conduct the meeting as a fact finding process;
- decide what happened;
- consider what action (if any) to take;
- give the decision in writing and set out any right of appeal.

You have the right to:
- be accompanied by another person;
- hear and question any evidence against you;
- explain your side of the matter:

Typically, the running order at the hearing will be as follows:

1. **Introduction** - the chair/panel introduces those present and outlines the procedure and the allegations or issues to be considered. They ask if the employee accepts or denies any of the material facts of the case.

2. **Line manager’s presentation** - the manager presents the facts revealed in the investigation. Chair/panel invites the employee to ask relevant questions to enable the chair to come to a considered view. Chair/panel seeks any further clarification.
3. **Line manager’s witnesses** - the manager asks witnesses to give their evidence. Chair/panel invites the employee to ask relevant questions to enable the chair to come to a considered view. Chair/panel seeks clarification.

4. **Employee’s presentation** - the employee’s side states their case. Chair/panel invites the manager to ask relevant questions to enable the chair to come to a considered view. Chair/panel seeks clarification.

5. **Employee’s Witnesses** - the employee asks witnesses to give their evidence. Chair/panel invites the manager to ask relevant questions to enable the chair to come to a considered view. Chair/panel seeks clarification.

6. **Summaries** - after an adjournment (if needed) each side (management first) takes turns to summarise the case without introducing new evidence.

7. **Decision** - after an adjournment to consider the case, and any mitigating circumstances, the chair gives the decision.

**If you disagree with the decision**

You have the right to appeal. You must do so within 10 working days of the date you receive the written decision and the reasons for it. Who you lodge your appeal with depends on who took the original decision.

<table>
<thead>
<tr>
<th>Original decision taken by:</th>
<th>Appeal lodged with:</th>
</tr>
</thead>
<tbody>
<tr>
<td>A manager</td>
<td>The manager’s manager</td>
</tr>
<tr>
<td>A panel</td>
<td>The Director of HR</td>
</tr>
</tbody>
</table>

The College has a Disciplinary Appeal Form. It sets out the grounds on which staff may appeal and gives more information about the appeal process. If the form is not included with the letter giving you the decision, it is available from your manager, the HR web-site or from the HR department.
Employee Assistance Programme

The College recognises the need to care for the well-being of staff and has introduced an Employee Assistance Programme. Any employee may use the service, but it is also available to your family, your partner and those close to you. The service can provide information, advice and counselling on a range of issues, including those that arise at work. For assistance, call:
- (Daytime) 01895 237071
- (24 Hour) 0800 243458.
Disciplinary appeal form

About your appeal

You may appeal against any disciplinary sanction using this form. It is designed to be helpful to staff who wish to appeal, but you do not have to use it. However, your appeal must:
- be in writing; and
- set out in full the grounds of your appeal; and
- be lodged with the appropriate manager within 10 working days of the date that you receive the written decision that you wish to appeal against.

Most valid appeals fall within the following grounds:
1. the procedure was applied incorrectly
2. the findings at the first hearing were unfair
3. the sanction or action taken was too severe
4. new facts or evidence have come to light.

This form is designed to enable you to structure your appeal to address these issues. Remember, the appeal hearing is not normally a rehearing of the whole case. The panel or manager hearing the case will, instead concentrate on the grounds of your appeal.

Thus, if you raise a matter at the appeal hearing that you do not raise now, the person(s) hearing the appeal may decide to exclude or disregard it. Your grounds of appeal must therefore be detailed enough to form the agenda and case statement at the appeal hearing. If you are in a trade union or are being advised by another person, we suggest that you consult them before you complete the form.

When you have completed the form, please don’t forget to sign and date it on page 7.

Lodging your appeal

Who you lodge your appeal with depends on who took the original decision. See the table below.

<table>
<thead>
<tr>
<th>Original decision taken by:</th>
<th>Appeal lodged with:</th>
</tr>
</thead>
<tbody>
<tr>
<td>A manager</td>
<td>The manager’s manager</td>
</tr>
<tr>
<td>A panel</td>
<td>Director of HR</td>
</tr>
</tbody>
</table>

The next step

You should expect the College to reject any appeal that is out of time. For appeals lodged in time, the College will appoint an appropriate manager or panel to hear the case within 20 working days.

