

# NATIONAL JOINT COUNCIL FOR STAFF IN SIXTH FORM COLLEGES

## Disciplinary Procedure

### 1 Introduction

- 1.1 This procedure provides guidance on disciplinary issues. The procedure is endorsed by the National Joint Council for Staff in Sixth Form Colleges for colleges' consideration in order to ensure that their own procedures meet minimum standards of good practice set out in this procedure. Sixth Form Colleges are committed to the avoidance of formal disciplinary procedures wherever possible by addressing problems as soon as they arise. As well as a guide to imposing sanctions, the disciplinary procedure should also be viewed as a means of encouraging and promoting professional conduct.

### 2. Statutory Guidance

- 2.1 Guidance from the ACAS Code of Practice, (Disciplinary & Grievance) has been taken into consideration in drafting this procedure.

### 3. Scope and Purpose

- 3.1 The disciplinary procedure provides a framework for dealing with instances in which employees are alleged to have breached the required standard of conduct. The aim is to ensure prompt, consistent and fair treatment for all employees without discrimination. The policy covers all staff except designated 'senior postholders'.
- 3.2 An employee's conduct outside of work may have a bearing on the employees continued employment, it is therefore important that all employees immediately inform their manager of any criminal investigation, charge or conviction.
- 3.3 Matters relating to incompetence, incapability or poor performance at work by the employee due to a lack of skill or aptitude should be dealt with under a separate capability procedure.

### 4 Establishing the immediate facts of the case

- 4.1 Where there is a suspected breach of discipline or an allegation is made relating to misconduct, initial enquiries will be made by an appropriate manager who has not previously been involved in the matter.
- 4.2 The manager will be required to undertake an initial fact finding exercise. This will be carried out promptly and without delay. The purpose of fact finding is to establish the circumstances of the alleged misconduct and to determine whether a formal investigation is required.

The fact finding will involve,

- a Establishing the immediate facts of the case and nature of allegations.
- b Speaking to the member of staff concerned to explain that they are subject to an allegation.
- c Describe the nature of the breach of discipline or allegation

- d Obtain an initial response from the employee
- e Briefly summarise the facts of the allegation/alleged breach of conduct.
- f The manager will present the facts to an appropriate senior manager who has not previously been involved in the matter, to decide if a formal investigation is required.

4.3 The manager may decide based on the facts that there is no case to answer and no further action will be taken. If no further action is to be taken, no records will be kept.

4.4 Where there is no dispute to the facts of the case and the member of staff agrees that allegations of misconduct were correctly reported, it may be necessary to go straight to a disciplinary hearing.

4.5 If it is determined by the appropriate senior manager that there is a case to answer, the appropriate senior manager will appoint an investigating officer.

## **5 Suspension**

5.1 At any stage, the Principal or designated alternate should consider whether the employee should be suspended on full pay pending further investigation. If the employee is suspended the Principal or designated alternate should give written notification of the suspension, setting out the grounds on which the decision to suspend has been taken. If suspension continues for more than three weeks and a disciplinary interview has not taken place, the employee may appeal to the Corporation. If an employee does so appeal, the suspension shall continue, pending the determination of the appeal, which shall be considered as soon as practicable. Suspension is a neutral act and not a disciplinary penalty.

## **6 Informal Action**

6.1 In some cases it will be considered appropriate to deal with the matter by issuing the employee with advice and instructions as to expectations of their future conduct. Where such a management instruction is given, a note of this will be kept on file. Advice given in this way is not part of the formal disciplinary procedure and is not subject to appeal but should not be kept on file for longer than the duration of a formal oral warning.

## **7 Formal Investigation**

7.1 Before a disciplinary hearing is convened there will be an investigation into the circumstances of the alleged misconduct. The investigation will be completed in a confidential manner. The purpose of the investigation is to prepare an investigation report establishing the full details of the case including making a recommendation if, on the balance of probabilities, there is a case to answer, or if there is no case to answer.

