



Employee Disciplinary Policy and Procedure

January 2023

History of Changes

Version	Description of Change	Authored by	Date
1.1	Changes to provide clarity, consistency and to meet changes in Equality Legislation	Debbie Kerr	4.9.14
1.2	3.6.4 added in line re ACAS code	Debbie Kerr	November 2015
1.3	Only dates have been changed	Debbie Kerr	January 2020
1.4	Updated dates, job titles and pronouns	Debbie Kerr	January 2023

1. Introduction

- 1.1 The College, the recognised trade unions and staff representatives agree that discipline is essential for the conduct of the College's affairs and for the safety and wellbeing of all employees. It is further agreed that disciplinary rules and procedures are necessary for promoting fairness and order in the treatment of individuals and in the conduct of industrial relations.
- 1.2 All employees are required to make a full commitment to their post and the College and to maintain the highest professional and personal standards in the areas of behaviour, personal honesty and integrity. Employees are required to promote and implement the policies of the College and to comply with such rules, regulations and procedures as the College may from time to time introduce in order to ensure efficient operation of its business and the welfare and interests of its students and employees. The rules will be applied in such a way as to ensure that employees are treated fairly and consistently, while at the same time ensuring that the needs of the organisation are met.

2. Scope

- 2.1 This policy is applicable to all employees of Borders College, with the exception of the Principal, in respect of whom special procedures are in place. It is not applicable to employees in their probationary period who are covered by the Probationary Period Guidelines.
- 2.2 This document explains the policy for ensuring that standards of conduct laid down for College employees are maintained. It defines the rights and responsibilities of the parties to disciplinary matters, the types of disciplinary action and when they can be taken, and has been agreed between the College and representatives of its employees.

3. Key Principles

- 3.1 Disciplinary procedures provide a framework for emphasising and encouraging improvements in individual behaviour. They are designed to:
 - Help and encourage all employees to achieve and maintain standards of conduct
 - Help management to deal fairly and consistently with those who do not
 - Promote and maintain good employee relations within the College
- 3.2 Before and formal procedures are implemented an investigation will be carried out and decisions taken as to whether formal procedures need to be implemented.

- 3.3 Any employee who may be subject to formal disciplinary procedures has the right:
- To be informed as soon as practicable that an investigation into his or her conduct is being carried out and the reason for it
 - To be notified in writing of the nature of the complaint against them and that they are required to attend a disciplinary hearing
 - To state their case before any decision is made
 - To be informed of their right to be accompanied by a recognised trade union representative or work colleague of their choice at any meeting concerned with the investigation or hearing
 - To appeal against any disciplinary action taken
- 3.4 The day-to-day supervision of employees is outside the scope of this policy. It is the responsibility of all employees in a supervisory or management position to advise and assist their staff to enable them to carry out their duties efficiently and effectively with regard to both work standards and conduct. Failure to achieve the required standard in work performance will be dealt with under the Performance Improvement/Capability Policy and Procedures. Disciplinary Procedures should not be seen primarily as a means of punishing employees (though, depending on the circumstances, penalties may be imposed on employees whose conduct falls short of that required by the College). They are an aid to good management and should be seen as part of the duties of a manager.
- 3.5 The policy and procedures take account of the ACAS Disciplinary Code of Practice and will be reviewed periodically in consultation with the recognised staff representatives.
- 3.6 While normal disciplinary standards will apply to their conduct as employees, no formal disciplinary action beyond a formal oral warning should be taken against a trade union official before the circumstances of the case have been discussed with full-time official of the relevant trade union.
- 3.7 It is only the Principal, or their designated deputy, who has the authority to dismiss a member of staff.
- 3.8 Appropriate guidance, where necessary, will be provided for those involved in applying this procedure, to ensure all involved are aware that the principles of fairness and equity must be borne in mind when applying it.
- 3.9 When taking disciplinary action, managers will receive the support of senior management and the People Services department. Disciplinary action in individual cases is a matter in which managers must:
- Act expeditiously at all stages
 - Establish the facts of the alleged offence as far as is reasonably practicable
 - Apply the procedures equitably, without discrimination on account of the gender, gender reassignment, race (including colour, nationality and ethnic origin), disability, sexual orientation, marital status, part-time status, age, religion or belief, political belief or affiliation or trade union membership, of the employee concerned

- Take all circumstances into account, including:
 - Any relevant personal, domestic or social circumstances including protected characteristics and whether it would be appropriate to involve the College Occupational Health Service
 - Whether the individual is aware of the standards required
 - Action taken in similar cases in the past

3.10 Misconduct can be dealt with under either the Disciplinary procedure or the Performance Improvement/Capability Procedure. Although most forms of misconduct affect performance, the distinction to be made is whether the problem is primarily one of conduct or performance.

Conduct issues should be dealt with under the Disciplinary Procedures.

Performance issues should be dealt with under the Performance Improvement/Capability Procedures.

