

John Wheatley College

Disciplinary Procedures

All Staff

This document was approved by the Board of Management on 9 December 2010.

1. Aims

The aims of the Disciplinary Procedure and the associated Code of Conduct are to set out the standards of conduct expected of all staff and to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct and where staff fail to meet these standards encourage improvement.

It is the College's policy to ensure that any disciplinary matter is dealt with fairly, that steps are taken to establish the facts and to give employees the opportunity to respond before taking any formal action.

This procedure is for guidance only and does not form part of a contract of employment. The College may amend it at any time depending on the circumstances of the case.

2. General Principles

- 2.1 The procedure applies to all employees regardless of length of service. It does not apply to agency workers or self-employed contractors. It does not apply to cases involving genuine sickness absence, proposed redundancies or poor performance.
- 2.2 The procedure was developed in line with appropriate legislation and the ACAS Guide and Code of Practice relating to disciplinary and grievance procedures.
- 2.3 Minor conduct issues can often be resolved informally between employee and manager by means of an informal caution. These discussions should be held in private and without undue delay whenever there is cause for concern. Where appropriate, a note of any such informal discussions may be retained by the manager for no longer than is necessary but not exceeding six months and will be ignored for the purposes of any future disciplinary hearings. In some cases an informal caution may be given, which will not form part of any disciplinary record. Formal steps will be taken under this procedure if the matter is not satisfactorily resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).

- 2.4 Dismissal will not normally be the sanction for a first act of misconduct, unless the evidence supports its definition as an act of gross misconduct.
- 2.5 If an individual feels that they have a difficulty at any stage of the procedure because of language barrier or a disability, this situation should be discussed with their manager, any other suitable member of the management team, Human Resources or their Trade Union as soon as possible. Reference can also be made to the ACAS Code of Practice.
- 2.6 Table 1, on page 11, provides information on the designation of the manager normally required to undertake an investigation, chair a disciplinary hearing and an appeal hearing. The College may amend this depending on the particular circumstances of the case.
- 2.7 Table 2, on page 12 provides information on the level of sanction managers are normally allowed to impose.

3. Confidentiality

- 3.1 The College's aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.
- 3.2 A Human Resources representative will take notes during a disciplinary hearing or appeals hearing. The appropriate parties will be provided with a copy of the notes. At an appeal hearing involving a loss of employment (dismissal) the College may retain the services of an external agency or make other reasonable arrangements to formally record the proceedings subject to the agreement with both parties. A copy of the notes will be provided when available.
- 3.3 Employees and anyone accompanying them (including witnesses) must not make electronic recordings of any meetings or hearings conducted under this procedure.
- 3.4 Employees will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them, unless the College believes that a witness's identity should remain confidential.

4. Right to be Accompanied

- 4.1 The employee may bring a companion to any disciplinary investigation, hearing or appeal hearing under this procedure. The companion may be either a Trade Union official or a fellow worker. The employee must tell the person who is conducting the hearing on the College's behalf who the chosen companion is, a minimum of two working days prior to the date of the hearing.

- 4.2 Acting as a companion is voluntary and other staff are under no obligation to do so. Employees will be allowed reasonable time off from duties, without loss of pay, to act as a companion.
- 4.3 If an employee's choice of companion is unreasonable the College may ask the employee to choose someone else. For example:
- (a) if in the College's opinion the chosen companion may have a conflict of interest or may prejudice the hearing; or
 - (b) if the chosen companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days.
- 4.4 The College may, at its discretion, allow the employee to bring another person who is not an employee or union official where this will overcome a particular difficulty as a result of a language barrier or a disability. This person will be in addition to their chosen companion.
- 4.5 The employee will have no right to be represented, or be accompanied as a companion, by a solicitor or other legal agent whom is acting on their behalf except in specific circumstances. These circumstances will only apply at the appeal stage and where an employee is appealing against being dismissed for a reason which would prevent them taking employment in their current career with any other employer. Examples may be where the College will have a duty to report the individual, if dismissed, under Child or Vulnerable Adult Protection Legislation or Financial legislation.

