



JOHN WHEATLEY COLLEGE

Board of Management

**Disciplinary
and Appeals Procedure**

All Staff

Disciplinary and Appeals Procedure

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1.0 Introduction

- 1.1 The purpose of the Disciplinary and Appeals Procedure is to ensure that the Code of Discipline is adhered to and to provide a fair method of dealing with alleged failures to observe the Code of Discipline.

The Employment Act 2002 introduced a statutory obligation for employers to follow basic disciplinary procedures. This may mean that a dismissal may be regarded as unfair if the College's Disciplinary and Appeals Procedures are not followed. The core principles of the new rules are contained in Ss.29-40 of the 2002 Act and are expanded upon and developed in the Employment Act 2002 (Dispute Resolution) Regulations 2004 SI 2004/752.

2.0 General

- 2.1 Management is responsible for maintaining discipline and setting standards of performance within the College and for ensuring that the College's Code of Discipline and Procedures covering issues of employee conduct and capability are applied and implemented.

Within the limitations of delegated powers, each senior or line manager (or nominated officer) will be responsible for the conduct and discipline within their School or Section. Managers have the right to warn or impose other sanctions such as - withholding sickness allowance (in accordance with the Attendance at Work Policy and Procedure), where appropriate withhold increments, or demote employees, within the disciplinary procedure, subject to the right of appeal against disciplinary action. Only the Principal, Depute Principal, Assistant Principals and Associate Principals have authority to impose administrative leave. The Principal (or in the absence of the Principal the Depute Principal and Assistant Principals) has the authority to dismiss. All such decisions should be reported to the Board of Management.

- 2.2 This procedure will apply to all employees of the College. The procedures to be adopted in the event of discipline or disciplinary matters in respect of the Principal and Depute Principal differ only insofar as their responsibilities are to the College and its Committees.
- 2.3 The formulation of the procedures setting out the course of action to be followed in the consideration of disciplinary cases has been jointly agreed with the appropriate Trades Unions and Professional Associations.
- 2.4 In agreement with the College's Trades Unions and Professional Association all meetings which form part of the formal process shall be electronically recorded.
- 2.5 The staff member is entitled to receive a copy of the recording. A typed transcript will be sent to the staff member for signature as soon as it is available.

3.0 Responsibility of Management

- 3.1 Managers have the responsibility to ensure that all employees for whom they are responsible know and understand the rules contained within the College's Code of Discipline.
- 3.2 In accordance with the Code of Discipline, the College has delegated responsibility for ensuring the maintenance of disciplinary standards to senior and line managers.
- 3.3 The limit of authority for managers with regard to levels of disciplinary action and the appropriate officers who will consider appeals are contained within appendices A and B.
- 3.4 Account will be taken of any special requirements or circumstances where the appropriate senior or line manager may not be available or appropriate in the situation.
- 3.5 The College reserves the right to appoint a member of the Board of Management to chair a Disciplinary or Appeal hearing in certain circumstances. Such circumstances will include situations where members of the senior management team are unavailable due to operational commitments, annual leave, sickness absence and unforeseen circumstances.

4.0 Responsibility of the Human Resources Manager

- 4.1 The Human Resources Manager (or nominated officer with designated responsibility for personnel matters, hereafter referred to as the Human Resources Manager) is available to offer advice to management in the consideration of items under the Code of Discipline and Disciplinary and Appeals Procedures. The relevant manager is the individual responsible for the investigation and conduct of disciplinary matters within their level of authority. The Human Resources Manager shall provide assistance in interpreting the Code of Discipline and the Disciplinary Procedures in terms of implementation and practice throughout the College.
- 4.2 The Human Resources Manager will be present at all formal meetings in connection with the disciplinary process to provide advice regarding the application of the Disciplinary Procedure and the conduct of the Investigatory, Disciplinary or Appeal Hearing and any disciplinary action arising from it. In the event of an appeal the Human Resources Manager will be available to assist managers in the preparation and presentation of their case to the Board of Management and any subsequent Employment Tribunal.
- 4.3 The Human Resources Manager will also ensure that records detailing the nature of the breach of disciplinary rules, the action taken and the reasons for it, the date the action was taken and whether an appeal was lodged, its outcome and associated records are maintained.

- 4.4 The Personnel Section will provide advice to managers/supervisors at any point in the operation of the Procedure. Experienced officers will be available to assist and advise departmental managers on request.

5.0 Responsibility of the College's Legal Adviser

The College's Legal Adviser will, in consultation with the Principal or nominated officer and the Human Resources Manager, assist in the preparation and presentation of Employment Tribunals.

6.0 Support and Assistance for Employees

- 6.1 It is recognised that staff who are under investigation or who go through the disciplinary process may require support, assistance or guidance. The College is affiliated to an Employee Counselling Service and employees are encouraged to make use of its services. Information on the Employee Counselling Service is displayed on staff notice boards or accessible through the Personnel Section or Trade Union or Professional Association. To arrange an appointment for structured counselling as a self-referral call 0800 435 768 or to contact the 24 hour helpline call 0800 389 7851.
- 6.2 A representative of the Personnel Section who is not involved in providing advice to management is available to provide advice and support to the employee on the Disciplinary Procedure and process.
- 6.3 The employee may also seek support and assistance from their Trade Union or Professional Association.

7.0 Managing Discipline

The term 'disciplinary action' refers to two separate things:

- informal action – this involves a one to one meeting between the line manager and the employee. The purpose of the meeting is to identify the issues of concern, the standards expected, improvement or change required and the consequences if there is no improvement or a reoccurrence of the offence or behaviour; and
- formal action – this follows on from informal action or is the first step in serious misconduct cases and may involve formal sanctions up to and including dismissal.

8.0 Informal Action

- 8.1 Minor cases of misconduct and most cases of poor performance may best be dealt with by informal advice, coaching or support rather than through the disciplinary procedure. In cases of minor misconduct or poor performance

managers are encouraged to deal with the matter through informal action rather than through the formal disciplinary process.