4. Responsibilities

- 4.1 The Regional Board is responsible for approving this policy and for overseeing compliance with its principals.
- 4.2 The Director of People Services is responsible for the implementation of this policy.
- 4.3 All staff are responsible for ensuring compliance with this policy.

5. Related Documents

- 5.1 Contract of Employment
- 5.2 Staff Handbook
- 5.3 Discipline and Grievance Procedures
- 5.4 Performance Improvement/Capability Policy
- 5.5 Performance Improvement/Capability Procedure

6. Review

This policy will be reviewed every 3 years or whenever statutory regulations change.

1. Introduction

- 1.1 The aim of this procedure is to support the Disciplinary Policy. The College, the recognised trade unions and staff representatives agree that discipline is essential for the conduct of the College's affairs and for the safety and wellbeing of all employees. It is further agreed that disciplinary rules and procedures are necessary for promoting fairness and order in the treatment of individuals and in the conduct of industrial relations.

2. Scope

- 2.1 This procedure is applicable to all employees of Borders College, with exception of the Principal, in respect of whom special procedures are in place. It is not applicable to employees in their probationary period who are covered by the Probationary Period Guidelines.

3. Key Principles

- 3.1 Line managers should consult with People Services on any issues concerning informal or formal disciplinary procedures.
- 3.2 Informal Procedure – Advice and Guidance
- 3.2.1 When an instance of unsatisfactory conduct occurs, line managers must assess whether it is appropriate for them to deal with the matter through informal discussion, or whether the evidence is such that formal disciplinary action should be started. For a summary of the individuals involved at each stage of disciplinary action, see Appendix 1.
- 3.2.2 Line managers should informally discuss the matter with the employee. They should explain their complaint and provide advice and guidance to the individual on what improvements are expected. Managers taking prompt action when minor lapses from acceptable standards of conduct occur may prevent a recurrence. In some cases, individuals may have regarded these lapses as trivial, without realising that they are unacceptable at work.
- 3.2.3 Informal discussion and staff development may be a more appropriate method of resolving problems than formal disciplinary meeting and should be offered (if the issue is minor and this action is appropriate) before the next stages of the procedure are put into operation. However, more serious issues may be dealt with without going through the informal stage.
- 3.2.4 When meeting with the employee, managers should explain that a repetition of the unsatisfactory behaviour or a failure to improve would lead to consideration of formal disciplinary action.

3.2.5 Sometimes domestic, personal or health problems can be at the root of unsatisfactory behaviour and employees should be encouraged to talk to their line manager, doctor, or trade union representative, if they feel that it might be helpful in their particular circumstances. In appropriate cases, a referral to the College's Occupational Health Service may be made. In any case, line managers should be made aware that a problem exists, even if the employee does not wish to discuss it with them in detail.

3.2.6 Informal discussions should be seen as an opportunity to 'clear the air' in which both parties can talk over the problem and look at ways of solving it. No formal record will be kept; however, the manager involved will take and retain notes in case the formal disciplinary procedure needs to be invoked.

3.2.7 Sometimes incidents leading to informal discussions or disciplinary action involve emotional behaviour, and a 'cooling-off period' may be needed before the matter can be dealt with appropriately. For example, if an employee loses their temper in the office, the line manager may consider it necessary to send that person home for the remainder of the day to calm down (it should never be for a longer period). Sending a person home in these circumstances is not regarded as suspension from work and should not be referred to as such. Whether or not disciplinary action follows, the line manager should make a note of such instances and the circumstances surrounding them and pass it to the People Services department.

3.2.8 Formal disciplinary action will be considered:

- If informal discussion has taken place and has not resolved the problem
- If the behaviour covered by informal discussion has been repeated
- If the behaviour in question is sufficiently serious that informal discussion is not appropriate

In these circumstances, the procedures set out below will be followed.

3.3 The Formal Procedure

3.3.1 An employee has the right to be accompanied by a trade union representative or work colleague during all stages of the formal procedure.

3.4 Suspension from Duty

3.4.1 In certain circumstances it may be considered appropriate for an employee to be suspended from duty without prior warning:

- Where there are reasonable grounds to suspect that the individual has committed gross misconduct
- When the continued attendance of the employee might prejudice investigation of the events leading to the consideration of a disciplinary penalty or have an adverse effect on the work of the College during such an investigation

3.4.2 The Principal (or their nominated deputy) has the authority to suspend employees. Any suspension should be for no longer than is reasonably necessary to investigate the matter; however, the Principal (or their nominated deputy) may at their discretion extend it until the conclusion of any criminal proceedings against the individual.

In the event of criminal proceedings being taken against any individual the College reserves the right to investigate and consider disciplinary action.