5. Investigations

- 5.1 The purpose of an investigation is for the College to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any witnesses, and reviewing relevant documents.
- 5.2 Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.
- 5.3 An employee may also be accompanied by an additional companion in certain situations for example if it assists them overcome a disability or if there is a language barrier.
- 5.4 Employees must co-operate fully and promptly in any investigation the College deems to be necessary. This will include informing the College of the names of any relevant witnesses, disclosing any relevant documents to the College and attending investigative interviews if required.

6. Alcohol and Drug Misuse Recovery Programme

- 6.1 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 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.
- 6.2 The College reserves the right to proceed with any disciplinary process in circumstances where the allegation made against the employee is sufficiently serious or unrelated to the problem identified, even where an underlying alcohol or drug problem exists. Each case will be determined on its own facts.

7. Criminal Charges

- 7.1 Where an allegation of a criminal offence arises from, or has a bearing on the employee's employment, the circumstances should be 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. Before any decision is taken about disciplinary action, reasonable grounds must be established for believing that the individual committed the particular offence.
- 7.2 In relation to criminal offences not arising from, or having a direct or in-direct bearing on the employment, consideration should be given to the relevance of the alleged offence and 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 their type of work or unacceptable to other employees. Employees should not be dismissed solely because a charge against them is pending.
- 7.3 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 nominated officer should decide whether sufficient information exists before proceeding to a disciplinary hearing. There is no requirement to await the outcome of a criminal charge through the Courts.
- 7.4 Depending on the nature of the criminal charges and having regard to the potential work implications, it may be necessary for the College to consider:
- (a) redeployment to other duties pending the outcome of criminal proceedings;
 - (b) leave with pay; or

(c) disciplinary action.

7.5 If an employee is unable to attend work as a result of being in custody or on remand, the College will decide, in the light of the needs of the College, if the employee's post can be held open. This decision is delegated to the Principal.

8. Suspension

8.1 In cases where an employee's continued presence at their place of work would present an unacceptable risk to the College or any employee or hinder an investigation the College may need to suspend that employee from work. The suspension will be for a period no longer than is necessary to investigate the allegations and the College will confirm such arrangements in writing. While suspended an employee may not visit the College premises unless authorised to do so by the Human Resources Manager or the Principal.

8.2 Suspension of this kind is not a disciplinary penalty nor an indication of guilt and does not imply that any decision has already been made about the allegations. Employees will continue to receive their full basic salary and benefits during any period of suspension of this type.

9. Notification of a Hearing

9.1 Following any investigation, if there is a disciplinary case to answer, the employee will be required to attend a disciplinary hearing. The employee will be informed in writing of the allegations against them, the basis for those allegations, the person who will chair the hearing, the procedure to be followed and what the likely outcome may be if, after the hearing, the allegations are upheld.

9.2 It is the College's intention that the person who chairs the disciplinary hearing will not have been involved at any of the previous stages of the process.

9.3 The College will also include the following where appropriate:

(a) a summary of the alleged evidence, for and against, gathered during the investigation;

(b) a copy of any documents which will be used at the disciplinary hearing;

(c) a copy of any relevant witness statements. Where a witness identity is to be kept confidential the College will give as much information as possible while maintaining confidentiality; and

(d) a copy of the Disciplinary Procedures.

- 9.4 The College will give an employee written notice of the date, time and place of the disciplinary hearing. The hearing will be held as soon as reasonably practicable, but the employee will be afforded a reasonable amount of time (usually a minimum of five College working days) to prepare their case based on the information provided by the College.
- 9.5 Where the employee involved is an appointed College Trade Union representative the College will, after obtaining agreement from the employee, discuss the case with the employee's full-time Trade Union official.