Initially, all that may be required is a meeting between the manager and the employee to alert the employee to the fact that certain standards, conduct or behaviour must be altered. Managers need to ensure that problems are discussed with the objective of encouraging and helping employees to improve.

- 8.2 Normally the first step in the process is for the line manager to raise any concerns which they might have directly with the employee. The main aim of this stage is to provide the employee with an opportunity to improve or change their behaviour or conduct. The College's Disciplinary Procedure should be used only when necessary and as a last resort. Where possible, informal advice, guidance, support, training and development or other good management practice should be used to resolve matters prior to any disciplinary action being taken.

The procedure is intended to be positive rather than punitive but takes cognisance of the fact that sanctions may have to be applied in some circumstances.

8.3 Informal Process

Informal action does not form part of the formal disciplinary process and the employee should be informed of this. It is important that employees understand what needs to be done, how performance, behaviour or conduct will be reviewed and over what period of time. Employees should also be made aware of what action will be taken if they fail to improve either their performance or conduct.

The manager should make clear to the employee the:

- unacceptable standards, conduct or behaviour causing concern;
- standards, conduct or behaviour that are expected of them;
- shortcomings and in what way or how the employee fails to meet the specified standards expected; conduct behaviour or which is unacceptable; and
- potential consequences if there is no improvement or a reoccurrence of the behaviour or conduct.

In discussion and agreement with the employee the manager should:

- identify any underlying difficulties that could be responsible for the issue(s), conduct or behaviour if appropriate;
- identify additional training, development or support the employee might require;
- set up mechanisms to measure progress; and

- agree a schedule of regular meetings to review progress.

8.4 If there is no improvement after the agreed period of time, depending on the severity of the issue, the manager should decide whether the matter should be managed by issuing an informal caution, Section 12 or move the matter to the formal disciplinary procedure, Section 13.

8.5 The manager should identify whether the difficulties are related to conduct or competence and refer to the appropriate procedure.

9.0 Precautionary Administrative Leave (Suspension)

9.1 The Principal, Depute Principal, Assistant Principals and Associate Principals (or nominated officer) shall have the necessary power to apply precautionary administrative leave to an employee who is considered to be creating a situation whereby he or she is either a danger to either him/herself or others or the alleged conduct has a significant bearing on the employee's duties.

This shall entail the employee being asked to leave the workplace and reporting to the investigating officer as soon as reasonably practicable. At this time an investigatory hearing and/or disciplinary hearing may be convened by the manager (or nominated officer). The employee should be given reasonable time to prepare his/her case. Copies of any relevant reports and documentation should be provided once the matter has progressed to the formal stage of the Procedure. There should be no loss of pay.

9.2 Administrative leave should only be applied if absolutely necessary. Alternative precautions should be considered in the first instance such as:

- a transfer to a different Section of a suitable nature or Campus;
- a transfer to an alternative position of a suitable nature; or
- an allocation of restricted duties and responsibilities.

Circumstances may arise however in which there is felt to be no alternative but to give the employee administrative leave by a member of senior management (or appropriate nominated officer). The circumstances could include:

- to facilitate investigation into charges of misconduct or irregularity;
- as a necessary precaution in the College's interests in circumstances which involve, or may involve, criminal proceedings against the employee; or
- where an employee is creating a danger to him/herself or others (e.g. due to the effects of alcohol, fighting, drugs).

Precautionary administrative leave is not a punitive measure and will be with pay, including allowances if applicable.

The manager should advise the employee of the allegations against them, the next step in the procedure and approximately how long the employee will be placed on Administrative Leave. The manager should agree with the employee how they wish their absence to be explained to their team members or staff for whom they are responsible if appropriate.

The employee shall be informed in writing by the Human Resources Manager (or nominated officer) of the conditions governing the administrative leave and informed of the arrangements for investigation, investigatory hearing and disciplinary interview if appropriate.

There shall be no unreasonable delay in dealing with employees in such circumstances.

- 9.3 In some circumstances it may not be possible to advise the employee of the meeting in advance, however in all cases it is advisable that the employee is given the opportunity to have a Trades Union, Professional Association representative or work colleague present during the administrative leave interview. In any case, it is advisable that the suspending officer always has a second party present to “witness” the precautionary administrative leave being imposed (i.e. another member of senior management or an officer from the Personnel Section).
- 9.4 In circumstances, where the precautionary administrative leave is likely to extend over a period of time the Human Resources Manager (or nominated officer) shall inform the suspended employee on a regular basis of the reasons for the continued period of leave. Such information should be given at least every 2 weeks. The suspended employee should be given some indication when the investigation is anticipated to be completed.
- 9.5 The decision to impose administrative leave on full pay or redeploy to other duties or location should be confirmed in writing to the employee by the Personnel Section.
- 9.6 The Principal shall report the suspension to the Chair or the Vice Chair of the Board of Management within five (5) working days of the issue of the administrative leave.
- 9.7 A member of staff on administrative leave shall have the right to appeal to the Executive Committee of the Board of Management if a disciplinary hearing has not been arranged within a reasonable timescale. If the nature of the investigation requires a longer time scale the employee shall be advised accordingly and kept fully informed on the progress of the investigation. The Committee shall act with the full, delegated authority of the Board.

10.0 Complaint and Investigatory Stage

When a disciplinary matter does arise the following procedure should apply.

