



Disciplinary (Misconduct and Capability) Policy and Procedures

Human Resources Committee:
Corporation Approval:
Review Date:

November 2008
December 2008
2011



Disciplinary (Misconduct and Capability) Policy and Procedures

1. Policy statement

- 1.1. BHASVIC recognises its staff as being fundamental to its success. A strategic and professional approach to disciplinary processes helps to enable the College to fulfil its strategic aims and to support the College's values.
- 1.2. The way in which disciplinary processes are conducted impacts on the College's image and reputation, the morale and performance of staff and subsequently the College's ability to attract and appoint high calibre staff.
- 1.3. The College is committed to ensuring that all disciplinary matters are conducted in a manner that is systematic, efficient, effective, supportive and fair. College Management must uphold this by ensuring that practices and procedures are consistently applied, that all staff understand them and that training is provided to those applying the procedures.
- 1.4. Employees must be made aware of, and adhere to, the contents of this policy and accompanying procedures. Any employee engaged in the process must be informed at the earliest opportunity and the possible outcomes must be outlined.
- 1.5. Disciplinary processes should, as far as is possible, be treated as a supportive process with the objective of meeting the performance expected by the College.
- 1.6. This policy and accompanying procedures have been produced to provide a definitive framework that promotes good practice and fully supports the College's mission.
- 1.7. Disciplinary procedures have been produced to ensure that the College complies with all relevant legislation. Any decision to waive or deviate from the College procedures must be agreed in advanced by all parties concerned. Such a decision can only be made after seeking advice from the HR Department.
- 1.8. Professional advice and support should be sought and will be provided at all stages of disciplinary processes by the HR Department.

2. Policy scope

- 2.1. This policy applies to disciplinary matters relating to all employees of the College (except the Principal and Senior Post Holders), plus any agency/casual staff (eg Sports Academy staff) and any workers at the College who are here on a voluntary basis (eg students on work experience). The Principal and Senior Post holders are subject to separate procedures (please refer to Disciplinary Procedures for Senior Post Holders).
- 2.2. The Disciplinary (Misconduct and Capability) Policy and Procedures will be implemented when an employee breaches College policy or terms and conditions of employment. The key policies and documents that are likely to be relevant in these circumstances are:
 - Absence Management Policy and Procedure
 - Complaints Policy and Procedures
 - Contract of Employment

- Dignity at Work Policy
- Equality and Diversity Policy
- Grievance Policy
- Race Equality Policy
- Staff Code of Conduct
- Terms and Conditions of Service
- Whistle Blowing statement

3. Policy aims

- 3.1 To ensure that the Disciplinary Policy and Procedures are clear, in writing and known and understood by all College employees.
- 3.2 To ensure that disciplinary processes are fit for purpose.
- 3.3 To resolve all disciplinary matters in an appropriate manner.
- 3.4 To ensure compliance with relevant employment legislation.
- 3.5 To ensure equality of treatment for all employees.
- 3.6 To support the College's mission statement and uphold its values.
- 3.7 To meet the College's operational requirements and strategic aims.

4. Monitoring and review of policy and procedures

- 4.1 The HR Department will advise on all College Disciplinary matters and where necessary will intervene to ensure that the policy and procedures are followed.
- 4.2 This policy and procedures will be reviewed every three years to ensure currency.
- 4.3 Where necessary, the policy and procedures will be reviewed more frequently to ensure compliance with legislation.
- 4.4 The Joint Union Management Consultative Group (JUMCoG) will review the application of the policy and procedure on an annual basis.

5. Related documents

- Grievance Policy and Procedure (April 2005)
- Dignity at Work Policy
- Whistle blowing statement
- Staff Code of Conduct
- Equality and Diversity policy
- Race Equality Policy
- Complaints Procedure
- The Employment Act 2002
- Data Protection Act 1998
- Contracts of employment
- Instruments and Articles of Government
- Terms and conditions of service
- Absence Management Policy and Procedure

DISCIPLINARY PROCEDURES

A. MISCONDUCT

1. Investigation

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

2. Suspension

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

3. Disciplinary Interview

- 3.1 Where it is decided that there is a case to answer, the employee concerned should be informed in writing, giving not less than 10 working days notice that she/he is being called to answer allegations (which will be specified in the letter) at a disciplinary interview. Any documentary evidence to be considered in connection with the allegations should be circulated as soon as possible and at the latest 48 hours in advance of the interview to both parties. She/he will also be informed of her/his right to be accompanied by a trade union representative or fellow employee during the disciplinary interview, and of the right to present her/his case, call relevant witnesses and give evidence.
- 3.2 The disciplinary interview will normally be conducted by the Principal or delegated alternate, accompanied by at least one other member of/or adviser to the senior staff. The decision on the outcome of the disciplinary interview will be that of the Principal or delegated alternate.