7.2 The following procedures must be followed:

- The investigating officer will be required to gather evidence to enable a decision to be taken on whether there is a disciplinary case to answer.
- The employee will be informed in writing of any allegation and that an investigation to establish the facts will be undertaken by an appointed

investigating officer.

- The investigative interview (s) will take place within 7 working days of the member of staff being informed of the investigation.
- The role of the investigating officer will be to ensure that all relevant facts and witness statements are obtained in relation to the allegation(s).
- The employee may submit a written statement in response to the allegation for consideration prior to the investigative interview taking place.
- The employee may be accompanied at the investigative interview by a workplace colleague or union representative.
- The investigative officer may be required to interview witnesses as part of the investigation, this can be in the form of a signed statement or a witness interview.
- The employee under investigation will have the opportunity to review the notes of the investigative interview.

## **8 Gross misconduct**

**8.1** Gross misconduct is misconduct at work or outside work serious enough to destroy the employment contract and make any further working relationship and trust impossible.

**8.2** Some examples of the kinds of offence likely to be treated as gross misconduct are:

- drunkenness or disorderly conduct sufficient to have an effect on the employee's ability to carry out their duties;
- fighting, violence towards others or destruction or damage of equipment or premises;
- fraud or deliberate falsification of records for personal gain;
- theft of employer's or colleagues' property;
- gross negligence or dereliction of duties;
- serious breaches of health and safety procedures or regulations;
- gross insubordination;
- serious breaches of confidence (subject to the Public Interest (Disclosure) Act 1998).

This list is not intended to be exhaustive.

## 9 Disciplinary Action

- 9.1 The following disciplinary sanctions will be deemed appropriate at a disciplinary hearing
- 9.2 The chair of the disciplinary hearing will determine the appropriate level of sanction. In determining the appropriate level of action the chair will consider if there are any live warnings already and overall assess the gravity of the case.

<u>Formal disciplinary</u>	<u>Maximum Time limits for disciplinary warning</u>
Formal oral warning confirmed in writing	6 months
Written warning confirmed in writing	12 months
Final written warning confirmed in writing	18 months
Dismissal	

- 9.3 In the case of gross misconduct being alleged and established on the balance of probabilities, the employee will be liable to summary dismissal by the Principal or designated alternative. Any disciplinary action related to safeguarding, live or spent will be disclosed for safeguarding purposes.
- Further breaches of misconduct committed during the period of a live warning will result in further disciplinary action against the employee.
  - Nothing in this procedure is intended to remove the right of an appropriate person to give an employee informal advice and instruction as to expectations of their future conduct as outlined in Para 6.1

## 10 Disciplinary Hearing

- 10.1 If the investigation report concludes that there is a case to answer, a disciplinary hearing will take place to consider the recommendations of the investigation report and any disciplinary sanction.
- 10.2 Where the case is upheld an informal oral warning may be issued for a minor offence and a note of this should be kept on file. An informal oral warning issued in this way is not part of the formal disciplinary procedures and is not subject to appeal but should not be kept on file for longer than the duration of a formal oral warning.
- 10.3 If the issue is more serious or a further offence occurs, there could be a written warning (or even a final written warning) setting out the nature of the offence, the improvement required, the timescale allowed for this and the likely consequences of further offences. Details of such disciplinary action should be given in writing within 5 working days to the employee and if desired to her/his work colleague or trade union representative. At the same time the employee should be informed of her/his right to appeal against the disciplinary action taken.
- 10.4 Where there is a further suspected breach of discipline or there is still a failure to improve following a formal written warning, the procedure set out in paragraphs 1-6

will be repeated.