- 10.1 The appointed Investigating Officer should first establish the facts and circumstances of the matter promptly before memory fades including interviewing, recording and taking the statements of any witnesses and the employee. As agreed with the Trade Unions and Professional Association all meetings shall be electronically recorded.
- 10.2 The employee should be advised of the allegation(s) against them (the alleged concerns, conduct or behaviour) however it should be noted that the full range of allegations may not be clear until after an investigation is carried out, in these circumstances the employee should be provided with as much detail as possible and advised that a thorough investigation shall be conducted. It should be made clear to the employee that the matter may proceed to a disciplinary hearing. If the matter proceeds the disciplinary hearing should be arranged within a reasonable timescale and as soon as reasonably practicable.
- 10.3 The College reserves the right to recruit assistance from an external source to assist in an investigation depending on the nature of the offence and according to need, for example an external auditor, IT consultant or other suitably qualified individual or organisation.
- 10.4 The College reserves the right to reasonably withhold the names of those making allegations or acting as witnesses under certain circumstances if it is felt necessary to protect the interests of those concerned or uphold the College's duty of care.

11.0 Format of an Investigatory Hearing

11.1 Process

- a) The Investigating Officer should inform the employee concerned and advise him/her verbally of the allegations being made. The employee has the right to be accompanied by a Trades Union, Professional Association representative or work colleague at all stages in the formal procedure.
- b) In addition to the Investigating Officer a Personnel representative should be present at the investigatory hearing. Where possible, witnesses should be interviewed first and then the employee concerned. The employee concerned should be advised in advance of their right to be accompanied at the hearing they should be reminded of this right at the start of the meeting if they attend unaccompanied.
- c) The Investigating Officer will decide if the transcript of meetings with any witnesses should be given to the employee in its entirety or if sections should be extracted and presented to the employee at the Investigatory Hearing.

- d) Witnesses should be informed in advance and in writing if a copy of the transcript of the information they have provided is to be given to the employee. Transcripts should be signed and dated by the witness(es) where possible.
- e) If a witness does not wish their name disclosed the Investigating Officer should consider whether or not the information provided should be used as evidence. When faced with such a situation managers should contact the Human Resources Manager.
- f) The Investigating Officer will give a description of the incident and its background providing as much information as reasonably possible for the employee in order that they may be in a position to respond to the allegations.
- g) The employee will be expected to respond to the questions put to them by the Investigating Officer, the employees companion may on behalf of the employee give a description of the incident and background from the employee's viewpoint.
- h) Questions can be asked by either side, a recess may be called if necessary.
- i) If more time is required to consider the matter further the Investigatory Hearing may be adjourned and reconvened.
- j) The Investigating Officer having investigated all the facts and being satisfied that they have all the information required should decide whether to: drop the matter; issue an informal caution; or forward the matter to be dealt with under the disciplinary procedure.
- k) If the decision is taken to proceed under the disciplinary procedure the Investigating Officer should prepare a written report detailing the content of their investigation and proposing that the matter proceed to a formal disciplinary hearing. The report should be presented to the nominated manager.

11.2 A decision will then be made by the nominated manager as to whether or not the matter should proceed to a disciplinary hearing. The employee should be informed of the decision as soon as reasonably practicable. If the nominated officer considers that the matter should proceed to a formal disciplinary hearing the formal process outlined in Section 13 of this procedure should be followed.

11.3 If it is intended to proceed to a disciplinary hearing the employee should be advised verbally of the allegations and this should be confirmed in writing.

11.4 The Investigating Officer should present management's case at any subsequent disciplinary hearing. The person who will chair the disciplinary hearing should not be involved at any stage of the investigation and will normally be the Investigating Officer's line manager.

- 11.5 If the employee fails to attend the Investigatory Hearing or is unable to attend due to sickness absence managers should seek advice from the Human Resources Manager.
- 11.6 Where the allegations involve possible misappropriation, fraud or embezzlement, the Principal should be notified and will in turn inform the College's Auditors. The procedure for managing this type of offence is contained in Appendix C. Advice should be sought from the officer with designated responsibility for personnel matters prior to any investigation being initiated.
- 11.7 Where an incident or situation occurs which gives rise to doubt as to an employee's professional conduct or competence to perform his/her duties the procedure for managing this type of issue is contained in Appendix D.
- 11.8 As described in paragraph 9.1 consideration may be given to a period of administrative leave.

12.0 Informal Caution

- 12.1 After establishing the facts, the manager or supervisor may consider there is no need to take disciplinary action and that it is sufficient to talk the matter over with the employee and issue an informal caution. Such discussions should take place out of the hearing of other employees. Management and staff should be clear about the difference between an informal caution of this kind and a verbal warning issued as part of the formal procedure, and the employee should be left in no doubt as to which sort of action has been taken.
- 12.2 An informal caution will not be confirmed in writing to the employee however the manager should record the content of the meeting for the record. The record of the meeting should contain the reason for the informal caution, agreed standards of improvement, confirm any assistance or support being offered, the consequences should there be a deterioration or no improvement in the standards set within the agreed time scale. A date for a review meeting(s) should be agreed.
- 12.3 The record should be signed by the employee and the manager and the period of time which the record shall be retained by the manager should be agreed with the employee. Should the matter require further action within the agreed timescale the formal disciplinary procedure should be invoked. The record connected with the informal process will not form part of the evidence connected with the formal disciplinary process.
- 12.4 Prior to the matter being dealt with under the formal disciplinary procedure where matters remain informal, the statutory right of accompaniment does not arise.

13.0 The Formal Procedure in Operation

When a disciplinary matter arises and it is considered that action beyond an informal caution may be called for, the following procedure should apply.

13.1 Preparation for Disciplinary Hearing

Managers and employees are advised that the College will not permit the involvement of legal advisers at any stage of the internal disciplinary procedures.

13.1.1 The employee will be issued a letter containing the following information:

- the allegations or complaint against them;
- their right to be accompanied by a Trades Union representative, Professional Association or work colleague;
- the time, date and place of the formal disciplinary;
- a request for names of witnesses they wish to call and the purpose of the witness in relation to the case; and
- a request for any documentation in support of their case.

13.1.2 The Chair of the disciplinary hearing should interview the employee concerned. The Chair of the hearing and the employee should provide a list of witnesses to the Human Resources Manager at least five (5) working days prior to the disciplinary hearing. The employee should provide any documentation to support their case to the Human Resources Manager five (5) working days prior to the disciplinary hearing.

