

## **Whitechapel College Staff Disciplinary Procedure**

24 November 2011

The aim of the college and this policy is to ensure a fair and just and effective procedure and arrangements for dealing with disciplinary matters so that common criteria are applied to all employees.

This procedural document covers situations of unsatisfactory conduct at work and unsatisfactory performance, unsatisfactory wilful performance and cases of incapability. The aim in setting out this procedure is to achieve the following objectives.

- (A) To promote efficient and safe performance of all employees when in work.
- (B) To maintain good and professional relationship between all staff at the College.
- (C) To make it clear to all staff the basic but high standards of conduct and behaviour expected of them.

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## **1. General principles**

In most cases such a minor lapse will be dealt with by way of informal advice.

However where it is necessary to begin formal disciplinary proceedings, they will only be commenced after a full and thorough investigation of the alleged offence.

All employees subject to disciplinary action will be notified in advance and in writing of the allegations against them and they will be given the opportunity to reply to the allegations in writing or orally as they deem necessary.

Any disciplinary action will only follow if it is felt that there is a prima facie case to answer.

If a decision is made to proceed to disciplinary action the employee concerned will have the right to be accompanied at the hearing by a friend, relative or another person of their choice.

Once a disciplinary hearing is conducted and completed the decision and any penalty imposed shall be communicated to the employee in writing.

All decisions of the disciplinary hearing shall be conducted expeditiously.

Except for instances of gross misconduct, which are defined later, no employee shall be dismissed for a first breach of discipline.

All employees shall have the right to appeal against a disciplinary penalty that has been imposed.

Not all criminal convictions will lead to dismissal but the main point for consideration will be if the conduct and conviction makes the employee unsuitable for continued employment or might damage the reputation of the College.

Once a disciplinary hearing date is set it is unlikely to be changed unless there is good cause for doing so. It shall be for person seeking the adjournment to show good cause.

A disciplinary proceeding may be commenced against an employee where there are a number of minor breaches but the cumulative effect is considered serious enough to warrant proceedings.

Where an employee fails to attend a disciplinary hearing without good reasons the hearing may proceed in his or her absence and the decision communicated in the normal way.

## **2. Procedure for Notification of Disciplinary Hearing**

Once the allegations have been investigated and a prima facie case is found the employee shall be notified in writing of the time date and place where the disciplinary hearing shall take place.

The employee shall be notified of the allegations against them and the evidence against them.

The employee shall be advised of their right to have a friend or relative present at the hearing and that they may call witnesses and produce documents.

The employee shall be provided with a copy of the document to enable them or their representative to understand the procedure that will be followed.

## **3. Suspension pending investigation**

The Chief Executive Officer may, after consultation with the Academic Director, suspend an employee on full pay for a period of 7 days while the allegations are investigated. The suspension may be increased by another 7 days to enable further investigation to take place.

Suspension should not be regarded as evidence of guilt but merely as a means of permitting a thorough investigation to take place.

Suspension will be the appropriate course of action to take where:-

- (a) the investigation might be hindered by the employee or their continued presence on site.
- (b) when it is concluded that the employee might be unable or unwilling to continue working normally
- (c) where the employee is the subject of criminal proceeding and it is considered inappropriate for them to continue in employment
- (d) where the continued presence of the employee is likely to cause distress or lead to hostility from others such as cases of race discrimination or sexual harassment.

All instances where suspension is considered appropriate will be notified to the employee as soon as possible and confirmed in writing.

If the period of suspension is increased to allow further enquiries to be made that will also be confirmed in writing to the employee.

If during the period of suspension it is discovered that there is no case to be answered or no prima facie case can be established or where the allegations complained of are withdrawn the employee shall be notified in writing and permitted to return to employment.

#### **4. Instances of Gross Misconduct**

These are cases of conduct which is regarded as so serious as to amount to a fundamental breach of the contract of employment which will normally lead to summary dismissal. It is not always possible to state as an exhaustive list what amounts to a gross misconduct but the following are examples of conduct which will be regarded as gross misconduct.

- (a) Theft from the College or other employees or students
- (b) Falsifications of College records
- (c) Fraud
- (d) Intentionally damaging the property of the College
- (e) Being under the influence of alcohol and or other drugs
- (f) Acts which are breaches of the race and sex discrimination laws
- (g) Failure to follow reasonable instructions and where the employee is already on a final written warning
- (h) Disclosing confidential information
- (i) Intentional disregard of health and safety regulations
- (j) Being convicted of a criminal offence or allegations of criminal activity such that it is seen as seriously undermining the trust and confidence in the employee or brings the college into disrepute.
- (k) Downloading or viewing pornographic or racist materials on the College computers
- (l) Sending offensive materials by email or other electronic means to other employees or students

#### **5. Instances of Minor Breaches: Informal Action**

These minor breaches will normally lead to an informal discussion or training as might be considered appropriate in all the circumstances. Minor breaches will never lead to dismissal unless they have a cumulative effect. Some examples of minor breaches are as follows:-

- (a) Poor time keeping
- (b) Unauthorised absences
- (c) Non compliance with a reasonable request

In such cases the Chief Executive Officer will normally discuss the matter with the employee and seek their explanation. The aim would be to resolve the situation without formal action.

