HR COMMITTEE

Not for publishing

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TITLE OF REPORT:	25-22 Draft Disciplinary Procedure
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PURPOSE:	Discussion and approval of the draft Disciplinary Procedure.
KEY RECOMMENDATIONS/ DECISIONS:	Members are recommended to: 1. Note content of the draft Disciplinary Procedure. 2. Note that this paper has been considered at the HR Committee. 3. Note that the College has consulted trade union colleagues. 4. Endorse the Procedure.
RISK	1. The failure to replace the current Disciplinary Procedure places the College at risk of failing to comply best practice.
RELEVANT STRATEGIC AIM:	Highest Quality Education & Support – High-quality support services; productive partnerships Sustainable Behaviours – effective leadership and management; excellent governance; continuing professional learning and development; appropriate risk management
SUMMARY OF REPORT:	The following is the draft Disciplinary Procedure.

South Lanarkshire College
East Kilbride

DISCIPLINARY PROCEDURE

Managing concerns

Version Number: 1.0

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Quick Links

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1.0 Introduction

South Lanarkshire College (the "College") seeks to ensure that all our employees work in a safe and professional environment.

The Disciplinary Procedure is designed to ensure fair, transparent and consistent treatment of all staff when handling issues related to concerns about employees.

Should the concern be as a direct result of a performance issue, this will be deemed as "capability" and will be dealt with under the Capability Procedure.

During the implementation of this policy, the College may defer to another policy depending on what is shared, for example the Absence Policy or the Reasonable Adjustments Policy. If appropriate, this policy will either be closed in writing or will be adjourned to allow the other policy to conclude. If a grievance is raised while a disciplinary is taking place, the College may pause the disciplinary procedure and deal with the grievance first or, alternatively, deal with both matters at the same time, depending on the situation.

If the disciplinary matter is deemed to be a criminal matter the police will be informed.

This procedure aligns with the ACAS guidelines on disciplinary and grievance procedures. Should the ACAS guidelines or legal requirements change, the policy will be revised to take these changes into account.

2.0 Objectives

The objectives of this procedure are to:

- Provide a structured and transparent approach to enable the handling of conduct or behavioural concerns of employees.
- Ensure a fair and consistent approach to managing and responding to employee concerns.
- Identify opportunities for the College to deal with concerns as a result of your employment.

3.0 Scope

This Procedure applies to all employees of the College and provides a mechanism for disciplinary matters to be handled promptly, transparently, fairly and consistently.

The Disciplinary Procedure will be used where there are potential issues of misconduct. This procedure does not apply to cases where an employee fails to perform to the required standard as a result of lack of skill, capability or training or has genuine sickness absence or where an illness or other condition causes or contributes to performance issues. In those cases, reference should be made to the Capability Procedure.

There may be cases where it will be appropriate to treat poor performance as a misconduct issue e.g., in cases of negligence or carelessness.

4.0 Principles

The Principles of this Procedure are:

- The College will seek to resolve conduct issues at the lowest possible level and informal action will be considered, where appropriate, to resolve problems;
- Some meetings may be audio recorded if agreed by all parties. Otherwise, covert recording is not permitted.
- No disciplinary action will be taken against an employee until the issue has been fully investigated to establish the facts of the case;
- For formal action, an employee will be advised of the nature of the complaint against their and will be given the opportunity to state their case before any decision is made at a disciplinary meeting;
- Employees will be provided with written copies of evidence and witness statements, under normal circumstances, in advance of a disciplinary meeting;
- Witnesses should be informed that a copy of their statement will be provided to the employee;
- At all formal stages of the procedure an employee will have the right to be accompanied by a trade union representative, work colleague or an official employed by a Trade Union;
- Employees may seek additional support or advice from the Human Resources Department;
- Employees will be provided with appropriate time off to attend the Employee Counselling Service to support them through the process;
- In certain situations, employees may be accompanied by an additional companion if agreed by all parties in order to assist the process e.g. an employee with a disability or if there is a language barrier;
- All meetings should be conducted courteously and fairly
- Where possible and practicable in the circumstances, an officer of the College who has been involved in any investigation into alleged misconduct will not be involved in either the disciplinary or the appeal hearing and any officer who has heard a disciplinary or dismissal hearing will not be involved in any appeal hearing.
- No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will be dismissal without notice or payment in lieu of contractual or statutory notice (non-exhaustive examples of misconduct and gross misconduct are contained within the Disciplinary Procedure but any employee in

doubt of their responsibilities or expected standards of conduct should speak to their line manager);

- An employee will have the right to appeal against any disciplinary sanction;
- Notwithstanding the stages of disciplinary sanction set out in the procedure, the procedure may be implemented at any stage, without the College being required to start with the lowest disciplinary sanction if the employee's alleged misconduct warrants this; and
- The College and its employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.