13.1.3 The employee should be issued with a copy of the Code of Discipline, the Disciplinary and Appeals Procedure, a typed transcript of the Investigatory Hearing, statements or typed transcripts of interviews with witnesses, where appropriate, a copy of the Investigating Officer's report and any other information or documents relevant to the case.

13.1.4 The employee should be given reasonable time to prepare his/her case and be given copies of any relevant reports/documentation. Wherever possible the hearing should be arranged at a mutually convenient time and in advance of the hearing, the employee should be advised of any rights under the disciplinary procedure. If the employee is unable to attend due to the person accompanying them being unavailable or work/personal circumstances the hearing should be rearranged allowing five (5) days for the employee to make suitable arrangements to ensure their attendance.

13.1.5 At the hearing the employee should be advised of the allegations and complaints made against him/her.

13.1.6 The disciplinary hearing will be electronically recorded as agreed with the Trades Union and Professional Association.

13.1.7 Where there is no dispute of the facts or where no investigation is required because the facts are already available then it is possible to proceed to the

disciplinary hearing stage without a requirement to conduct a prior investigatory hearing. The disciplinary hearing should of course be conducted within the general terms of the disciplinary procedures.

13.2 Disciplinary Hearing Stage

The appropriate nominated officer shall convene and chair the disciplinary hearing at which the allegations can be examined. Normally the officer with designated responsibility for personnel matters will also be in attendance. An electronic record of the meeting shall be taken.

The procedure to be adopted shall be as follows:

- 13.2.1 The manager or supervisor making the allegations or who has conducted the investigation will be present and will state the case giving rise to the allegations supporting this with witnesses, statements or typed transcripts of meetings where appropriate.
- 13.2.2 The employee will respond to the allegations and call witnesses or give statements as appropriate. The employee should be provided with every opportunity to state their case and to answer the allegations that have been made.
- 13.2.3 Both parties will have the opportunity to question each other's case and the Chairperson will have the opportunity to ask questions of either party.
- 13.2.4 The Chairperson should come to a clear view of the facts, bearing in mind all the available information before any decision is taken about disciplinary action.
- 13.2.5 If more time is needed to consider the matter or further investigations are necessary, the hearing should be adjourned and resumed as soon as is reasonably practicable.
- 13.2.6 In these circumstances advice should be sought from an officer with designated responsibility for personnel matters.

14.0 Factors to Consider

- 14.1 After establishing the facts and before deciding whether disciplinary action is appropriate and the form any such action should take, consideration should be given to the following:
 - the employee's current disciplinary record;
 - the employee's awareness of the standard of behaviour and performance and conduct;
 - the employee's position, responsibilities, length of service and general performance and conduct;

- any mitigating circumstances, such as health or domestic problems.
- whether the Code of Discipline indicates what the likely action may be as a result of the particular misconduct which has been found;
- disciplinary action taken in similar cases in the past; and
- whether the proposed action is reasonable and in accordance with the Code of Discipline, having regard to all the circumstances.

14.2 The Chair must be satisfied that:

- there is sufficient reason to take disciplinary action;
- that a fair procedure has been applied;
- that a full and fair investigation has been carried out; and
- that the employee's defence, explanation or mitigation has been heard.

15.0 Disciplinary Action

The Chair must give careful consideration to the level of action taking into consideration all the circumstances related to the case. When deciding whether a disciplinary penalty is appropriate and what form it should take it is important to bear in mind the need to act reasonably in all the circumstances.

Where it is decided that disciplinary action is appropriate, the following levels of such action and procedures should be considered with the level of action being dependent on the severity of the offence.

15.1 Verbal Warning

In the case of a minor offence warranting admonition, the appropriate manager or supervisor shall give a verbal warning to the employee, which shall be confirmed in writing for record purposes. The warning shall remain in the employee's file for a period of six (6) months.

15.2 Written Warning

In the case of further minor offences or a more serious instance of Unsatisfactory Conduct, the appropriate nominated officer shall give a formal written warning to the employee. The warning shall remain in the employee's file for a period of six (6) months.

15.3 Final Warning

In the case of further minor offences or a serious instance of unsatisfactory conduct, the appropriate nominated officer shall give a final warning to the employee. The warning shall remain in the employee's file for a period of twelve (12) months.

A final warning may be extended beyond the period of time allocated should a further minor breach of discipline occur or the nature/seriousness of the offence merit a longer monitoring period.

15.4 Punitive Action Short of Dismissal

In addition to issuing warnings the appropriate nominated officer may consider punitive disciplinary action short of dismissal including disciplinary transfer, demotion, loss of seniority, withholding of sickness allowance, postponement or loss of increment.

15.5 Dismissal

15.5.1 In the event of further repeated minor offences of the Code of Discipline Section 7.0 Unsatisfactory Conduct the final step will be dismissal. In the case of Section 8.0 Gross Misconduct of the Code of Discipline an employee can be dismissed summarily. The College shall only move to dismiss when satisfied that all other avenues have been explored. In such cases the employee would be expected to work their period of contractual notice or alternatively a payment in lieu of notice will be made. Payments will be subject to National Insurance and Tax deductions.

15.5.2 In considering the sanction of dismissal the Chair must be satisfied that the following points have been established:

- that there is a genuine belief in the employee's guilt of the misconduct at that time;
- that there is reasonable grounds on which to base that belief; and
- at the final stage at which the Chair formed that belief on those grounds that as much investigation into the matter has been reasonable in all the circumstances of the case.

15.2.3 The Chair of the disciplinary hearing will produce a report detailing the evidence considered, any factors or mitigating circumstances taken into account and how they reached their decision.

15.6 Written Confirmation of Disciplinary Action

All disciplinary action taken will be confirmed in writing to the employee. The employee will confirm receipt by signing a copy of the letter and returning it to the Personnel Section in all formal disciplinary cases with the exception of dismissal.