10. Disciplinary Hearings

- 10.1 The disciplinary hearing will be attended by:
- (a) the individual chairing the hearing. It will be for this individual to hear and assess the evidence for and against the allegations and make a decision based on the evidence presented;
 - (b) the person presenting the evidence resulting from any investigation;
 - (c) a representative from the Human Resources Section. Their responsibility will be to ensure the College's procedures are followed;
 - (d) the employee;
 - (e) the employee's companion; and
 - (f) witnesses as previously identified.
- 10.2 If the employee or the chosen companion cannot attend the hearing the employee should inform the Human Resources Section immediately to allow an alternative date to be arranged. An employee must make all reasonable efforts to attend the hearing, and failure to attend without an acceptable reason may itself be treated as misconduct. If an employee fails to attend without an acceptable reason, or is persistently unable to do so (for example for health reasons), the College may have to take a decision based on the consideration of the available evidence. If the failure to attend is related to a disability or health reasons the College will seek the opinion of its Occupational Health Service before deciding to proceed.
- 10.3 At the disciplinary hearing the Chair will introduce those present, describe the purpose and structure of the hearing. The Chair will go through the allegations against the employee and the evidence, for and against, that has been gathered. The employee will be able to respond and present any evidence of their own. The employee's companion may make representations to the College and ask questions, but may not answer questions on behalf of the employee unless agreed by the Chair based on a barrier caused by language or disability. The employee may confer privately with their

companion at any time during the hearing.

- 10.4 An employee may request that relevant witnesses appear at the hearing, provided they give the College sufficient advance notice and arrange their attendance. However, it will be for individual employees to decide whether to appear as a witness and the College will be under no duty to compel attendance. An employee will be given the opportunity to respond to any information given by a witness or in a witness statement. An employee will be permitted to ask questions of witnesses. In exceptional circumstances these questions may be in the form of a written list and put to the witness by the chair.
- 10.5 The Chair may adjourn the disciplinary hearing if there is a need to carry out any further investigations such as re-interviewing witnesses in the light of any new points raised at the hearing. An employee will be given a reasonable opportunity to consider any such new information obtained before the hearing is reconvened.
- 10.6 When the evidence has been heard and the questioning is complete the chair will summarise the main points of the discussion. An employee will be given the opportunity to clarify any point or indicate anything they think has been missed or misinterpreted. The employee will then be asked if they have anything further to add.
- 10.7 The chair will inform the employee in writing of their decision, and its reasons for reaching it, as soon as is reasonably practicable after the disciplinary hearing. Where possible this information will be explained to the employee in person (accompanied by their companion and a Human Resources representative). The employee will be required to sign and return an acknowledgement mandate to confirm receipt of the letter within five working days.
- 10.8 If the employee has any concerns about the process they should raise the matter with the Human Resources Manager.

11. Disciplinary Penalties

- 11.1 The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. The College aims to treat all employees fairly and consistently, and a penalty imposed in a similar case will usually be taken into account however such a decision should not be treated as a precedent and any relevant circumstances taken into account. Each case will be assessed on its own merits.
- 11.2 Stage 1 – Verbal Warning. This will usually be appropriate for a minor act of misconduct where there are no other active warnings on the employee's disciplinary record.

- 11.3 Stage 2 - Written warning. This will usually be appropriate for an act of misconduct or where there are active verbal warnings on the employee's disciplinary record.
- 11.4 Stage 3 - Final written warning. This will usually be appropriate for:
- (a) misconduct where there is already an active written warning on the employee's record; or
 - (b) misconduct that the College considers sufficiently serious to warrant a final written warning even though there are no other active warnings on file.
- 11.5 A verbal warning (which will be confirmed in writing) and written warnings will set out the nature of any misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period. It will also indicate any support or development to be provided to the employee.
- 11.6 A verbal and written warning will usually remain active for six months and a final written warning will usually remain active for 12 months from the date of the hearing. The employee's conduct will be monitored and reviewed during the warning's active period.
- 11.7 Stage 3 - Dismissal. Dismissal will usually only be appropriate for:
- (a) further misconduct of a repeat or similar nature where there is an active final written warning on the employee's record. This will result in dismissal with payment in lieu of notice; or
 - (b) any gross misconduct regardless of whether there are active warnings on the employee's record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). Examples of gross misconduct are set out in the College's Code of Conduct, which is available on the staff intranet.
- 11.8 Alternatives to dismissal. In some cases the Chair may at their discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning. Examples of alternatives include:
- (a) demotion; or
 - (b) transfer to another section or job; or
 - (c) recalculation, reduction and deduction from pay (cases of unauthorised leave or misclaims).
- 11.9 In all cases disciplinary penalties will be imposed to elicit more positive behavior or to protect the interests of the College and or its learners.