- 10.5 Where the case of a further breach of discipline is upheld a further formal warning or final written warning may be issued. Other possible forms of disciplinary action that may be appropriate are alteration of duties and responsibilities, demotion or transfer to another post.
- 10.6 Where a final written warning has already been issued and the case of a further breach of discipline is upheld, disciplinary action could include dismissal. The Principal or delegated alternate should notify the employee in advance that dismissal is being contemplated. If the Principal or delegated alternate does decide to dismiss the employee and, if desired, her/his work colleague or trade union representative should be given written reasons for dismissal, the date on which employment will terminate and the right of appeal to the Principal or Corporation.
- 10.7 The ACAS Code of Practice provides for an appeal against formal disciplinary action. If action has been taken by the Principal, then the appeal must be to the Corporation (or a Committee of the Corporation or the Chairman of the Corporation if so delegated under the Articles). If, however, the Principal empowers another member of staff e.g. a Vice-Principal to take disciplinary action, then the appeal should be considered by the Principal. The employee may be accompanied by a work colleague or trade union representative at the appeal hearing. The appeal should be lodged in writing with to the appropriate member of staff/ HR department/ Principal/ chair of corporation within 14 calendar days of receipt of the letter informing the employee of the outcome of the disciplinary sanction / hearing. An appeal cannot result in a more severe penalty than that originally imposed and the decision at appeal is final.
- 10.8 The Appeal hearing should be convened without undue delay. The procedure to follow at the appeal hearing will follow that of Appendix 1. The original decision maker (Chair of previous disciplinary hearing) will replace the investigating officer in the order of hearing. The investigating officer can be called as a witness by the original decision maker at the appeal hearing. The appeal hearing cannot be a re-run of the original disciplinary hearing or consider any new evidence but may address points which the member of staff considers were not properly considered at the original hearing.

## **APPENDIX 1: DISCIPLINARY HEARING**

The employee /respondent will be given a minimum of 14 calendar days' advanced notice of the hearing. The management case / bundle of evidence should be forwarded to the employee by 7 calendar days of the hearing. The employee should forward to the relevant manager/ HR department all paperwork they wish to be considered at the hearing, 7 calendar days before the date of the hearing.

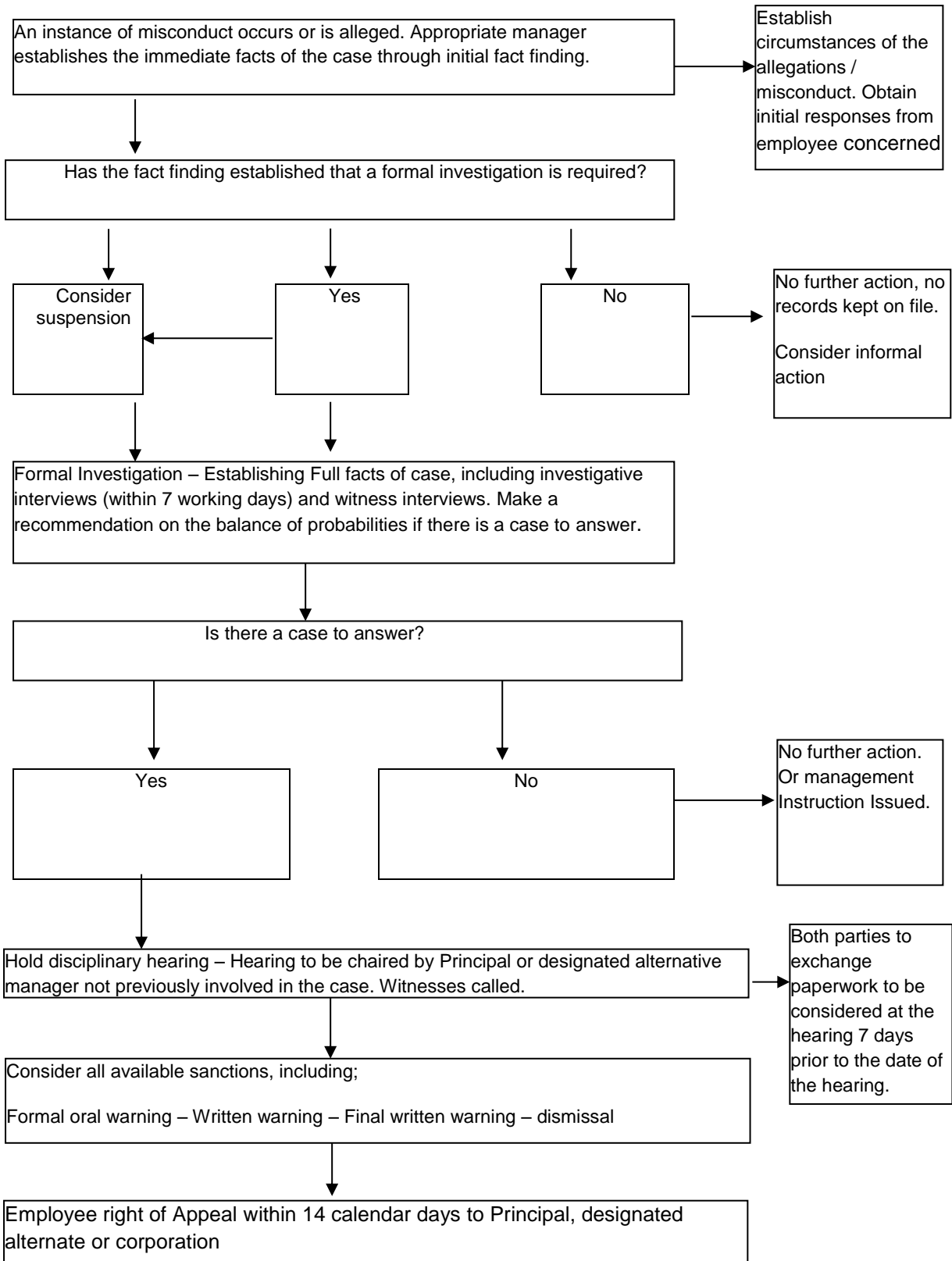
### **Order of hearing to follow at the Disciplinary Hearing**