3.4.3 If the decision is made to suspend the employee, the following procedures will be followed:

- The suspension will be notified to the employee by the Principal (or their nominated deputy) immediately the decision to suspend is made
- Within three working days of the suspension, a letter will be sent to the employee by the Principal, (or their nominated deputy) formally notifying him/her of the reason for the suspension, the date and time from which it took place and the rules of the suspension

3.4.4 The College standard rules of suspension are as follows:

- The employee will not be permitted to return to the workplace without prior express permission
- He or she will remain entitled to full pay for the duration of the suspension

3.4.5 Suspension should not be seen as a disciplinary penalty in itself and should not be taken to imply that any decision had been made about the disciplinary matter.

3.5 Disciplinary Investigation

3.5.1 Any allegations of misconduct will be investigated promptly to establish whether disciplinary action is appropriate. Only after such an investigation will the decision be made as to whether disciplinary action is necessary.

3.5.2 Investigators should make every effort to obtain the relevant facts and information. They should interview witnesses impartially.

3.5.3 Dismissals can only be carried out by the Principal (or their nominated deputy); therefore, line managers should consult People Services if their investigations result in allegations that may lead to dismissal as the disciplinary action.

3.5.4 Evidence generated by an investigation carried out under any College procedure will be admissible in relation to the disciplinary procedure.

3.5.5 Witnesses to alleged offences may be asked to make written statements and to sign and date them; alternatively, careful notes should be taken of interviews with witnesses or other individuals involved. Great care must be exercised when interviewing students, who may be accompanied.

3.5.6 Following the investigation, the manager will decide whether the matter needs to be dealt with under the formal procedure.

3.6 Disciplinary Hearing

3.6.1 A Disciplinary Hearing will be called to enable employees to have the opportunity to state their case and answer the allegations that have been made. The employee has the right to be accompanied by a trade union representative or work colleague. See Appendix 1 for details of the Panel's membership.

3.6.2 The employee should be given at least five working days' notice of the meeting. The failure of an employee to attend the disciplinary hearing may result in it taking place in their absence. The decision concerning disciplinary action will also be made in his or her absence.

3.6.3 The letter inviting them to the hearing should also include:

- The details of the alleged misconduct
- The date, time and place of the hearing
- The individual's right to be accompanied
- Copies of any relevant documentation (if appropriate)
- A warning that the hearing may lead to disciplinary sanctions and an indication of the level
- A copy of the disciplinary procedure

3.6.4 If the employee's companion is unable to attend on the proposed date the employee has the right to agree an alternative date and time provided it is within 5 working days of the first proposed date.

3.7 Standard Procedure to be followed at Disciplinary Hearings

3.7.1 The Chair of the Panel

The Chair will open proceedings by briefly explaining the purpose of the hearing, identifying the individuals present and outlining the process to be followed. The panel may ask any questions appropriate to either side to clarify any issues involved and to help them come to a reasoned decision (see Appendix 1 for panel membership).

3.7.2 The Director of People Services will arrange for a member of the People Services Department to be in attendance to record the proceeding and to provide advice in respect of procedures, People Services matters and employment legislation as required.

3.7.3 The Employer

The investigator will begin by presenting his/her findings. This information should include:

- A summary of the events which took place (including whether the individual has been suspended pending the disciplinary hearing)
- The information that was taken into account when investigating the matter
- The investigator's findings and recommendation

3.7.4 Once the College's case has been presented, the employee or their representative may ask questions of the employers' investigator via the Chair of the panel, to clarify facts and, if appropriate, to question witnesses. The employee may not insist on the attendance of those witnesses giving evidence for the College. However, in certain circumstances it may be reasonable to allow the employee to put questions to a witness in writing. The members of the panel may also ask questions.

3.7.5 The Employee

The employee will then have the opportunity to state their case, answer any allegations made and to call witnesses if appropriate, however, they may not insist on the attendance of an unwilling witness. The employee should advise People Services in advance of witnesses to be called. The employee will have the right to be accompanied by a trade union representative or work colleague.

3.7.6 The investigator may ask questions via the Chair of the panel, to clarify facts and if appropriate to question witnesses. The panel members may also ask questions.

3.7.7 The Decision Making

Once the two parties have presented their case and the panel feels that sufficient information has been presented for it to come to a reasoned and reasonable conclusion, the hearing will be concluded, and the panel will consider its decision in private. The note taker from the hearing will be present during deliberations and will record the deliberations.

Issues for the panel to consider might include:

- The need to act reasonably at all times
- Did the investigation take into account all the facts and any mitigating circumstances surrounding the case?
- Have College policies and procedures been carried out correctly?
- Has there been a fair and reasonable consideration of the evidence presented?
- The extent to which standards were breached
- The employee's general record, position, length of service and any special circumstances
- Are there any precedents?
- Has anything been overlooked?
- Was gross misconduct involved?
- That discrimination did/does not occur on the grounds of gender, gender reassignment, race (including colour, nationality and ethnic origin), disability, sexual orientation, marital status, part-time status, age, religion or belief, political belief or affiliation or trade union membership

If the panel chair considers that further information and discussion is necessary, the hearing may be adjourned for up to five working days.

If, after consideration of all of the available information, the panel does not feel it has sufficient information to reach a decision, it may be necessary for the panel to ask further questions of the participants.

The panel will communicate its decision to the parties as soon as the decision has been made, and will confirm in writing within five days of the decision (or as soon thereafter as is reasonably practicable).

3.8 Disciplinary Action

3.8.1 The Panel will decide whether disciplinary action is required and what the nature of this will be. Training, counselling, review and management support may be required in addition to any disciplinary action.

3.8.2 The forms of disciplinary action are formal first written warning, second written warning, final written warning and dismissal.

3.8.3 While normal disciplinary standards will apply to their conduct as employees, no formal disciplinary action should be taken against a trade union official before the circumstances of the case have been discussed with a full-time official of the relevant union.

3.8.4 Formal First Written Warning

In cases of minor infringements of the College rules of conduct, the employee could be given a formal first written warning.

The formal first written warning should include:

- The reason for the warning
- The fact that it is the first stage of the formal disciplinary procedure
- That they have the right of appeal against the decision (see Appeal and Appeal procedure)

The warning will be confirmed in writing to the employee and recorded on his/her personal file. Formal warnings will be regarded as 'spent' after certain period of time (see para 4.8).

3.8.5 Second Written Warning

In cases of more serious infringements of College rules of conduct, the employee should be given a second written warning. In the case of a further or repeat disciplinary breach or no improvements following a formal first written warning, a second written warning could be given.

The second written warning will consist of:

- A statement of the offence, including details of the complaint
- Details of the specific improvements or changes required
- The timescale allowed for this
- Notification that a final warning may be considered if there is no sustained satisfactory improvement or change
- The right of appeal against this decision (see Appeals and Appeals Procedure).

3.8.6 Final Written Warning

In cases where the infringement is sufficiently serious, or where further or repeat breaches occur a final written warning could be given. A failure to improve or change behaviour during the currency of a prior written warning could result in the employee being issued with a final written warning.

The final written warning will consist of:

- A statement of the offence, including details of the complaint
- Details of any specific improvement required
- The timescale allowed for this
- Notification that failure to improve or modify behaviour may lead to further disciplinary action
- Notification that dismissal may be considered if a further offence is committed within the warning period
- The right to appeal this decision (see Appeals and Appeals Procedure)

3.8.7 Dismissal

The decision to dismiss is the last resort in cases where the Principal feels that no other disciplinary penalty will suffice under the circumstances of the particular case. Dismissal may occur where the employee's conduct still fails to improve or change.

The dismissal letter will consist of:

- Notice of the dismissal in writing
- Reasons for the dismissal
- The date on which the employment will end
- The employee's right of appeal

Summary dismissal (dismissal without notice) would be considered only in cases of gross misconduct or cases with serious consequences.

3.8.8 Punitive Disciplinary Action

Punitive disciplinary action may be taken in conjunction with disciplinary action where:

- (a) following a final warning, the employee fails to achieve and maintain the required improvement in conduct or performance, or a further act or omission warranting disciplinary action occurs;

or

- (b) a failure in conduct or performance occurs of a sufficiently serious nature to justify disciplinary action without prior warning(s).

Punitive disciplinary action refers to any of the following sanctions:

- (a) the withholding of an annual increment in conjunction with a final written warning;
 - (b) suspension without pay for a period normally not exceeding three working days, in conjunction with a final written warning;
 - (c) demotion and/or transfer to another job, place or work or department, in conjunction with a final written warning;
 - (d) dismissal with due notice;
- or
- (e) summary dismissal – ie dismissal without notice – only in cases of gross misconduct (see paragraph 8).

Where the possibility of punitive disciplinary action arises, the Principal – or other nominated senior staff member – shall hold a disciplinary hearing with the employee concerned. The hearing shall be convened and conducted in accordance with the procedure set down in paragraphs 3.2 to 3.5 following consultation with the Principal. The Principal may, subject to agreement with another senior nominated staff member, attend or be represented at the hearing in an advisory capacity.

Where punitive disciplinary action is taken, the decision shall be notified or confirmed in writing in the name of the staff member who conducted the disciplinary hearing, and the letter shall:

- (a) refer to previous warnings, if appropriate;
- (b) state clearly the punitive disciplinary action taken and the effective date;
- (c) specify the reason(s) for this action. Employees have a right to a written statement of reasons for dismissal within 14 days;
- (d) refer to the employee's right of appeal to the Chair's Committee of the Regional Board, and indicate the date by which notice of appeal should be received;

In the case of dismissals, the Chair of the Regional Board shall be informed of the action taken.

3.8.9 Gross Misconduct

Acts that constitute gross misconduct are those resulting in a serious breach of contractual terms. Any act serious enough to undermine the employment contract and make any further working relationship, mutual trust and confidence impossible would be considered gross misconduct and would be likely to lead to dismissal.