The written confirmation of disciplinary action will:

- detail the nature of the misconduct giving rise to the action;
- state, if appropriate, the period of time given for improvement and the standard of performance and conduct which is expected;
- confirm any training, development or support to be put in place to assist the employee;
- confirm any agreed action points;
- confirm the level of disciplinary action taken and how long this action will be held on record;
- confirm the likely consequences of further misconduct;
- inform of the right to appeal and how it should be made and to whom; and
- inform the employee that if they intend to appeal a statement giving the grounds of appeal will require to be submitted within ten (10) working days of receiving the written confirmation.

16.0 Time Limit of Disciplinary Action

Disciplinary action will remain on the employee's record and will be considered should there be further disciplinary action necessary during its period on record. Warnings will have a specific time limit. On completion of a period of satisfactory conduct any record or warning will be expunged from the employee's record. The appropriate period will be as follows:

Verbal Warning	6 months
Written Warning	6 months
*Final Warning	12 months
Punitive Action Short of Dismissal	12 months

*A final warning may be extended beyond the period of time allocated should a further minor breach of discipline occur or the nature/seriousness of the offence merits a longer monitoring period.

17.0 Appeals

17.1 Appeals against All Disciplinary Action Short of Dismissal

Appeals against all disciplinary action short of dismissal may be made to the appropriate manager within ten (10) working days of receipt of confirmation of the disciplinary action. The appropriate manager (or appropriate nominated officer) will arrange an appeal hearing normally within ten (10) working days within receipt of the employee's letter confirming their wish to appeal. The procedure for the appeal hearing will be as per the Appeals Procedure.

Where action is taken against the Principal an appeal against such action may be made to an ad hoc Committee of the Board of Management established for the purpose of the Appeal detailed in Section 23.0 of this procedure.

Where disciplinary action has been taken by a senior manager or line manager appeals will be heard by the nominated officer. Where disciplinary action has been taken by the Principal, the appeal will be heard by ad hoc Committee of the Personnel and Staffing Committee established for the purpose of the Appeal. In such cases the appeal hearing will be arranged within a reasonable timescale and will be dependent upon the availability of Board Members.

17.2 Appeals against Dismissal

17.2.1 Where an employee has been dismissed, the employee shall be notified in writing of the reason for such action, and if the employee considers the dismissal is unfair, an appeal to the Principal (or nominated officer) or ad hoc Committee of the Board of Management established for the purpose of the Appeals may be lodged in writing with the Human Resources Manager either individually or through a Trade Union within ten (10) working days of receiving written notification of the disciplinary action.

17.2.2 Appeals submitted to the Principal (or nominated officer) shall be heard promptly by the Principal (or nominated officer) no later than fifteen (15) working days after lodgement. The appellant shall have the right to be heard. The College reserves the right to appoint a member of the Board of Management to chair an Appeal hearing in certain circumstances. Such circumstances will include situations where members of the senior management team are unavailable due to operational commitments, annual leave, sickness absence and unforeseen circumstances.

17.2.3 Appeals shall be heard promptly by ad hoc Committee of the Board of Management established for the purpose of the Appeal, within a reasonable timescale after lodgement dependent upon the availability of Board Members. The appellant shall have the right to be heard.

17.2.4 Where an individual lodges an appeal against dismissal the management representatives will be required to submit to the Human Resources Manager at least ten (10) working days prior to the hearing a report based on the disciplinary action and decision taken. In terms of the appellant and/or his/her representative, reasons for the grounds of appeal should also be submitted in

writing to the Human Resources Manager at least ten (10) working days prior to the hearing.

18.0 Trade Union Representatives

Particular attention has to be given to situations where a Trade Union representative is the subject of investigation. Normal disciplinary standards will apply to Trades Union representatives' conduct as employees of the College but no disciplinary action should be taken until the circumstances of the case have been discussed with a full-time Union official.

19.0 Criminal Offences

- 19.1 Where an allegation of a criminal offence arises from the employment or has a bearing on the employee's employment, the circumstances should be ascertained from the employee and investigated as fully as possible. Consideration should be given to all likely explanations for what has happened. Where the Police are called in, they should not be asked to conduct the disciplinary investigation on behalf of the College or to be present at the disciplinary interview. The disciplinary investigation and the criminal investigation should be handled separately by the appropriate authorities since the College's interest and the Police interest and their consideration as to the nature of circumstances differ. Before any decision is taken about disciplinary action, reasonable grounds must be established for believing that the individual committed the particular offence.
- 19.2 In relation to criminal offences not arising from the employment or having a direct or in-direct bearing on the employment, consideration should be given to the relevance of the alleged offence to the duties of the individual as an employee. The main consideration should be whether the alleged offence is one that makes the individual unsuitable for continuing employment in his/her type of work or unacceptable to other employees. Employees should not be dismissed solely because a charge against them is pending or because they are absent through having been remanded in custody. Where an employee is on bail pending a court hearing or an appeal and is still available for work, any decision concerning dismissal should be postponed if practicable, bearing in mind the effects on the College's activities, until the outcome of the case or the appeal is known.
- 19.3 The College as an employer has an interest if any employee is alleged to have committed a criminal offence whether the offence relates to employment with the College or not. In considering such matters the Principal (or nominated officer) should decide whether sufficient information exists before proceeding to a disciplinary hearing and issuing disciplinary action. Senior management and nominated officers are not expected to establish whether the employee committed the offence beyond reasonable doubt but rather whether the employee on the balance of probabilities committed the offence (reasonable belief). There is no requirement to await the outcome of a criminal charge through the Courts.