The employee will be advised in clear terms of the standard expected of them and a probationary period might be agreed in which improvements are expected, failing which formal disciplinary action may be commenced.

## **6. Formal procedure**

In situations which are neither minor breaches nor gross misconduct entitling the college to dismiss summarily, a formal disciplinary procedure may be commenced. No sanction will be imposed without a full investigation which shall be achieved within 5 working days.

If a prima facie case is established then the employee will be notified of the allegations against them and given a written notification of the time date and place where the disciplinary hearing shall take place and also notified of the penalty that can be imposed.

The employee shall be advised that they can have a friend or relative present and they can produce documents in support of their defence and bring any witnesses to support their case.

## **7. Sanctions that can be imposed**

### **(1) Oral Warning**

This would be the normal sanction where the standard expected of the employee is not reached. The record of the oral warning will be made on the employee file and will remain on the file for a period of 12 months. Written notification will also be provided to the employee with an indication that if there are no other issues within the 12 month period the oral warning shall be expunged from their record.

### **(2) Written Warning**

This would only be given where the conduct is regarded as serious in itself or where the employee has already received an oral warning within the last 12 months.

Full details of the case against the employee will be set out as will the disciplinary hearing record and decision.

The written warning shall remain on the employees file and work record for a period of 12 months with a clear indication that any further breaches may lead to the next stage of a final written warning

### **(3) Final Written Warning**

If the misconduct complained of and found by the disciplinary hearing is sufficiently serious a final written warning might be issued. This would also be appropriate if a written warning has been given but there has been a repeat of the misconduct during its currency.

All the details of the allegations which have been found against the employee shall be recorded as will all the evidence taken and documents submitted. The employee shall be given the decision of the disciplinary hearing in writing and the sanction imposed with a clear indication that a repeat will lead to dismissal. The employee will be advised of a right of appeal against the decision.

The final written warning shall remain on the employees' record for a period of 24 months to illustrate its seriousness to the employee. If the employees conduct remains satisfactory in that period then the final written warning shall be removed from their record.

#### (4) Dismissal

This will normally be the result in cases of gross misconduct or where the conduct has not improved and the employee has been given a final written warning which is still active having been issued within a period of 24 months. Dismissal will also be appropriate where there has been a cumulative and persistent conduct on part of the employee.

The employee will be given full written details of the conduct which is found to have been proved and the date of dismissal and information on the right of appeal against the dismissal and a copy of the disciplinary procedure, if not already supplied

### **8. Appeals against disciplinary action**

The employee concerned will be given an opportunity to appeal against a decision within ten working days of decision.

The employee should write a letter indicating their intention to appeal and this letter shall be treated as notice of appeal. The employee should also state the grounds of appeal and enclose any documents that they intend to rely on.

The grounds of appeal will normally be limited to either an unreasonable penalty or that there are mitigating circumstances which ought to be considered or that the correct procedure was not followed.

An appeal would be heard by the Appeal Panel consisting of the College's Academic Director and a Human Resource Officer or another senior member of staff.

The employee would be given a notice in writing of when and where the appeal shall take place. Such notification shall be sent ten working days before it takes place, so as to enable the employee to arrange representation if they so desire.

It shall be the responsibility of the employee to provide two copies of any documents that they intend to rely to the Appeal Panel five working days before the date of hearing. If documents are not disclosed in this manner and are produced late it shall be for the employee to show good cause why the documents could not be produced in time.

The Appeal Panel shall have access to all records and documents regarding the employee including all disciplinary matters and any witness statements.

The decision of the Appeal Panel shall be final but without prejudice to an employees' right to argue that the dismissal was unfair to an Employment Tribunal

## **9. Conduct of Disciplinary Hearing**

The formal disciplinary hearing shall be conducted by the Chief Executive Officer of the College in the presence of another senior member of staff and the employee concerned.

The case against the employee will be outlined and any witness statement or documents disclosed

The employee will be asked to respond to the allegations and state their case or defence by showing documents or witness statements either by themselves or through a representative

Both sides may ask additional questions to clarify matters.

The employee or their representative may sum up the case for their side

The disciplinary hearing may adjourn for a period of time to consider their decision

The decision shall be made known to the employee and what sanction it is intended to be imposed in accordance with the guidelines given above

A written decision and confirmation of the sanction imposed and its implications for the employee shall be sent to the employee within 5 days of the decision

Appropriate notes and records will be made in the employees' file.

## **10. Procedure to be followed at an Appeal Hearing**

The Appeal Panel shall introduce themselves and all other parties

It shall be for the employee/appellant to start the proceedings by stating their case and calling witness and producing documents.

The representative for the College shall be allowed to cross examine the witnesses

The Appeal Panel may ask any questions

The College representative shall outline the case against the employee/appellant upon which the disciplinary action was taken

Both sides may summarise their respective cases

The Appeal Panel may retire to consider their decision.

The Appeal Panel shall give their decision which may uphold the original decision or not. Written confirmation of the decision and the penalty imposed shall be notified to the employee

If a lower penalty is imposed, eg a written warning instead of a final written warning, suitable records will be made or changed in the employee file.

If any penalty that was previously imposed at a disciplinary hearing is ordered to be removed all such entries shall be expunged from the employee file and destroyed.