Examples of gross misconduct might include (this list is not exhaustive or exclusive):

- Theft or unauthorised possession of property or facilities belonging to the College or another employee or student
- Serious or deliberate damage to College property
- Deliberate falsification of College records, registers, timetables, reports, accounts, expenses claims or self-certification forms
- Wilful failure to follow College financial procedures/regulations
- Bribery, fraud or corruption
- Serious insubordination which may include refusal without good cause to carry out reasonable instructions to perform reasonable allotted duties in line with the job description or to comply with College rules, policies and procedures
- Incapability during working hours while on College premises as a result of intoxication by alcohol or illegal drugs
- Violent, threatening or dangerous conduct
- Infringement of the College's rules and procedures concerning health and safety at work
- Bullying or harassment of another employee or student
- Acts of direct or indirect discrimination on grounds of gender, gender reassignment, race (including colour, nationality and ethnic origin), disability, sexual orientation, marital status, part-time status, age, religion or belief, political belief or affiliation or trade union membership
- Bringing the College into disrepute by action or inaction
- Conviction of a criminal offence which, whether or not committed during College working hours, would adversely affect the College's reputation, the employee's suitability for the type of work he/ she is employed to do or their acceptability to other employees or to students
- Negligence

3.9 Appeals

3.9.1 Appeals Against Disciplinary Action

Appeals against warnings may be made to the Principal and shall be submitted in writing, indicating the grounds of the appeal, within ten working days of the employee receiving confirmation of the warning (notification of the appeal may be made orally but the grounds of the appeal should be placed in writing).

3.9.2 Appeals against warnings shall be heard by a panel as soon as possible and normally within ten days of receiving the written notice of appeal (see Appendix 2 for panel composition).

3.9.3 The employee shall be given at least three working days' notice in writing of the appeal hearing, and shall be informed of his/her right to be accompanied at the hearing by a trade union official or a work colleague.

- 3.9.4 The panel hearing the appeal will consider any new evidence and allow the employee to comment on any new evidence and may confirm, amend or withdraw the disciplinary action and may substitute disciplinary action of a more serious form than that originally imposed.
- 3.9.5 The decision shall, if possible, be made known to the employee at the end of the appeal hearing and shall, in any case, be confirmed in writing within three working days. There shall be no further right of Appeal within this procedure.
- 3.9.6 Where – in exceptional circumstances – a warning is issued by the Principal in person, any appeal shall be referred for consideration by the Chair's Committee of the Board of Management.
- 3.9.7 Appeals against Punitive Disciplinary Action (Including Dismissal)
- 3.9.8 Appeals against punitive disciplinary action may be made to the Principal and shall be submitted in writing to the Director of People Services, indicating the grounds of the appeal, within ten working days of the employee receiving written notification of the disciplinary action, or – in the case of appeals against dismissal with due notice only – within five working days of the effective date of dismissal. In all cases, the date by which the Principal should receive notice of an appeal shall be included in the written notification.
- 3.9.9 The Principal shall arrange for the appeal to be considered by the Chair's Committee of the Regional Board within twenty working days of receipt of the letter of appeal, or as soon as possible thereafter. The appeal shall be heard in accordance with the procedure set out in this procedure.
- 3.9.10 Effect of Appeals on Disciplinary Record
- If, as a result of an appeal, any disciplinary action is withdrawn or modified, any written reference thereto on the employee's personal file shall be expunged, or appropriately amended, and the employee and his/her representative, if any, notified accordingly.

Employees will have a right of access to his/her personal file to ensure the written reference has been removed or appropriately amended.

4. Procedure for Consideration of Appeals Against Disciplinary Action

Appeals Sub-Committee (Chair's Committee)

4.1 Terms of Reference

4.1.1 The Chair's Committee shall be convened to hear an appeal against a decision:

(a) to dismiss or take other forms of punitive disciplinary action, as defined in paragraph 3.8.8 of the disciplinary procedure;

or

(b) to issue a warning, where – exceptionally – the warning has been issued by the Principal in person.

4.1.2 The Chair's Committee shall have delegated power to decide appeals and shall be the College's final arbiter on such matters.

4.1.3 Conditions relating to an Appeal

4.1.4 For the Chair's Committee to be convened, notice of appeal against disciplinary action must be lodged with the Director of People Services within ten working days of the appellant receiving written notification of the decision arising out of the disciplinary hearing.

4.1.5 The notice of appeal, which must be in writing, may be lodged by the appellant or his/her trade union, or by a work colleague of the appellant's choice.

4.1.6 The appellant and his/her representative, if any, will be given a minimum of ten working days' notice in writing of the date, time and place of the appeal hearing.

4.2 Membership of the Chair's Committee

4.2.1 The Chair's Committee of the Regional Board shall comprise three members thereof appointed by the Chair.

4.2.2 Three members shall form the quorum of the Chair's Committee.

4.3 Representation and Attendance of Officers

4.3.1 The Principal – or other appropriate senior member(s) of staff – shall act as the College's representative(s) at the appeal hearing.

4.3.2 The appellant shall have the right to be represented at the appeal hearing by a local trade union official or a work colleague of his/her choice.

4.3.3 The Director of People Services shall act as Clerk to the Chair's Committee and shall act as adviser to the Chair's Committee.

4.3.4 If an appeal hearing is adjourned, all parties involved shall ensure that – other than in exceptional circumstances – the original representatives attend the re-convened hearing for continuity purposes.

4.4 Procedure prior to Appeal Hearing

4.4.1 Following submission of a written notice of appeal, the appellant or his/her representative shall submit to the Director of People Services:

- (a) a written statement, indicating the grounds of the appeal;
 - (b) copies of any written statements made by witnesses for the appellant which were considered at the original disciplinary hearing;
 - (c) a copy of any other document(s) to be placed before the Chair's Committee;
- and
- (d) the name(s) of any witness(es) to be called to give evidence on behalf of the appellant.

4.4.2 The Principal shall submit to the Director of People Services:

- (a) a written statement of case against the appellant;
 - (b) copies of any written statements made by witnesses for the College which were considered at the original disciplinary hearing;
 - (c) a copy of any other document(s) to be placed before the Chair's Committee;
- and
- (d) the name(s) of any witness(es) to be called to give evidence on behalf of the College.

4.4.3 In cases involving dismissal where the decision to dismiss was taken after consideration of medical evidence, whether direct or indirect, a report by the College Medical Adviser shall be submitted to the Chair's Committee. The Medical Adviser shall attend the appeal hearing as a witness on behalf of the College. Independent medical evidence may be introduced on behalf of the appellant.

4.4.4 The Director of People Services shall issue the agenda for the meeting of the Chair's Committee, which shall contain all the documents submitted under paragraphs 4.4.1, 4.4.2 and – where appropriate – 4.4.3 above, not less than five working days in advance of the appeal hearing.

4.4.5 The Chair's Committee may order such other information and/or documents to be submitted, as it may consider appropriate.

4.5 Procedure to be followed at Appeal Hearing

4.5.1 Witnesses shall be excluded until called, unless it is agreed that they should be present from the start of the hearing.

4.5.2 The College's representative(s) shall put the case, in the presence of the appellant and his/her representative(s), and may call witnesses.

4.5.3 The appellant or his/her representative(s) shall have the opportunity to ask questions of the College's representative(s) and witnesses.

4.5.4 The members of the Chair's Committee shall have the opportunity to ask questions of the College's representative(s) and witnesses.

4.5.5 The College's representative(s) shall have the opportunity to re-examine witnesses on any matter referred to in his/her questioning by members of the Chair's Committee, the appellant or his/her representative(s).

4.5.6 The appellant and his/her representative(s) shall put the case in the presence of the College representative(s) and may call witnesses.

4.5.7 The College's representative(s) shall have the opportunity to ask questions of the appellant, his/her representative(s) and witnesses.

4.5.8 The members of the Chair's Committee shall have the opportunity to ask questions of the appellant, his/her representative(s) and witnesses.

4.5.9 The appellant or his/her representative(s) shall have the opportunity to re-examine witnesses on any matters referred to in his/her questioning by the members of the Chair's Committee.

4.5.10 Firstly the College's representative(s), and then the appellant or his/her representative(s), shall have the opportunity to sum up his/her cases, if they so wish. The summing up shall not introduce any new matter.

4.5.11 If, at any stage, new facts are alleged – or new evidence produced – the Chair's Committee, either at the request of one or both parties, or of its own volition, may adjourn the hearing for such period as it may deem reasonable. If any new and important medical evidence is produced, the hearing may be adjourned for a period of not more than fourteen days to allow the appropriate medical reports to be submitted.

- 45.12 At the conclusion of the evidence, the College's representative(s), the appellant and his/her representative(s) and any witnesses shall withdraw.
- 45.13 The Chair's Committee, together with the members of staff appointed to assist the Committee, shall deliberate in private – only recalling the College's representative(s), and the appellant and his/her representative(s) 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.
- 45.14 The Chair's Committee shall, if practicable, announce its decision to the parties at the conclusion of the hearing. In any event, the decision shall be notified – in writing – to the appellant and his/her representative(s) by the Director of People Services within three working days of the date of the hearing.

4.6 Powers of the Appeals Sub-Committee in Disciplinary Cases

- 4.6.1 The form of the decision of the Chair's Committee shall be announced and confirmed in one of the following, as appropriate:
- “that the grounds of the appeal have been sustained and the appeal be upheld”;
- “that the grounds of the appeal have been sustained in part, and the appeal be upheld to the extent that”;
- “that the grounds of the appeal have not been substantiated and the appeal be not upheld”.
- 4.6.2 If the appeal is upheld, the disciplinary action shall be withdrawn and any monies due to the appellant shall be payable in full. Where the appeal was against a decision to dismiss, the appellant shall be re-instated to his/her former post or – exceptionally – if this is not practicable, to another similar post on terms and conditions no less favourable than those applying to the post formerly held by the appellant.
- 4.6.3 If the appeal is substantiated in part, the disciplinary action shall be withdrawn and an alternative, less serious, form of disciplinary action substituted. Where the appeal was against a decision to dismiss, the appellant shall be either:
- (a) re-instated to his/her former post, or a similar post – on no less favourable terms – except that a lesser disciplinary penalty shall apply;
- or
- (b) re-engaged in some other post on terms and conditions which may be determined by the Chair's Committee

- 4.6.4 If the appeal is not upheld, the disciplinary action shall stand and be regarded as confirmed.
- 4.6.5 Where the appeal is against a dismissal, and that appeal is not upheld, the Chair's Committee may decide that the appellant shall be offered re-employment with the College on such terms and conditions as the Chair's Committee may determine.
- 4.6.6 For the purposes of paragraphs 7.2 to 7.5 above, the terms "re-instatement", "re-engagement", and offer of "re-employment" shall be defined below:
- (a) **"re-instatement"** is the restoration of the contract of employment between the appellant and the College as if the dismissal had never taken place. Thus, the outstanding salary/wages for the period the contract ceased to operate shall be payable in full, unless the College impose an alternative disciplinary penalty of a financial nature – ie withholding of an annual increment. In addition, all rights arising out of continuous employment shall be restored, as necessary, to ensure re-instatement is without detriment.
 - (b) **"re-engagement"** is the engagement of the appellant to another post and/or in another location with effect from the date of dismissal on terms and conditions which may be less favourable than those of the appellant's former post – eg demotion to a lower graded post. Thus, salary/wages for the period since the dismissal took effect may be payable in accordance with the terms and conditions of re-engagement determined by the Chair's Committee. In addition, all rights arising out of continuous employment shall be restored;

4.7 Reporting to the Board of Management

- 4.7.1 The decision of the Chair's Committee shall be reported to the Regional Board at the earliest opportunity.

4.8 Expiry of Warnings

- 4.8.1 Warnings and other formal disciplinary action short of dismissal shall normally be disregarded for disciplinary purposes after a period of satisfactory employment. A decision not to disregard a warning for disciplinary purposes may be taken in exceptional circumstance where an employee's persistent misconduct warrants such action. The relevant periods shall be as follows: first formal warnings – to be disregarded after six months second formal warnings – to be disregarded after nine months final written warnings – to be disregarded after twelve months punitive disciplinary action short of dismissal in conjunction with a final written warning – to be disregarded after eighteen months

4.8.2 A warning shall not be disregarded for disciplinary purposes if further disciplinary action is taken against an employee before the date the warning is due to be disregarded. In these circumstances, the warning shall remain on the employee's record for a further period commencing from the date the further disciplinary action was taken.

4.8.3 The provisions above shall not apply to a warning where, in the view of the nominated staff member concerned, following consultations with the Director of People Services, the sensitivity of the particular misconduct, in combination with the nature of the employee's current post (and foreseeable future employment with the College), gives rise to such concern that the warning should be available for future consideration. A decision not to apply the expiry provisions shall be notified to the employee at the time the warning is issued. The employee shall have a separate right of appeal against the decision, in accordance with the arrangements for hearing appeals against the issuing of warnings.

5. Responsibilities

- 5.1 The Regional Board is responsible for approving this policy and for overseeing compliance with its principals.
- 5.2 The Director of People Services is responsible for the implementation of this policy.
- 5.3 All staff are responsible for ensuring compliance with this policy.

6. Related documents

- 6.1 Employee Resourcing Policy
- 6.2 Staff Handbook
- 6.3 Discipline and Grievance Policy
- 6.4 Safeguarding Juveniles and Adults at Risk of Harm

7. Review

- 7.1 This policy will be reviewed every 3 years or whenever statutory regulations change.

Summary of Levels of Disciplinary Action

For:	Employees below SLT Member level	SLT Members	Vice Principals and Executive Director
Informal Procedure			
	Line manager or SLT member	Vice Principal or Executive Director or Principal	Principal
Formal Procedure			
Disciplinary Action short of dismissal	2 SLT members and Director of People Services or People Services Business Partner	2 SMT members and Director of People Services	Principal and Vice Principal or Executive Director and Director of People Services
Dismissal	Principal and Vice Principal or Executive Director and Director of People Services	Principal and Vice Principal or Executive Director and Director of People Services	Principal and Vice Principal or Executive Director and Director of People Services

The Director of People Services or People Services Business Partner attends in an advisory capacity.

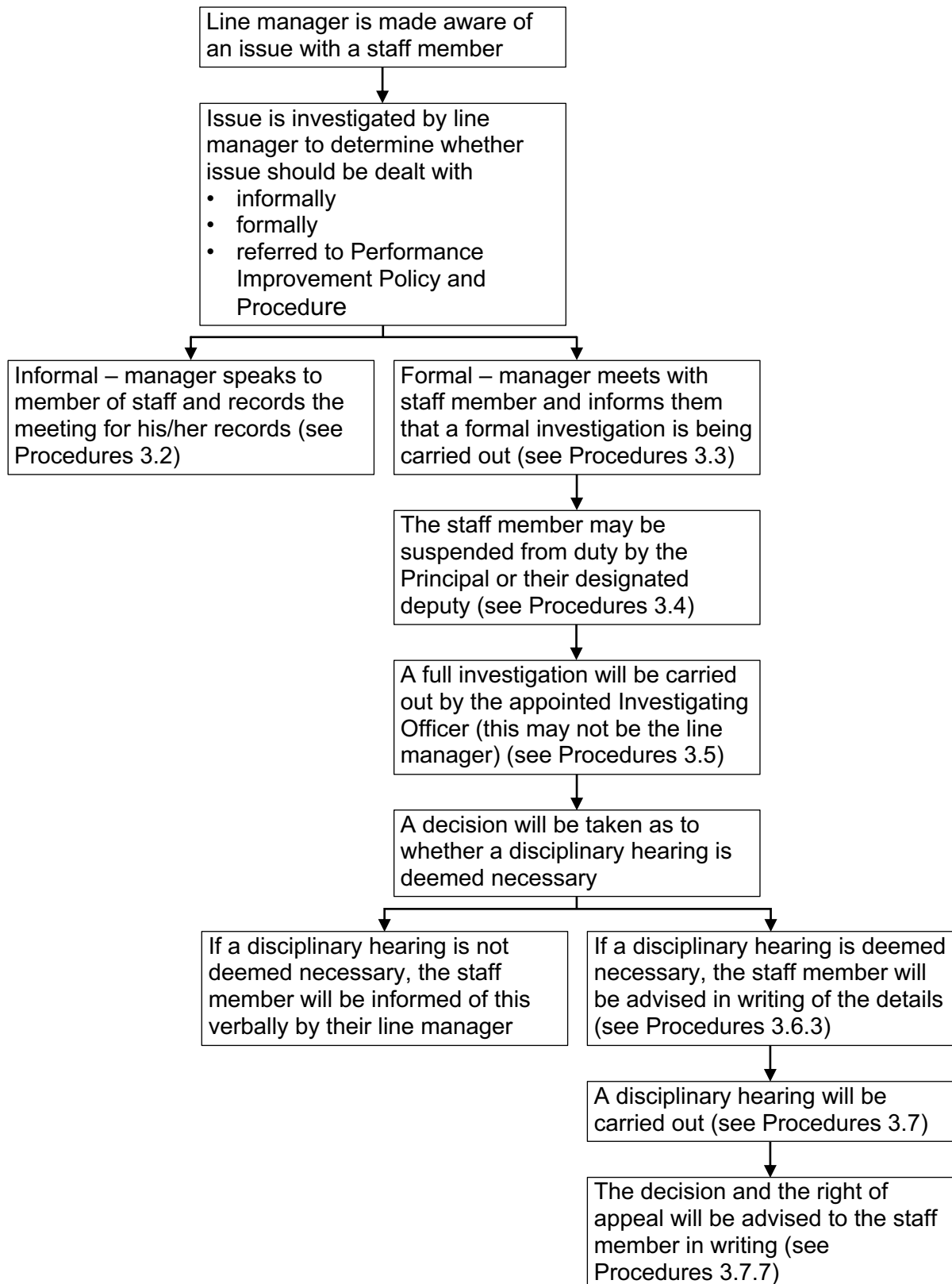
The People Services Business Partner would replace the Director of People Services if he/she were subject to disciplinary action.

SLT – Senior Leadership Team.

For:	Employees below SLT Member level	SLT Members	Vice Principals and Executive Director
Appeals against penalty short of dismissal			
	Vice Principal or Executive Director and appropriate SLT member and Director of People Services	Principal and Vice Principal or Executive Director and Director of People Services	Two board members and Director of People Services
Appeals against dismissal			
	Chair of Board and 2 Board members (not student/staff or Principal) and Director of People Services	Chair of Board and 2 Board members (not student/staff or Principal) and Director of People Services	Chair of Board and 2 Board members (not student/staff or Principal) and Director of People Services

Flow Chart – Disciplinary Policy and Procedure

Advice and Guidance should be obtained from the People Services Department at all stages of this process.



Status:

Policy Dated: January 2023

Author: Director of People Services

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Equality Impact Assessed: January 2023