- 19.4 Where a custodial sentence is imposed and the employee is not available for work, senior management (or nominated officers) must be mindful of the need to act reasonably in the light of the needs of the College before deciding whether or not to dismiss. Where disciplinary action is not justified by the nature of the actual or alleged offence but the employee is not available for work because of a custodial sentence, or through being remanded in custody, the question to be determined is whether in the light of the needs of the College the employee's job can be kept open.
- 19.5 Depending on the nature of the criminal charges or offence and having regard to the potential work implications, it may be necessary to consider:
- redeployment to other duties/another work location pending the outcome of criminal proceedings;
 - administrative leave with pay; or
 - punitive disciplinary action, which may include dismissal.

20.0 Alcohol and Drug Misuse Recovery Programme

- 20.1 In accordance with the terms of the College's Policy Statements on Alcohol and Substance Misuse, an employee with such a problem should be given the opportunity of accepting referral to the counselling services arranged by the College. If the Employee Counselling Service or other agreed agency, and the employee accept that an alcohol or drug problem exists and providing the employee undertakes to co-operate and successfully undertakes the recovery programme, disciplinary action will be suspended in respect of the offence which led to the referral.
- 20.2 Offences which are either not related to the reason for referral or offences which are considered to be of a serious nature will be dealt with in the normal way. If the employee is not accepted by the counselling service as having an alcohol, drug problem and therefore cannot be considered for the recovery programme, the appropriate disciplinary action should be taken as normal. If the employee is accepted for counselling but does not complete the recovery programme, the suspension of disciplinary action which came into effect on referral will be removed and consideration of the original breach of discipline should be re-opened and the appropriate disciplinary action taken.

21.0 Disciplinary Procedure for Depute Principal

The foregoing procedures shall apply to the Depute Principal with the exception that appeals against verbal/written/final warnings, given by the Principal, may be made to the ad hoc Committee of the Personnel and Staffing Committee within ten (10) working days of notification.

22.0 Disciplinary Procedure for Principal

- 22.1 The Board of Management will be responsible for all matters affecting the discipline of the Principal but it is recommended that, where formal disciplinary action is contemplated, the relevant members of the College staff should be consulted.
- 22.2 Where the Principal's work, conduct or omission is such as to warrant disciplinary action, the Chair of the Board shall initiate the necessary action and the Clerk to the Board will be present as an adviser.
- 22.3 Any disciplinary matter will be considered within the foregoing Disciplinary Code and Procedures.
- 22.4 If the College has cause for complaint against the Principal, it is recommended that the matter be investigated by a Committee of Members set up specifically for this purpose from the Personnel and Staffing Committee. The Principal shall have a right of appeal against the findings of this Committee. Any such appeal will be lodged with the Clerk to the Board within ten (10) working days of receipt of confirmation of the disciplinary action.
- 22.5 Any appeal should be heard by ad hoc Committee of the Board of Management Committee set up for the purpose of the appeal by the Board of Management. Members who sat on the investigating Committee shall be excluded.
- 22.6 Any meeting of the College, Committee or ad hoc Committee relating to disciplinary action in respect of the Principal shall be held in private.

23.0 Disciplinary Appeals Procedure

23.1 Introduction

Employees will have the right of an appeal against any disciplinary action to a higher level. The appropriate level of the appeal will be dependent upon the severity of disciplinary action and the level of the officer who issued the disciplinary action. There will be only one appeal against each disciplinary action taken.

23.2 Intimation of Appeal

- 23.2.1 Appeals against disciplinary action must be lodged in writing using the note of appeal form PER/DAP/1 Notification of Appeal, Appendix E with the Human Resources Manager within ten (10) working days of receipt by the employee of the letter confirming the disciplinary action taken.
- 23.2.2 On receipt of the intimation of appeal, the Human Resources Manager or nominated Officer will acknowledge receipt and advise the appellant and the Principal accordingly. The date of the appeal hearing will normally be within fifteen (15) working days of receipt of the appeal. If the appeal is to the ad hoc Committee of the Board of Management the Human Resources Manager shall forward the letter of appeal to the Clerk to the Board. The date of the appeal will

be within a reasonable timescale after lodgement dependent upon the availability of Board Members.

23.2.3 The appellant and the Officer issuing the action will be required to submit to the Human Resources Manager, at least ten (10) working days prior to the hearing a statement of the basis of appeal and the reasons for the action respectively.

23.2.4 The purpose of these submissions will be to allow the relevant officer or members of the appeal panel to have given prior consideration to the circumstances of the case. It need not be a detailed script of the appeal submission or the reasons for the decision but should form an outline of the main elements of the case.

24.0 Appeals Procedure

24.1 The following Appeals Procedure shall be adopted in all disciplinary appeals whether the appeal is being considered by the College Management or by the ad hoc Committees of the Board of Management. The appropriate level of appeal is defined in Appendix A of the Disciplinary Procedure. Where the word "Officer" is used within this section it refers to the individual manager hearing the appeal or the ad hoc Committee hearing the appeal.

24.2 At any appeal the appellant can be accompanied by their Trades Union representative, Professional Association or work colleague.

24.3 Where the basis of the appeal is a dispute about matters of fact and there are other persons who have personal knowledge of these matters of fact, it shall be open to either the appellant or Management to ensure that these persons be in attendance to be called as witnesses. It is the responsibility of appellants to approach witnesses on their own behalf, to ensure that witnesses are in attendance at the hearing and are willing to give evidence. For College employees, paid time off to attend will be granted if management are given prior notice. Similarly it is the responsibility of management to ensure any witnesses for College's case are in attendance. Both the appellant and management shall give the Officer hearing the appeal prior notice of witnesses and shall forward their list of witnesses and the relevance of their presence to the case to the Human Resources Manager ten (10) days prior to the appeal hearing.

25.0 Appeals Hearing

25.1 The management representative shall put the case to the Appeal Chair or Panel in the presence of the appellant and the person accompanying the appellant.

25.2 The appellant and the person accompanying them shall have the opportunity to ask questions of management and any witnesses called by the management.