What to expect at an appeal hearing

The person or panel hearing the appeal will:
1. consider any valid grounds of appeal;
2. establish the relevant facts, ensuring good order and natural justice;
3. decide any disputes about procedure;
4. reject any ground of appeal that is not valid and explain the reason for the rejection;
5. allow all the parties to
   - put their side of the matter
   - hear the case put by the other side
   - ask questions, bring evidence and call witnesses;
6. reconsider the original decision and, if need be, change the findings or reduce the severity of any sanction (or both)
7. confirm their decision and the reasons for it, in writing to the employee and the relevant managers, within 5 working days.
Typically, the "running order" for the hearing will be as follows:

1. Introduction - the Chair/panel introduces those present and outlines the procedure.

2. Employee's presentation - The employee's side sets out the grounds of appeal. Chair/Panel invites the manager to ask relevant questions to enable the panel to come to a considered view. Chair/Panel seek clarification.

3. Employee's Witnesses - the employee asks witnesses to give their evidence. Chair/Panel invites the manager to ask relevant questions to enable the panel to come to a considered view. Chair/Panel seek clarification.

4. Manager's presentation - the manager addresses the issues raised in the grounds of appeal. Chair/Panel invite the employee to ask relevant questions to enable the chair/panel to come to a considered view. Chair/Panel seeks any further clarification.

5. Manager's witnesses - the manager asks witnesses to give their evidence. Chair/Panel invites the employee to ask relevant questions to enable the panel to come to a considered view. Chair/Panel seeks clarification.

6. Summaries - after an adjournment (if needed) each side (management first) takes turns to summarise the case without introducing new evidence.

7. Decision - after an adjournment to consider the case, the chair/panel gives the decision.

About you and your employment

1. Your name

2. Your job-title

3. Your workplace address

4. Your e-mail address
Grounds of appeal

Breach of procedure

5. I am appealing on the grounds that the procedure was applied unfairly.
   ☐ Yes  ☐ No

6. If you ticked “yes”, please explain:
   - how the procedure was breached
   - what effect this had on the outcome of the disciplinary process
   - any evidence not available at the original hearing that supports this aspect of your appeal, and
   what prevented you from presenting it then
Grounds of appeal

The facts of the case

7. I am appealing on the grounds that the findings of fact (the decision about what happened, rather than the decision about what action to take) at the hearing was unfair.
   □ Yes
   □ No

8. If you ticked “yes”, please explain:
   - the parts of the evidence you dispute
   - the evidence that you believe was given too much or too little weight
   - how the conclusion of the chair/panel runs counter to the evidence heard
   - how the finding on the facts of the case is unfair
   - any evidence not available at the original hearing that supports this aspect of your appeal; its relevance to the finding of fact at the original hearing; and what prevented you from presenting it then
Grounds of appeal

The action taken was too severe

9. I am appealing on the grounds that the action taken was too severe in the circumstances of the case:
   [ ] Yes
   [ ] No

10. If you ticked yes, please explain:
    - the sanction or warning that was applied
    - the aspect of the sanction or warning that you believe is too severe
    - the reason you believe it is too severe
    - the sanction or warning that you believe would be fair
    - any evidence not available at the original hearing that supports this aspect of your appeal; and what prevented you from presenting it then.
Grounds of appeal
Any other substantial grounds of appeal

11. I am appealing for another substantial reason:
   □ Yes
   □ No

12. If you ticked yes, please explain:
   - the grounds on which you are appealing
   - its effect on the procedure followed
   - its effect on the findings of fact at the original hearing
   - its effect on the severity of the warning or sanction applied
   - any evidence not available at the original hearing that supports this aspect of your appeal; and what prevented you from presenting it then.
Signature of appellant

1. Your signature

2. Date of signature

Administration

[This section to be completed by (or for) the person with whom the appeal is lodged]

3. Date the appeal was lodged

4. Was the appeal lodged in time?

☐ Yes
☐ No