4. Disciplinary Action

- 4.1 Where the case is upheld, an oral warning may be issued for a minor offence and a note of this should be kept on file. An oral warning issued in this way is not part of the formal disciplinary procedures.
- 4.2 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 trade union representative or fellow employee. At the same time the employee should be informed of her/his right to appeal against the disciplinary action taken (see paragraph 5).
- 4.3 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 to 4.3 will be repeated. (If a final written warning has been given then the procedure should move on to paragraph 4.5).
- 4.4 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, suspension with pay or transfer to another post. Demotion or suspension without pay are also possibilities.

- 4.5 If conduct is still unsatisfactory and the employee still fails to reach the prescribed standards, then, following a further interview, dismissal will normally result. If the Principal or delegated alternate does decide to dismiss, the employee and, if desired, her/his trade union representative or fellow employee, should be given written reasons for dismissal, the date on which employment will terminate and the right of appeal to the Corporation (see paragraph 5).
- 4.6 If the employee does decide to appeal to the Corporation against the notice to dismiss, then the dismissal shall not take effect until the appeal has been determined.

5. Appeal

- 5.1 The ACAS Code of Practice on Disciplinary Procedures provides for an appeal against any formal disciplinary action (which would not, therefore, include oral warnings under paragraph 4.1 above) which must be to a higher authority. 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 or Assistant Principal, to take disciplinary action, then the appeal should be considered by the Principal. The employee may be accompanied by a trade union representative or fellow employee at the appeal hearing. The appeal should be lodged in writing with the Principal within 10 working days of receipt of the letter informing the employee of the decision. The decision at appeal is final.

GROSS MISCONDUCT

1. Gross misconduct is misconduct at work or outside work serious enough to destroy the employment contract and make any further working relationship and trust impossible.
2. Some examples of the kinds of offence likely to be treated as gross misconduct are:
 - drunkenness or disorderly conduct sufficient to have an effect on the employee's ability to carry out their duties;
 - fighting, violence towards others or destruction or damage of equipment or premises;
 - fraud or deliberate falsification of records for personal gain;
 - theft of property from the College or a member of the College community;
 - 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).
 - A criminal offence, which may (whether it is committed during or outside the employee's hours of work for the College) adversely affect the College's reputation, the employee's suitability for the type of work he or she is employed by the College to perform or his or her acceptability to other employees or to students.

The above examples are not exhaustive or exclusive and offences of a similar nature will be dealt with under this procedure.

3. All alleged cases of gross misconduct must be investigated without delay. The Principal or delegated alternate should suspend the employee on full pay pending further investigation and give written notification of the suspension, setting out the grounds on which the decision to suspend has been taken. The Principal or delegated alternate should then investigate the allegation and as part of this investigation the employee must be given the opportunity to see any documents relevant to the investigation and to submit her/his explanations if she/he so wishes. For gross misconduct the Principal or delegated alternate may dismiss an employee without notice or, if appropriate, any of the forms of disciplinary action referred to under the disciplinary procedure may be taken.
4. **Appeal**
 - 4.1 Where an employee has been dismissed she/he may appeal against the dismissal to the Corporation (or the Chairman of the Corporation if so delegated under the Articles). The employee may be accompanied by a trade union representative or fellow employee at the appeal hearing. The appeal should be lodged in writing with the Chairman of the Corporation within 10 working days of receipt of the letter informing the employee of the decision. The decision at appeal is final.

B. CAPABILITY

1. Stage I

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

- counselling
- a review of commitments and responsibilities
- availability of suitable materials (e.g. for teaching staff, curricular guidelines and programmes)
- availability of training
- opportunities to see good practice within the college or other appropriate establishments

2. Stage II

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

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

3. Disciplinary Procedures

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

APPEALS PROCEDURE

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