25.3 The appellant shall put their case in the presence of the management representative.

- 25.4 The management representative shall have the opportunity to ask questions of the appellant and/or the appellant's representative and of any witnesses called by the appellant.
- 25.5 The Officer hearing the appeal shall have the opportunity to ask questions of either party and of any witnesses.
- 25.6 Witnesses introduced by either party will be questioned by the other party's representative and by the Officer hearing the appeal and will then retire. If necessary, the Officer can recall a witness to clarify any point in question.
- 25.7 The management representative followed by the appellant and/or the appellant's representative shall have the opportunity if they so wish to sum up their case, introducing no new material.
- 25.8 The Management representative(s), the appellant and the appellant's representative shall then withdraw.
- 25.9 The Officer hearing the appeal, together with the officer(s) appointed to assist him/her, shall deliberate in private, only recalling the management representative, the appellant and the appellant's representative to clarify points of uncertainty on evidence already given. If recall is necessary, both parties are to return, notwithstanding only one is concerned with the point giving rise to doubt.

26.0 Decision

The decision shall be confirmed in writing to the appellant within an acceptable time scale but no later than five (5) working days. If it is not possible to advise the employee of the decision within five (5) working days due to unforeseen circumstances the employee should be notified accordingly and advised within a reasonable timescale.

The Chair of the appeal hearing will produce a report detailing the evidence considered, any factors or mitigating circumstances taken into account and how the panel reached their decision.

26.1 Confirmation of Decision

The form of the decision of the Officer hearing the appeal to be announced shall be one of the following as appropriate:

- "that the grounds of the appeal have been substantiated and the appeal is upheld";
- "that the grounds of the appeal have been substantiated in part and the appeal is upheld to the extent that...."; or
- "that the grounds of the appeal have not been substantiated and the appeal is not upheld".

- 26.2 If the appeal is being considered by the Officer and the appellant remains dissatisfied with the decision, the appeal shall end at this level unless it is agreed by both the appellant and the Officer that the appeal be referred further.
- 26.3 Nothing in the foregoing shall infringe on the employees rights under current employment legislation.

Date Approved: Board of Management

Date Implemented

Review Date

Appendix A

Disciplinary Referral Guide

Category of Employee	Investigation Conducted by (Stated Designation Or Above)	Chair Person	Appeals Officer
Principal	Clerk to the Board	ad hoc committee (Personnel and Staffing)	ad hoc committee (Board of Management)
Depute Principal	Principal	ad hoc committee (Personnel and Staffing)	ad hoc committee (Board of Management)
Assistant Principal	Depute Principal	Principal (or nominated member of the Board)	ad hoc committee (Personnel and Staffing)
Associate Principals	Assistant Principal	Depute Principal (or nominated member of the Board)	Principal (or nominated member of the Board)
Senior Lecturers	Associate Principal	Assistant Principal (or nominated member of the Board)	Depute Principal (or nominated member of the Board)
Lecturers	Senior Lecturer	Associate Principal	Assistant Principal (or nominated member of the Board)
Support Staff	Line Manager	Second Line Manager or equivalent from another Support Section	Assistant Principal (or nominated member of the Board)

Notes

In all formal stages of the procedure a member of the Personnel team shall accompany the investigator/s and or the Chair of the disciplinary or appeal hearings with the exception of those stages involving the Board of Management where the Clerk to the Board shall be present.

Ad hoc Committees will elect a Chair from their number.

The above Disciplinary Referral Guide shall be adhered to under normal circumstances however should it be necessary the hierarchy of the Guide may be applied in a flexible manner due to operational requirements.

Appendix B

Authorised Level of Disciplinary Action

Designation	Level of Disciplinary Action
Line Manager/Senior Lecturer	Informal Warning, Oral Warning or Written Warning
Associate Principal	Informal Warning, Oral Warning, Written Warning, Final Warning, recommendation for Dismissal
Assistant Principal	Informal Warning, Oral Warning, Written Warning, Final Warning, recommendation for Dismissal, Dismissal and imposing Administrative Leave
Depute Principal	Informal Warning, Oral Warning, Written Warning, Final Warning, recommendation for Dismissal, Dismissal and imposing Administrative Leave
Principal (or in the Principal's absence the Depute Principal)	Informal Warning, Oral Warning, Written Warning, Final Warning, Dismissal and imposing Administrative Leave
Ad hoc committees of the Personnel and Staffing Committee and the Board of Management	Informal Warning, Oral Warning, Written Warning, Final Warning, recommendation for Dismissal and imposing Administrative Leave

Notes

In all formal stages of the procedure a member of the Personnel team shall accompany the investigator/s and or the Chair of the disciplinary hearing with the exception of those stages involving the Board of Management where the Clerk to the Board shall be present.

Ad hoc Committees will elect a Chair from their number.

The above Disciplinary Referral Guide shall be adhered to under normal circumstances however should it be necessary the hierarchy of the Guide may be applied in a flexible manner due to operational requirements.

APPENDIX C AND D

Special Investigation Procedures

- (i) In certain instances, where it is considered that the circumstances relating to an incident/situation warrant special investigation prior to punitive disciplinary action being considered, such investigations shall be carried out in accordance with the procedures as contained in the attached appendices.
- (ii) The instances to which such procedures relate and can be invoked, are as follows:
 - a) Defalcation (see Appendix C)

Where an incident/situation occurs involving the suspected or actual misappropriation or embezzlement of cash, goods, etc placed in a person's charge.
 - b) Professional conduct, competence, etc (See Appendix D)

Where an incident/situation occurs which gives rise to doubt as to an employee's professional conduct or competencies to perform her/his duties.
- (iii) Following investigation and consideration of each case, a decision shall be taken as to whether or not the employee should be disciplined and/or the police advised.
- (iv) If an employee is given administrative leave during a Special Investigation, the suspension shall be with pay.

IN CERTAIN CIRCUMSTANCES IT MAY BE NECESSARY THAT AN APPROACH IS MADE TO THE POLICE.