12. Appeals Against Disciplinary Action

- 12.1 If an employee feels that disciplinary action taken against them is wrong or unjust they have a right to appeal in writing to the Human Resources Section, stating their full grounds of appeal, within five College working days of the date on which they were informed of the decision. An appeal can be on the grounds of new evidence, undue severity or alleged breach of College procedure.
- 12.2 If an employee is appealing against dismissal, the date on which the dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employee will be reinstated with no loss of continuity of service, pay or other material benefit.
- 12.3 Where possible, the appeal hearing will be conducted impartially by a more senior manager who has not been previously involved in the case (see Table 1). The employee may bring a companion with them to the appeal hearing (see section 4, above). At the appeal hearing the Chair will introduce those present, describe the structure and the purpose of the hearing.
- 12.4 If an employee raises any new matters in their appeal, the College may need to carry out further investigation. The party bringing the new information will provide a summary including, where appropriate, copies of additional relevant documents and associated witness statements. The chair and the employee will have a reasonable opportunity to consider this information before the hearing.
- 12.5 The College will give the employee written notice of the date, time and place of the appeal hearing. This will normally be five College working days after they receive the written notice.
- 12.6 The appeal hearing may be a complete re-hearing of the matter or it may be a review of the sanction. This will be at the chair's discretion depending on the circumstances of the individual case.
- 12.7 When the evidence has been heard and the questioning is complete the chair will summarise the main points of the discussion. The employee will be given the opportunity to clarify any point or indicate anything they think has been missed or misinterpreted. The employee will then be asked if they have anything further to add.
- 12.8 Following the appeal hearing the College may:
 - (a) confirm the original decision; or
 - (b) revoke the original decision; or
 - (c) substitute a lesser sanction.

12.9 The chair will formally inform the employee in writing of its final decision as soon as possible, usually within one week of the appeal hearing. Where possible this will also be explained to the employee in person (accompanied by their companion and a College Human Resources representative). The employee will be required to sign and return a copy of the written decision within five College working days.

12.10 There shall be no further right of appeal.

12.11 This procedure will be revised in normal circumstances by 30 June 2012.

Table 1

Disciplinary Referral Guide

Category of Employee	Investigation (Stated Designation or Above)	Hearing Chair	Appeal Chair
Principal	Clerk to the Board	Ad hoc committee (Personnel and Staffing Committee)	Ad hoc committee (Board of Management)
Depute Principal	Principal	Ad hoc committee (Personnel and Staffing Committee)	Ad hoc committee (Board of Management)
Assistant Principal	Depute Principal	Principal (or nominated member of the Board)	Ad hoc committee (Personnel and Staffing Committee)
Associate Principals	Assistant Principal	Depute Principal (or nominated member of the Board)	Principal (or nominated member of the Board)
Senior Lecturers, Curriculum Leaders and Assistant Associate Principal	Associate Principal	Assistant Principal	Depute Principal
Lecturers	Curriculum Leader or Senior Lecturer	Associate Principal	Assistant Principal
Support Staff	Line Manager	Second Line Manager or equivalent from another Support Section	Assistant Principal

It should be noted that the circumstances of case may require another manager to undertake the roles indicated in the table.

Table 2**Authorised Level of Disciplinary Action**

Designation	Level of Disciplinary Action
Line Manager, Senior Lecturer, Curriculum Leader, Assistant Associate Principal	Informal Caution; Verbal Warning; Written Warning; or Improvement Notice.
Associate Principal	Informal Caution; Verbal Warning; Written Warning; Improvement Notice; Final Written Warning; and Recommendation for Dismissal.
Assistant Principal	Informal Caution; Verbal Warning; Written Warning; Improvement Notice; Final Written Warning; Suspension; Recommendation for Dismissal; Dismissal.
Depute Principal	Informal Caution; Verbal Warning; Written Warning; Improvement Notice; Final Written Warning; Suspension Recommendation for Dismissal, and Dismissal.
Principal (or in the Principal's absence the Depute Principal)	Informal Caution; Verbal Warning; Written Warning; Improvement Notice; Suspension Final Written Warning; and Dismissal.
Ad hoc committees of the Personnel and Staffing Committee and the Board of Management	Informal Caution; Verbal Warning; Written Warning; Improvement Notice; Final Written Warning; Suspension; and Recommendation for Dismissal.