5.0 Confidentiality

The College aims 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. A failure to do so may result in disciplinary action, up to and including dismissal.

An employee who provides a statement will be advised that the individual who is subject to the investigation will normally be told the name(s) of any witness(es) who provides evidence relevant to the allegation(s) against them, unless in exceptional circumstances the College determines that the identity of a witness should remain confidential, for example in cases of sexual harassment or where an individual has provided evidence on the condition that anonymity is preserved.

In such cases the College will endeavour to ensure that the employee is provided with a fair opportunity to respond to any allegation(s) made against them and, if this is not possible, will ensure that a determination is made as to the appropriate weight to be placed on any such evidence in light of any prejudice caused to the employee as a result of anonymity being preserved. The decision not to disclose the name(s) of a witness(es) will be discussed with the employee, and/or their Trade Union representative where appropriate.

6.0 Right to be accompanied

The employee has the right to be accompanied at any formal stage of the procedure by a trade union representative, work colleague or an official employed by a Trade Union.

Under this procedure, the employee does not have the right to be accompanied by anyone else (such as spouse, partner, other family member or legal representative) unless agreed otherwise as set out above in Section 4.

To exercise the statutory right to be accompanied the employee must make a reasonable request. The employee should provide enough time for the College to deal with the companion's attendance at the meeting and make clear in advance the name of the companion where possible and whether the individual is a Trade Union representative or work colleague.

The role of a companion is limited. A companion is entitled to put forward the employee's case, sum up their case and respond on their behalf to any view expressed at the hearing. An employee will also be able to confer with their companion during the hearing.

The companion cannot answer questions on behalf of the employee or address the hearing if the employee indicates that they do not wish the companion to do so. The companion cannot use their powers in any way which prevents the employer from explaining its case or which prevents any other person at the hearing from contributing to it.

The companion's role is not to give evidence on behalf of the employee.

The role of the companion is to advise and take notes. They may respond on the employee's behalf to a view expressed at the hearing but they have no legal right to answer questions on the employee's behalf.

The companion does have a legal right to address the hearing and may ask questions.

Reasonable time to confer privately with an employee either in the hearing room during the hearing and/or outside it should be given to the companion.

An employee who has been requested to accompany a fellow employee employed by the College and has agreed to do so should be permitted to take a reasonable amount of paid time off to fulfil that responsibility. That should not only cover the hearing but some time before and after the hearing to confer with the employee. The same applies to a trade union official.

When a chosen companion is not available to attend on the date proposed for the hearing the employee can postpone the hearing and offer an alternative time and date so long as it is reasonable and falls before the end of the period of five working days, beginning with the first working day after the first date proposed by the College. In proposing an alternative date, the employee should have regard to the availability of the relevant manager(s). The location of timing of any alternative hearing should be convenient to both employee and employer.

7.0 Suspension

The College may decide to suspend the employee from work as a precautionary measure pending the outcome of investigation. Any such decision will be taken after consideration of relevant factors including but not being limited to:

- The nature and seriousness of the allegation and the likelihood of the allegations being established;
- The risks to the College and/or employees, students or other third parties of the employee's continued presence in the workplace;
- The risk of a recurrence of the behaviour that is the subject of the

allegations; and
- Any impact or prejudice that may be caused by the employee's continued presence in the workplace, in particular in relation to the employer's ability to conduct an investigation

The suspension will be for no longer than is necessary to investigate the allegations and the College will confirm the arrangements to the employee in writing. The initial period of suspension will normally be for no more than 10 working days. After this period the decision will be reviewed. If necessary, the period of suspension may be extended for a further 10 working days, after which the decision will again be reviewed. Any decision to suspend will be kept under review. While suspended the employee should not visit the College premises or contact any employees, clients, learners, suppliers or contractors associated with the disciplinary investigation or offence under investigation unless authorised to do so.

Suspension of this kind is a precautionary measure, not a disciplinary penalty and does not imply that any decision has already been made about the allegations. The employee will continue to receive full basic salary and benefits during the period of suspension.

An alternative to suspension, where appropriate, would be to relocate the individual under investigation to another work location.

Employees will be provided with information on the support available to them through the Employee Counselling Service. Employees will receive information during their absence similar to any employee who is absent for any other reason.

8.0 Alcohol and Drug Misuse

The College may suspend disciplinary action under certain circumstances in respect of an offence related to alcohol or substance misuse in accordance with the terms of the College's Policy Statements on Alcohol, Drug and Substance Abuse.

9.0 Overlapping Disciplinary and Grievance Cases

Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently.

10.0 Records

The College will keep a file with all written information relating to the disciplinary case. The records will be treated as confidential and kept in accordance with our data retention policy which can be obtained from the staff portal.

The details of every disciplinary case will be maintained for monitoring purposes. The College will publish general statistics relating to the number of disciplinaries each year. No personal data is published as part of this process.

11.0 Training

Training and coaching of managers operating the procedure will be provided. Representatives of the College's recognised Trade Unions will be invited to attend such training. Advice and guidance on the application of the Disciplinary Procedure will be provided by Human Resources.

12.0 Disciplinary Procedure

12.1 Informal Procedure

Where practicable and/or deemed appropriate by the College, misconduct will normally be managed, or resolved, informally in the first instance.

Informal action will normally be carried out by the employee's direct line manager or supervisor.

It will take the form of a discussion between the employee and the line manager or supervisor with the objective of resolving any issues, encouraging and helping the employee to improve and identify whether additional training, coaching and advice may be needed is required. Informal resolution may also take the form of an informal warning or direction.

Both parties should fully understand the outcome of the discussion and that the formal processes may start if there is a recurrence of the misconduct or where other misconduct issues arise or where there is no improvement or if any improvement fails to be maintained.

Arrangements will be made to review progress over a specified period where appropriate. Where improvement is required both parties must understand what needs to be done, how the conduct will be reviewed, and over what period. The line manager will confirm in writing what has been decided.

Brief notes of any agreed informal sanction or action should be kept for reference purposes by the manager and a copy provided, where appropriate, to the employee. The discussion is not a disciplinary meeting and any warning issued whether orally or in writing is informal.

12.2 Formal Procedure

The formal disciplinary procedure will be used when informal resolution is not deemed appropriate or when informal attempts to address the issue have not proven possible or effective.

Managers should discuss the case with a member of the Human Resources Department prior to invoking the formal disciplinary procedure.

12.3 Investigation

The College will investigate alleged misconduct, without unreasonable delay and within an agreed timescale, to establish the facts in any particular case. The investigation will be carried out by the appropriate manager, refer to Table 1, with support and advice from a member of the Human Resources Department.

The employee will normally be told that the investigation will be taking place (unless there are circumstances in which this would not be appropriate), the allegation(s) which is the subject of investigation, the anticipated timescale and their right to be accompanied by a trade union representative, work colleague or an official employed by a Trade Union during any meeting to discuss the area(s) of concern.

The purpose of an investigation is for the College to establish a fair and balanced view of the facts relating to any allegations against an employee, before deciding whether to proceed with a disciplinary meeting.

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.

Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary meeting has been held.

Employees must cooperate 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.

If, after investigation, it is deemed that no further action is to be taken the employee will be notified of this in writing. The outcome will be recorded and any evidence collected during the investigation will be destroyed.

Where, after investigation, it is established that there is a case to answer the employee will be invited in writing to attend a disciplinary meeting.

12.4 Notification of a Disciplinary Meeting

The notification to attend a disciplinary meeting will contain sufficient information about the alleged misconduct and the possible consequences to enable the employee to reasonably prepare to answer the case at a disciplinary meeting. An employee will normally receive seven (7) working days advance notification of the date of the meeting. Evidence will be provided with the notification. The notification will give details of the time and venue for the disciplinary meeting, confirm who will be present and advise the employee of their right to be accompanied at the meeting should they wish. In the case of part-time staff the disciplinary meeting, where possible, should be within the employee's normal working hours.

If an employee's trade union representative, work colleague or an official employed by a Trade Union cannot attend the employee may offer a reasonable alternative time within five (5) working days of the original date.

Where an employee is unable or unwilling to attend a disciplinary meeting without good cause the College may make a decision on the evidence available. If the failure to attend is related to a disability or health reason the College may seek the advice of its Occupational Health Service before deciding how to proceed.

12.5 Disciplinary Meeting

Both management and employees (and their companion(s)) will make every effort to attend the meeting. A guide to conducting a disciplinary hearing for managers is attached as appendix 1.

The disciplinary meeting will normally be attended by:

(a) the individual chairing the meeting (the 'Chair') - The Chair will be

appointed taking into account the potential outcomes and the authority levels set out in Table 2. It will be for the Chair to hear and assess the evidence for and against the allegations and make a decision based on the evidence presented. The College reserves the right to appoint a panel consisting of a minimum of two where this is felt to be appropriate;

(b) the person who conducted the investigation ('the Investigating Officer');
(c) a representative from Human Resources – to provide advice and support to the manager and take notes;
(d) the employee;
(e) the employee's trade union representative, work colleague or an official employed by a Trade Union (if requested by the employee); and
(f) relevant witnesses as previously identified when required to provide evidence.

At the meeting the following process will be followed:

- the Chair will introduce those present and explain the purpose and format of the meeting outlining the alleged misconduct and the potential sanctions;
- the Investigating Officer will be invited to present the case and respond to any questions posed by the chair or the employee;
- the employee will set out their case, respond to the allegations be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses;
- both the Chair and the employee will be given an opportunity to raise points about the evidence provided by the Investigating Officer or witnesses.

Where the College or the employee intends to call relevant witnesses they should give advance notice that they intend to do this.

The College will normally rely either on statements and/or the terms of any investigatory report produced by the Investigating Officer but may call witnesses where this is considered appropriate depending on the specific circumstances of the case.

Summary Notes of formal meetings will be taken and not a verbatim record**.**

Copies of these notes will, where practicable, be given to the employee within ten College working days and they should inform the College if they wish to comment on the accuracy of the notes within seven (7) College working days of receiving them. Comments made by the employee in respect of the notes will be added as an addendum and the notes themselves will not be amended.

12.6 Adjournment

The Chair or Appeal Chair will have discretion to adjourn any disciplinary hearing or appeal hearing as deemed necessary. This decision is entirely at the discretion of the Chair or Appeal Chair and may be made after a request by the employee or representative of the College or otherwise as deemed necessary.

12.7 Reaching a Decision and Potential Outcomes

At the end of the disciplinary meeting, the Chair will normally adjourn the meeting before making a decision, see section 5 of appendix 1. Following the adjournment, the Chair may issue an oral decision. If the Chair is unable to reach an immediate decision following the meeting, they are entitled to deliberate on the meeting prior to issuing a decision in writing. Written notification of the outcome will normally be issued within ten [10] working days of the meeting, or earlier if reasonably practicable, together with an explanation of any disciplinary action to be taken and notification that the employee has the right of appeal.

The penalties imposed must be reasonable in all circumstances and must consider the nature of the misconduct, any disciplinary record, any mitigation advanced by the employee and be consistent with penalties imposed in similar cases.

The College reserves the right to impose sanctions at any level, or to skip levels, depending on the circumstances of the case.

The potential outcomes are as follows:

- No Action – after the meeting the Chair may decide that there is no action to take.
- First Warning – this will be confirmed in writing. This will usually be appropriate for a minor act of misconduct. A record of the warning will be kept but it will be disregarded for disciplinary purposes after 6 months subject to the employee achieving and sustaining satisfactory conduct.
- Final Written Warning – this will normally be issued if:
    - it is more serious misconduct than that which would warrant a first written warning;
    - there is further misconduct of a similar nature; or
    - during the currency of an existing warning for a similar offence.

  This will be in writing and set out of the nature of the misconduct and the change in behaviour required and the right of appeal. It will also warn that further incidents of misconduct may lead to dismissal (or some other action short of dismissal) and will refer to the right of appeal. A copy of this written record will be kept but disregarded for disciplinary purposes after 12 months subject to the employee achieving and sustaining satisfactory conduct.
- Dismissal (with notice) – this will normally be issued if there is still further misconduct during the currency of a Final Written warning. Dismissal decisions can only be taken by a nominated officer and the employee will be provided in writing with reasons for dismissal the date on which the employment will terminate and right of appeal.
- Summary Dismissal (without notice) – this will normally be issued where the employee has committed an act of gross misconduct.
- Action short of dismissal – this can be issued as an alternative to dismissal and will normally be accompanied with a Final Written warning.

Action short of dismissal includes:

- demotion (permanent or temporary) as an alternative to dismissal, and the dismissal is clearly justified in the circumstances;
- redeployment to an alternative role or section without loss in remuneration;
- recalculation, reduction and deduction from pay (cases of unauthorised leave or misclaims).

The employee will receive written details of the misconduct, will be warned that dismissal could result if there are further incidents of misconduct and will be advised of the right of appeal. A copy of this written record will be kept but disregarded for disciplinary purposes after 12 months subject to achieving and sustaining satisfactory conduct.

There may be exceptional cases where the College deems it appropriate to extend the period for which any warning remains 'live', and the College reserves the right to implement an extension of the duration of the warning where this is deemed appropriate by the College. Full reasons for this decision will be provided to the employee in the written notification of the outcome where this right is exercised.

The manager will produce a written report articulating a justification for the decision reached and the sanction applied.

13.0 Appeals against Disciplinary Action

An employee will have the right to appeal against disciplinary action if they feel that the action taken against them is wrong or unjust. An appeal, for example, may be on the grounds of new evidence, undue severity/level of sanction or alleged breach of College procedure. The appeal should be submitted in writing to Human Resources, stating the full grounds for the appeal within seven (7) College working days of the date on which they were informed of the decision.

Appeals should be heard without unreasonable delay. The appeal will be dealt with impartially and wherever possible, chaired by a manager who has not previously been involved in the case and is more senior to the chair of the disciplinary meeting, in accordance with Table 1 (the 'Appeal Chair').

Both management and employees (and their companion(s)) will make every effort to attend the appeal meeting. At the appeal meeting, the Appeal Chair will introduce those present and explain the purpose and format of the meeting. The employee will be

allowed to set out the grounds of their appeal and further questions may be asked by the chair as appropriate. The process outlined in section 12.5 will be followed.

Following the appeal meeting the Appeal Chair may:

(a) confirm the original decision; or
(b) revoke the original decision; or
(c) substitute an alternative sanction.

The Appeal Chair will inform the employee in writing of their final decision as soon as possible after the adjournment of the appeal meeting and usually within seven (7) working days of the appeal meeting. The College acknowledges the impact of that a formal process may have on an employee's health and wellbeing and will endeavour to progress the process within a reasonable timescale.

Where a sanction of dismissal is applied the appeal will be heard by a panel consisting of a College senior manager and two members of the Board or its Standing Committees. It should be noted that the appeal hearing will take place as soon as reasonably practicable given the external commitments of members of the Board and its Standing Committees.

There shall be no further right of appeal.

14.0 Misconduct and Gross Misconduct

The following are examples of matters that will normally be regarded as misconduct or gross misconduct.

14.1 Misconduct

Matters that will normally be regarded as Misconduct and will be dealt with under the Disciplinary Procedure include:

a) minor breaches of College policies or procedures;
b) minor breaches of the employment contract;
c) damage to, or unauthorised use of, College property;
d) persistent, unauthorised lateness;

e) unauthorised or unacceptable high levels absence from work;
f) failure to follow reasonable management instructions;
g) excessive use of College telephone for personal calls;
h) excessive personal e-mail, internet usage or social media;
i) deliberate negligence in the performance of duties;
j) unauthorised disclosure of confidential information; or
k) smoking in no-smoking areas;

The list is intended as a guide and is not exhaustive or exclusive.

14.2 Gross Misconduct

Gross misconduct is a serious breach of contract and includes misconduct which, in the College's opinion, is likely to prejudice College business or reputation or irreparably damage the working relationship and trust between employer and employee.

An employee can be summarily dismissed for a first offence which is considered to constitute gross misconduct. Should an employee be dismissed for gross misconduct the dismissal is without notice or payment in lieu of notice.

The following are some of the offences the College considers to be gross misconduct:

- serious misuse of College property or name;
- Posting social media content that has the sufficient potential to or does bring the College into disrepute, or reflects negatively on the College, colleagues or learners (in line with the College's ICT Acceptable Use Policy and other related policies);
- bullying or cyber bullying (actual or threatened);
- acts of indecency or sexual harassment, at, but not limited to, work, social events associated with the College, attendance at external events or on residential;
- unacceptable use of obscene, abusive or offensive language (including language of a discriminatory nature);
- actual or threatened violence, or behaviour which provokes violence;
- deliberately accessing internet sites containing pornographic,

offensive or obscene material;

- bringing the College into disrepute;
- causing loss, damage or injury through serious negligence;
- theft, or unauthorised removal of College property or the property of an employee, contractor, customer or member of the public;
- falsification of records or other College documents including those relating to obtaining employment;
- fraud, forgery or other dishonesty, including fabrication of expense claims and timesheets;
- acceptance of bribes of other secret payments arising out of employment;
- deliberate and serious damage to College buildings, fittings, property or equipment, or the property of an employee, contractor, customer or member of the public;
- conviction for a criminal offence that in the College's opinion may affect our reputation or our relationships with our employees, customers or the public, or otherwise affects suitability to remain an employee;
- possession or use of non-prescribed drugs on College premises or during working hours;
- Consumption of alcohol on College premises or during working hours, other than on occasions approved by the College;
- incapacity at work brought on by alcohol or non-prescribed drugs;
- refusal to carry out reasonable management instructions, repeated or serious disobedience of instructions, or other serious act of insubordination;
- serious neglect of duties, or a serious or deliberate breach of employment contract or the College's polices or procedures;
- serious or repeated breach of health and safety rules or serious misuse of safety equipment or otherwise endangering the health and safety of themselves, colleagues and/or third parties;
- deliberate breach of statutory rules affecting employment;
- unauthorised use or disclosure of confidential information;
- unauthorised use, processing or disclosure of personal data contrary to the College Data Protection Policy;
- unauthorised access to or use of computer data or computer hardware or copying of software, other than when authorised in the employee's normal course of employment;
- harassment of or discrimination against employees, contractors, clients or members of the public on the grounds of their protected characteristic(s);
- giving false information as to qualifications or entitlement to work

(including immigration status) in order to gain employment or other benefits;
- knowingly taking parental, paternity or adoption leave when not eligible to do so for a purpose other than supporting a child;
- victimising another employee who has raised concerns, made a complaint or given evidence information under other College policies;
- serious misuse of College information technology systems (including misuse or developed or licensed software, use of unauthorised software and misuse of email and the internet);
- undertaking unauthorised paid or unpaid employment during paid working hours.

The list is intended as a guide and is not exhaustive.

15.0 Criminal Charges or Convictions

An employee should not be dismissed or otherwise disciplined solely because they have been charged with or convicted of a criminal offence. The question to be asked in such cases is whether the employee's conduct or conviction merits action because of its employment implications.

Where it is thought the conduct warrants disciplinary action the following guidance should be borne in mind:

- the College should conduct a brief preliminary investigation of the facts, come to a view about them and consider whether the conduct is such as to warrant instigating the disciplinary procedure;
- where the conduct requires prompt attention, the College need not await the outcome of the prosecution before taking fair and reasonable action;
- where the police are called in, they should not be asked to conduct any investigation on behalf of the College, nor should they be present at any meeting or disciplinary meeting.

In some cases, the nature of the alleged offence may not justify disciplinary action, for example because the employee is in custody. In these cases, the College should

decide whether, in light of the needs of the College, the employee's job can be held open. Where a criminal conviction leads, for example to the loss of a license so that continued employment in a particular job would be illegal, the College should consider whether alternative work is appropriate and available.

Where an employee, charged with or convicted of a criminal offence, refuses or is unable to cooperate with the College's disciplinary investigations and proceedings, this should not deter the College from taking action. The employee should be advised in writing that unless further information is provided, a disciplinary decision in accordance with the Disciplinary Procedure will be taken on the basis of the information available and could result in dismissal.

The employee will be advised that, where this is deemed appropriate in the circumstances, they may instruct their trade union representative, work colleague or an official employed by a Trade Union to act on their behalf or submit written representations for the College to consider prior to making its decision.

16.0 Alcohol and Drug Misuse Recovery Programme

The College may suspend disciplinary action in respect of an offence related to alcohol or substance misuse.

In accordance with the terms of the College's Policy on Alcohol, Drugs and Substance Abuse, 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.

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.

17.0 Adjustments to Procedure

The College will endeavour to adhere to the time limits specified in the above procedure, however, this may not be practicable in the specific circumstances. Accordingly, the College reserves the right to extend any applicable time periods. In circumstances where it is not practicable to adhere to the above procedure within the time limits specified or within a reasonable period, the College will modify the procedure as appropriate and will notify the employee of the reasons for the delay and will keep the employee updated as to progress at reasonable intervals.

18.0 Reasonable adjustments

Reasonable adjustments may be made to this procedure where an employee is suffering from a disability as defined by the Equality Act 2010.

19.0 External Agencies

Employee Counselling Service - PAM Assist - College Intranet
ACAS (Advisory, Conciliation and Arbitration Service) Telephone: 08457 47 47 47
Minicom: 08456 06 16 00

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 (Human Resources Committee)	Ad hoc committee (Board of Management)
Depute Principal	Principal	Ad hoc committee (Human Resources Committee)	Ad hoc committee (Board of Management)
Associate Principal or Head of Department	Depute Principal	Principal (or nominated member of the Board)	Nominated member of the Board
Depute Head of Faculty	Associate Principal	Depute Principal	Principal
Curriculum Managers or Line Manager	Associate Principal or Head of Department	Depute Faculty	Principal
Lecturers	Curriculum Manager	Associate Principal	Depute Principal
Support Staff	Line Manager	Head of Department or equivalent from another Support Department	Depute Principal

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

Where a sanction of dismissal has been applied and where an appeal against the decision has been submitted the appeal will be heard by a panel consisting of a College senior manager and two members of the Board or Standing Committees.

Table 2

Authorised Level of Disciplinary Action

Designation	Level of Disciplinary Action
Line Manager or equivalent from another Support Department or Curriculum Manager	Informal Warning; Verbal Warning; or Written Warning.
Associate Principal (or Depute), Head of Department (or (Depute)	Informal Warning; Verbal Warning; Written Warning; Final Written Warning; and Recommendation for Dismissal.
Depute Principal	Suspension; Informal Warning; Verbal Warning; Written Warning; Final Written Warning; Recommendation for Dismissal; Dismissal.
Principal (or in the Principal's absence the Depute Principal)	Suspension; Informal Warning; Verbal Warning; Written Warning; Final Written Warning; Recommendation for Dismissal; Dismissal.
Ad hoc committees of the Human Resources Committee and the Board of Management Or Nominated Board Member	Suspension; Informal Warning; Verbal Warning; Written Warning; Final Written Warning; Recommendation for Dismissal; and Dismissal (Board of Management Only).

Appendix 1

CONDUCTING A DISCIPLINARY HEARING

Commented [GM1]: This section will be removed from the procedure but will remain as a published management guide

The manager conducting the hearing should follow a structured format, which will ensure compliance with the College's Procedure and the ACAS Code of Practice. This will also ensure that every disciplinary hearing is conducted in a fair and consistent manner.

The manager should:

- open the hearing
- present the employer's case (essentially the investigatory report findings)
- hear the employee's case (in response to each finding at a time with a general opportunity to make additional / supplementary / general representations at the end)
- adjourn for consideration of both sides' cases
- reach a decision, including working out how to articulate an appropriate justification for that decision
- reconvene to communicate the decision or issue a decision in writing (the latter being advisable where not a straightforward case)
- explain the right of appeal

Prior to the point at which the hearing adjourns to consider the decision, there may be reasons why one or more other, earlier, adjournments of the hearing may be necessary as well, e.g.:

- if the employee becomes unwell, angry or upset
- if the employee presents a grievance
- if some unexpected evidence or information is presented by the employee which needs to be discussed, considered or investigated
- if the hearing has digressed, is taking a long time and a break is needed to refresh, recap and refocus

The length of any other adjournments will depend on the circumstances. Usually, a brief adjournment will be sufficient to allow an employee to regain composure if they

are upset or angry, or to enable the Chair to refresh, recap and refocus. Occasionally, it may be necessary to adjourn the hearing until another day. This might be appropriate if the employee becomes unwell or if the Chair needs to take advice and/or needs further investigations to be undertaken.

Opening the Hearing

The disciplinary hearing should follow a formal structure as laid out in the Procedure as it is a meeting where potentially important decisions affecting the employee may be made. For this reason, it can be anxiety-provoking for the employee and so the Chair should open the hearing by setting a tone which is serious and professional yet still relaxed and supportive, perhaps by:

- thanking the employee and the companion for attending
- introducing himself or herself as the person conducting the hearing, and anyone else present, explaining their role
- explaining the purpose of the hearing (to consider the findings of the investigation report)
- confirming the employee has received and had an opportunity to read the relevant written notification and copies of all evidence, including the disciplinary procedure
- explaining the format of the hearing (as detailed above)
- inviting initial questions and asking the employee to confirm that they understand that the hearing will consider the 'findings' set out at in the investigatory report.

Investigating Officer - Presenting the Employer's Case

Presenting the employer's case involves the Investigating Officer going through the evidence gathered as part of the investigation. If there is a relatively small amount of evidence, it might be appropriate to refer to each piece of evidence and ask the employee any relevant questions. Where a considerable amount of evidence has been gathered, it may be more appropriate for the Chair to refer only to those pieces of evidence about which they have questions. At this stage it is not appropriate for the Chair to communicate any opinions or judgements about what they believe, or about the potential outcome. The aim at this stage is to be objective and open-minded

— presenting the evidence as it appears without inferring anything about the employee’s intentions or culpability.

Hearing The Employee’s Case

Once the employer's case has been presented, the Chair should then effectively hand the hearing over to the employee so they have an opportunity to outline their case and defence. If there are a number of allegations, it is recommended that once the Chair has gone over all of the allegations they then go through each one and ask for the employee's position in relation to each specific finding. They should then, at the end of this, ask the employee if they have any additional representations that they wish to make about the allegations generally or any of the specific findings to ensure that they have had a proper opportunity to defend themselves.
A Chair conducting a hearing should demonstrate throughout that they are listening attentively by maintaining positive body language and good eye contact while the employee is speaking. Even if the Chair/panel finds the employee's explanation implausible, it is important that they allow them to speak openly and without interruption. The Chair should make a written note, while listening to the employee, of anything they wish to say in response, but should only ask questions and/or make comments (based on those notes) at the end when the employee has finished speaking.

If the employee starts to digress or drift on to other matters that are not relevant to the allegations being considered, it is acceptable to interrupt and refocus them back onto the key issues.

The employee may wish to bring witnesses to the hearing to support their case. Provided that they have notified the employer in advance, they should be allowed to do so. The witness should not be present throughout the meeting, but the employee should be allowed to 'call' each witness individually. If the employer intends to call witnesses, the employee will be notified of this in advance. To comply with the ACAS Code, the employee should be permitted to "raise points about" the information given by the witnesses.

Once the employee has presented their case, the Chair should summarise the information put forward by both parties and any clarification should be requested at this point.

Adjourning For Consideration of Both Sides' Cases

Adjournment is a key stage in the disciplinary hearing and it is important that the length of the adjournment reflects the seriousness of the matter, the potential consequences for the employee and the amount of evidence presented by both sides.

A short adjournment of 20 to 30 minutes might be appropriate for consideration of a small amount of evidence, on a relatively minor matter, which is most likely to result in no more than a first written warning. A longer adjournment should be taken for proper consideration of all the evidence on a more complex matter, and/or one which might result in a final written warning or dismissal. Fair consideration of all the facts is evidenced by an adjournment of appropriate duration, so it is important to record the duration of the adjournment within the meeting minutes, the adjournment or decision may take a few days to reach.

During the adjournment, the manager should:

- reconsider the evidence of the investigation
- review the evidence/version of events presented by the employee
- check there are no further questions that need to be asked or facts that need to be investigated
- refer to the College disciplinary procedures, previous decisions to establish:
- the degree of seriousness with which it is appropriate to view the allegations, and
- what the potential disciplinary consequences might be

Reaching a Decision and Articulating a Justification For It

There are two key decisions the Chair must make during the adjournment:

- whether the available evidence sufficiently substantiates the allegations and, if so
- what level of disciplinary action is appropriate in the circumstances

In determining whether the available evidence substantiates the allegations, the Chair should:

- gather a list of all the key statements and pieces of evidence that support the allegations
- gather a list of any statements and evidence that do not support the allegations
- go through both lists and decide, in each case, whether that piece of evidence:
  - should be disregarded and, if so, why disregarding it is justified
  - should be accepted and taken into account and, if so, why that is justified
- having gone through the above stages, weigh up the evidence which they have decided to take into account and form an overall balanced view about the truth of the allegations, based on that remaining evidence

If the Chair decides that the allegations are substantiated then, in determining the level of disciplinary action that is appropriate, they should consider:

- the College disciplinary procedure and Code of Conduct about the relevant types of misconduct and levels of disciplinary action
- any extenuating factors that might have had a bearing on events
- the employee's length of service and previous disciplinary record
- any earlier examples of how similar matters of misconduct have been dealt with in the College (to ensure that the College's approach to disciplinary sanctions is consistent over

time)

The College disciplinary procedure should help to establish what level of disciplinary action the type of misconduct would normally warrant. Once a misconduct incident has entered a formal disciplinary procedure (as opposed to being dealt with informally, which may be more appropriate in instances of minor, isolated problems), the available levels of disciplinary action, in ascending order of seriousness, are usually:

- first written warning
- final written warning
- dismissal — usually with notice, but may be without notice (summary) in cases of gross misconduct

The Chair should consider whether it is appropriate to issue the normal level of warning in the particular circumstances of the case. Extenuating circumstances that might be considered could include:

- mental or physical health problems (stress or other ailments causing pain)
- personal problems (recent bereavement, divorce, problems affecting family members, financial issues)
- provocation (for some types of behavioural misconduct)

Where there are extenuating factors, and the employee otherwise has long service and a good disciplinary record, consideration should be given to how other similar matters have been dealt with in the College in the past and taking all this into account, it may be appropriate to adjust the level of sanction accordingly. It is good practice for the Chair to keep a written record of all that they consider during the adjournment. This will serve to provide evidence at a later date of what was considered and of the decision-making process. It is also helpful in any event for creating the basis of the written decision that will be given to the employee, and the written justification that should be part of it.

Reconvening to Communicate the Decision

In ordinary cases, it will usually be possible to reconvene within about an hour to communicate the decision. If the matter is very complex, and/or the evidence extensive, it may instead be necessary to reconvene on another day or to take some time to consider the outcome before communicating it in writing. Where it becomes clear that it is necessary to reconvene, the employee should be informed of this immediately.

If the Chair reconvenes to communicate the decision, they should:

- thank the employee for their patience during the adjournment
- outline the evidence that has been considered
- explain the decision and justification for it
- explain the duration of any warnings and any other disciplinary implications of the decision
- explain the right of appeal

In all cases, the decision should also be communicated in writing.

The Right of Appeal

To comply with the College' Procedure and ACAS Code of Practice, all employees must be offered the right of appeal against any disciplinary action taken against them. The right of appeal, is detailed in the College procedure, should be explained at the disciplinary hearing and then again in the written decision.

Confirm the Decision in Writing

In all cases, even where the decision is first communicated orally to the employee at the hearing, it should also be communicated in writing, as required by the College Procedure and the ACAS Code of Practice. This might be done

at the same time as the decision is given orally to the employee at the reconvened disciplinary hearing (particularly if there has been a significant adjournment that has allowed time to write it up) or, if not, soon afterwards.

The written decision should be provided to the employee in accordance with the College's disciplinary procedures — this would usually be within five days of the disciplinary hearing. It should outline:

- the allegations
- a summary of the key evidence considered in reaching the decision
- the decision, the justification for it and, where appropriate, the duration of any warnings issued; and
- the right of appeal

A copy of the minutes of the disciplinary hearing should also be sent to the employee along with the written confirmation of the decision.

Record-Keeping Requirements

A detailed record should made during the disciplinary hearing, which should include:

- a list of each person in attendance and his/her role
- the date and time the hearing commenced
- a fairly detailed summary of what was said by whom (it need not be verbatim)
- the duration of any adjournments
- what was considered and discussed during the main adjournment
- the decision reached during the main adjournment, and the justification for that decision
- the end date and time of the hearing In addition, the Chair, supported by HR will:
- request that the employee read, sign and return to the College a copy of the minutes to confirm they are an accurate representation of what was discussed during the hearing
- ensure that handwritten minutes are typed up

If the employee disagrees with the minutes, their comments should simply be attached as an addendum (to avoid going back and forward indefinitely). All records should be retained in accordance with the Colleges data protection policy.

DRAFT

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East Kilbride