- 1 The chair of the hearing can have an appropriate advisor /note taker present at the hearing. The role of the advisor will be to provide guidance on the procedure to follow and take any notes.
- 2 The chair will introduce all parties present and confirm the order of hearing /procedure to follow.
- 3 The investigating officer will outline the management case.
- 4 The investigating officer will have the opportunity to call any witnesses.
- 5 The employee/ respondent can ask questions of the investigating officer and their witnesses.
- 6 The Chair/panel can ask questions of the investigating officer and witnesses.
- 7 The investigating officer's witnesses to withdraw from proceedings, (if applicable)
- 8 Employee/ respondent to state their case
- 9 The employee/ respondent will call any witnesses (if applicable)
- 10 The investigating officer to ask questions of the respondents witness (s)
- 11 The Chair / panel can ask questions of the employees/ respondent's witness  
*(All witnesses should leave the hearing at this stage).*
- 12 The investigating officer will summarise their case
- 13 The employee/ respondent will summarise their case
- 14 The Chair /panel should call for an adjournment for deliberation at this stage.
- 15 After all parties have summarised their cases, the chair/panel of the hearing should have a stated period of adjournment.  
This time will be spent to deliberate the case, or to establish if a decision can be made within a reasonable amount of time in order to call all parties back to the hearing to communicate an outcome. If, after a period of adjournment, the chair / panel have determined that it is not possible to reach a decision within a reasonable period of time, the employee/ respondent will be informed that a decision will be communicated to them in writing within a period of 7 calendar days.

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- 16 The decision of the chair will be one of the following:
- a No action to be taken. On the balance of probabilities, the allegations against the employee/ respondent cannot be proven. The employee/ respondent will be exonerated.
  - b The alleged breach of discipline / allegation (s) is proven on the balance of probabilities in whole or part and one of the disciplinary sanctions open to chair will be imposed.

\*If the employees chosen companion is unable to attend the date of any formal meeting, the meeting can be rescheduled once.


## Disciplinary Procedure Flow Chart





## National Joint Council for Staff in Sixth Form Colleges

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Sixth Form Colleges' Association  
National Union of Teachers  
National Association of Schoolmasters  
Union of Women Teachers  
Association of Teachers and Lecturers  
UNISON