NO APPROACH WILL BE MADE TO THE POLICE EXCEPT BY THE PRINCIPAL OR OTHER PERSON ACTING ON HIS/HER AUTHORITY.

Appendix C

Defalcation Procedures

1. The Board of Management shall make arrangements to ensure where it is suspected or known that defalcation has occurred (i.e. the misappropriation or embezzlement of monies, materials, etc placed in the employee's charge) that the matter shall be reported immediately to them and the Principal. The Principal as Accountable Officer is nominated for the purpose of receiving reports concerning suspected or known defalcations.
2. The College Principal having been informed of a suspected or known defalcation shall contact immediately the College's Internal Auditors requesting that an investigation be carried out. The Auditor will thereafter carry out a preliminary investigation and report back to the College Principal or nominated officer.
3. On the basis of a report on the preliminary investigation from the Auditors, a decision shall be taken by the College Principal or nominated officer, as to whether or not the employee(s) concerned should be removed from their existing workplace and found alternative work, or given administrative leave with pay pending the results of further investigation.
4. Prior to this decision being implemented, the employee(s) concerned shall be called to an interview. In some circumstances it may not be possible to advise the employee of the interview in advance, however in all cases it is advisable that the employee is given the opportunity to have a Trades Union, Professional Association representative or work colleague present during the administrative leave interview. The employee should be advised of the reasons for the interview, of the decision to extend the audit investigation and whether he/she is to be moved to another work location or given administrative leave with pay pending the completion of the investigation.
5. If, in the course of the investigation, further interview(s) by the Internal Auditors are required with the employee(s) concerned, the employee(s) must be given the opportunity of being accompanied by a representative of their Trades Union, Professional Association or a work colleague if he/she so wishes.
6. On completion of the investigation, the Internal Auditors shall submit a written report to the Principal.
7. Thereafter the Principal shall refer the report to the Financial Control Committee and Audit Committee for information and consideration.
8. At the conclusion of the investigations when the findings are known the employee(s) concerned shall be called to a further interview and advised of the broad nature of the findings and of the proposed course of action (e.g. a return to place of work and normal working or to proceed with a disciplinary hearing).
9. In the event of disciplinary action being contemplated, the employee shall be given written information on the broad nature of the findings of the investigation. Thereafter the employee(s) shall be called to a disciplinary hearing within the terms of the College's Disciplinary Procedure.

No approach shall be made to the police regarding defalcation except the College Principal or other person acting on their authority.

Appendix D

Procedures for the Investigation into Professional Conduct & Competence

Experience has shown that where the existing disciplinary procedures are properly followed, they have proved to be adequate in most cases.

Several situations however, have arisen whereby it was considered necessary that an agreed special procedure should be available which would enable an "Internal Investigation" to be undertaken, to establish the facts of an incident or complaint prior to any consideration being given of the need for disciplinary action being taken against an employee.

This area mainly concerns professional staff and is related to professional conduct or competence in the carrying out of the duties in situations where it is considered advisable to have the matter investigated and a report prepared by officers qualified/experienced to do so and who have no direct involvement in the situation or with local management of the staff involved.

Where such a move is contemplated, the following procedure shall apply:

- a) Such a decision shall normally rest with the College Principal and he should advise the Depute Principal or Assistant Principal/s of his/her wish to have an "Internal Investigation" carried out.
- b) The nominated officer shall convene a meeting with the Full-Time Officer or Senior Trade Union Officials of the appropriate Trades Union(s), Professional Association together with the appropriate line Manager and his/her support staff.
- c) At the meeting, the Trades Unions or professional Association will be formally advised of the background to the situation and of the reasons for an "Internal Investigation" being considered necessary. The representatives will be advised of the officers nominated to undertake the investigation and asked to nominate their own Liaison Officer.
- d) At this stage, the terms of reference and the scope of the investigation should be agreed with the Trades Union(s) or Professional Association and the procedures set in motion.
- e) All staff to be interviewed shall have the right to be interviewed in the presence of the nominated Liaison Officer or, if a member of a different union, an official of that union if they so wish and the Trade Union(s) or Professional Association representative shall be kept advised of the progress of the investigation.
- f) At the conclusion of the investigation, a report should be prepared and presented to the College Principal and arrangements made for the Trades Union(s) or Professional Association to be likewise provided with a copy.
- g) A meeting shall then be arranged, attended by the Trades Union(s) or Professional Association, at which the content and the recommendations of the report will be discussed.
- h) Where the report clearly indicates that remedial action (e.g. further training, development, guidance, support or advice) as opposed to disciplinary action is indicated, then arrangement on this should be sought with the Trades Union(s) or Professional Association involved and an agreed statement recorded.
- j) Where, however the findings are such as to warrant disciplinary action, then management shall indicate to the Trades Union(s) or Professional Association the course

of action they propose taking and thereafter take the appropriate procedural steps in terms of the Disciplinary Procedures.

- k) Thereafter, the normal disciplinary procedures, rights and privileges etc shall apply, together with the right of appeal, where appropriate.

Note. This agreed procedure for an "Internal Investigation" shall not apply to cases of suspected defalcation, for which a separate and different procedure exists.

JOHN WHEATLEY COLLEGE

NOTIFICATION OF APPEAL

Form (PER/DAP/1)

Employee's Details	
Name:	NI Number:
Employee Reference Number:	Home Phone No:
Date of Birth:	Date of Commencement:
Home Address:	Section/School:
	Designation:
Line Manager:	

Trade Union or Representative details	
Name of Trades Union/Professional Association:	Name of Trade Union or other representative:

Level of Action Taken (i.e. Oral Warning, etc)

Grounds of Appeal
<p>Please indicate reason for appeal:</p> <p>a) I wish to appeal against the decision to discipline me</p> <p>b) I wish to appeal against the level of disciplinary action taken against me.</p> <p>Please state in detail the grounds of appeal in the section overleaf.</p>

Please detail your grounds for appeal:

Name:

Designation:

Date: