

DISCIPLINARY AND DISMISSAL PROCEDURE

1.0 DISCIPLINARY AND DISMISSAL PRINCIPLES

The disciplinary and dismissal process and procedure is intended to help and encourage staff to improve and maintain the required level of conduct. This document outlines a fair, transparent and consistent process that includes the key steps the College will take if the conduct of staff falls below what is expected of them.

1.1 Scope

The following procedure applies to all staff who have successfully completed their probationary period (please see Birkbeck Probation Procedure for guidance on managing staff conduct during the probationary period). It does not apply to Academic staff who are covered by the College Charter and Statutes nor to agency workers or staff with a contract for services who are bound by the terms and conditions governing their contracts within their respective organisations.

If it is established that issues are related to performance then the Performance Management Policy and Procedure should be followed. If it is established that issues are health-related, the Sickness Absence Policy should be followed.

2.0 PROCEDURE

2.1 Informal Disciplinary Procedure

In the first instance, informal action will always be considered, where appropriate. The line manager (or appropriate manager) should have a discussion with the employee with the purpose of finding informal routes for resolution of the issue(s) following a fair and equitable process. This should be a two-way discussion, aimed at highlighting and exploring any areas of concern and encouraging improvement. Feedback should be constructive, with the emphasis on finding ways for the member of staff to improve e.g. either in terms of their conduct and for the improvement to be sustained.

The manager should listen to what the employee has to say about the issue. Such dialogue may highlight evidence that no further action is required. Where there is a need for further action the line manager should identify if there are any underlying causes such as personal problems or issues wider than the matter at hand that need to be resolved independently. Support and attention should then be focused on these other matters utilising appropriate College support, where available.

However, where improvement is required, the manager should make sure the employee understands what needs to be done, how their conduct or attendance will be reviewed, and over what period. This will be put in writing and the employee will be informed that if there is no improvement, formal disciplinary procedures will be initiated.

The manager should be careful that any informal action does not turn into formal disciplinary action, as this may unintentionally deny the employee certain rights, such as the right to be accompanied. If during the discussion it becomes apparent that the matter may be more serious, the meeting should be adjourned. The employee should be told that the matter will be continued under the formal disciplinary and dismissal procedure (see section 2.2). In essence, it should be crystal clear to all whether the meeting is informal or, alternatively, a formal meeting as part of the disciplinary and dismissal procedure. This process should allow for informal enquires to take place to collect evidence and establish the facts. A written note of the outcome

should be made by the line manager following the informal process and sent to the employee in a letter or report flagging up required actions and timescales for improvement. There should be reviews of progress over specified periods.

2.1.2 Mediation

In some cases, where the manager considers that formal disciplinary action is not appropriate, an independent third party or mediator may help resolve disagreements over disciplinary issues. Mediation is voluntary and will only take place with the agreement of both parties. Whilst mediation may be advocated by the College, with fuller explanation and encouragement given to its use at both the informal and formal stage, there will be no coercion and no punitive consequences to any party as a result of choosing not to undertake this route to resolution.

Mediation will be proposed only where appropriate and not as a means of absolving managers of their responsibilities.

In cases where mediation is used amidst disciplinary procedures, the formal processes will be temporarily suspended pending the outcome of the mediation.

2.2 Formal Disciplinary Procedures

Where informal action does not bring about an improvement in the employee's behaviour or the misconduct is considered too serious to be classed as minor, the College will consider the use of formal disciplinary measures.

HR must be consulted at the earliest possible stage in all cases where formal action is being considered and will participate in all formal meetings. Examples of misconduct which could lead to formal disciplinary action are outlined in section 3.2 and 3.3.

Gross misconduct is a serious breach of College policies and disciplinary procedures that amounts to a fundamental breach of trust and confidence between the employee and the College. It can result in a summary dismissal for a first breach.

Summary dismissals for gross misconduct will be without notice or payment in lieu of notice.

2.2.1 Investigation

An investigation will take place where it is suspected that the College disciplinary rules have been broken. The line manager or other appropriate person will instigate an investigation. The line manager may undertake the investigation, or in more serious breaches will ask a more senior colleague not immediately associated with the matter to undertake the investigation and report back with findings. In some instances this may include a meeting with the employee and/or witnesses to the incident(s). The purpose of the investigation will be to establish the facts and determine whether there is a case to answer at a disciplinary meeting. This will be set out in a written report, the outcome of which may result in the convening of a disciplinary meeting. The manager undertaking the investigation will not be involved in determining the disciplinary outcome but will be asked to attend the disciplinary meeting to present the case to answer.

2.2.2 Suspension

Suspension from work duties will only occur in cases of gross misconduct or where it is felt necessary to undertake the investigation effectively. Suspensions will be for as brief a period as possible and will be kept under review. During the period of suspension the contract of employment will continue together with normal pay arrangements.

A decision to suspend an employee will be a neutral act and not a punitive action. This will be made clear to the suspended employee. Suspension will normally be made by a line manager in consultation with HR.

Suspension will take place where:

- i There is a significant risk or significant potential risk to health and safety or the College.
- ii The presence of the employee could hamper a thorough and fair investigation.

An employee may be suspended at the start of the investigation or at any time during the course of the investigation. A suspended employee will not be allowed onto College premises without the prior consent of the line manager.

2.2.3 Companions

Employees have a right to be accompanied at meetings by a trade union representative or a Birkbeck work colleague and they should notify the investigating manager or the meeting Chair that they wish to be accompanied prior to the meeting. Companions may assist staff in stating their case and asking questions on their behalf but may not answer instead of the employee.

2.2.4 Disciplinary Meeting

Where the decision has been taken to hold a formal disciplinary meeting, the member of staff will be notified in writing. The notification will include information on the nature of the alleged misconduct, the possible consequences of the disciplinary action, advice on the right to be accompanied by a companion (trade union representative or work colleague) and copies of relevant evidence. The employee facing disciplinary action should also provide copies of documents to be presented as evidence (this may include written statements), prior to the meeting (although in exceptional circumstances, consideration may be given to reviewing additional/new evidence at the meeting which will be decided on a case by case basis), in support of their case and who they have chosen as a companion to accompany them to the meeting.

The member of staff and their companion should make every effort to attend the meeting. Normally 5 working days written notice will be given to attend a disciplinary meeting. Variations to the timescales outlined within this procedure may be unavoidable in exceptional circumstances and the employee will be notified if this is the case. If the employee's companion is not able to attend the meeting, it will be rearranged normally within 5 days of the original date. If an employee fails to attend a disciplinary meeting without good reason, a decision on the disciplinary issue may be taken in the employee's absence.

The disciplinary meeting will normally be conducted by an appropriate manager who will act as the Chair and ensure a fair and equitable process is followed. This will not be the investigating officer. The meeting will also include a representative from HR and a note taker.

At the start of the meeting the Chair will explain the premise of the meeting, the allegations against the employee and ask the investigating officer to outline the details of the case including any evidence from witnesses. The employee will have the opportunity to state their case fully and answer the allegations that have been made. The employee will also be given a reasonable opportunity to ask questions and present evidence. They will have the opportunity to call witnesses where advance notice to the Chair has been given and raise points about any information provided by any of the witnesses, but not to cross-examine them.

Prior to making a decision, the disciplinary meeting will be adjourned to consider all relevant information. The meeting may also be adjourned at the discretion of the Chair where there is a need to clarify or gather additional information. If new information is gathered or clarified, the employee will be advised of the new information and given a reasonable time to consider it prior to the meeting being reconvened. At the conclusion of the meeting, the Chair in consultation with the representative from HR, will decide whether or not disciplinary or any other action is justified and will prepare to inform the employee. When the Chair is satisfied that all relevant information has been properly considered, they will notify the employee of the decision, including any disciplinary sanction.

2.2.5 First Written Warning

A first stage disciplinary sanction will be in writing and will set out the nature of the misconduct; the change in behaviour required; together with the timescales and details of training and support, where appropriate. The first written warning will also inform the employee that a final written warning may be considered if there is no sustained satisfactory improvement or change. A record of the warning will be kept, but it will be disregarded for disciplinary purposes after a specified period (usually within 6 -12 months). The sanction will explain that there is a right of appeal.

If the employee's first misconduct is sufficiently serious, it may be appropriate to move directly to a final written warning. This may occur where the employee's actions have had, or are liable to have, a serious or harmful impact upon the College. HR will be involved in this decision.

2.2.6 Final Written Warning

Where the misconduct is sufficiently serious, or if there is further significant or related misconduct or a failure to improve during the period of a prior warning, subject to confirmation at a disciplinary meeting, a final written warning will be communicated to the employee. This will give details of the complaint, the improvement required and the timescale required for improvement. It will also warn that a failure to improve may lead to dismissal or some other action short of dismissal, for example redeployment to a different work area or different working pattern. A copy of this final written warning will be kept by the College but will be disregarded for disciplinary purposes after a specified period, usually 12 months, subject to the employee achieving and sustaining satisfactory conduct. The sanction will explain that there is a right of appeal.

2.2.7 Dismissal

Following a formal written warning, if there is further misconduct or a failure to improve, subject to confirmation at a disciplinary hearing, dismissal will be considered. In addition, there will be some examples of behaviour that are so serious in themselves or have such serious consequences that they may call for dismissal without notice or payment in lieu of notice, even for a first breach of conduct. This would only result in cases of gross misconduct, having followed a fair and consistent application of the College's disciplinary and dismissal procedure.

The decision to dismiss will be considered subject to confirmation at a disciplinary meeting chaired by a senior manager of the College, for example the College Secretary or nominee, or the Executive Dean of a School. The employee will be provided in writing with reasons for dismissal and the date on which the employment will terminate. This will include the right of appeal (see section 2.2.8).

2.2.8 Appeals

All employees have a right of appeal against any formal action in the disciplinary and dismissal procedure. An appeal must be made in writing to the Head of HR Services normally within 5 working days of the date of the disciplinary sanction letter, however in exceptional circumstances a short extension may be granted. Individuals should seek further advice from HR.

Grounds for appeal are where the employee believes:

- The sanction to be unfair or unreasonably severe; or
- Substantial new and relevant information related to the case is available; or
- There is evidence indicating the procedure was not properly applied.

Appeals will be heard without unreasonable delay. The appeal will be considered by a senior manager who will take the role of Chair of the appeal meeting. The meeting will include a representative from HR. Where possible the appeal will be chaired by a nominee of the College senior to the Chair of the disciplinary meeting. In all cases the nominated Chair will be a senior manager from a different Department who has not been previously involved in the case. The HR representative will also be a different person from the person who participated in the previous meeting.

The appeal meeting will consider the disciplinary sanction imposed. The appeal panel can uphold or reject the appeal; modify or remove the sanction where justified. Employees have a right to be accompanied at appeal meetings. Employees will be informed in writing of the outcome of the appeal meeting within 5 working days of the meeting. The decision of the Chair of the appeal meeting is final.

2.2.9 Special Cases

Where disciplinary action is being considered against an employee who is a trade union representative, the normal disciplinary and dismissal procedure will be followed. Discussion of the matter at an early stage will take place with an official employed by the union, after obtaining

the employee's agreement and prior to any proposed disciplinary hearing. The employee can be accompanied by an official of the union.

If an employee is charged with, or convicted of, a criminal offence, this is not normally in itself a reason for disciplinary action. Consideration will be given to what effect the charge or conviction has on the employee's suitability to do their job and what impact this may have on their relationship with the College, work colleagues and customers.

2.3 Overlapping Grievance and Disciplinary 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. Depending on the nature of the grievance, the College may consider bringing in another manager to consider the grievance process separately but concurrently.

3.0 GUIDANCE

3.1 Conflicts of Interest

There may be situations where conflicts of interest arise during the disciplinary and dismissal process, examples of which include but are not limited to:

- i. The Selection of the Individual in the Role of Chair, Investigating Manager or Other Formal Position - the College will ensure that individuals selected to undertake formal roles during a disciplinary or dismissal case are impartial and not personally connected to any individual or issue in the case.
- ii. The Role of the Companion - it would not normally be reasonable for employees to insist on being accompanied by a companion whose presence would prejudice the meeting or who might have a conflict of interest.

Advice and guidance from HR should be sought where a conflict of interest is possible.

3.2 Grounds for Disciplinary Action

The following are examples of the sort of breaches of conduct, other than gross misconduct, which could lead to disciplinary action. The list is not exhaustive or exclusive and further information is available from HR:

- any minor infringement of the College's Dignity at Work and Study commitments;
- failure to comply with reasonable management instructions or requests;
- persistent, unsatisfactory time-keeping and poor attendance;
- careless destruction or waste of College property and/or failure to report such;

- unauthorised absence;
- minor breach of confidentiality (e.g. disclosure of confidential information to a person not authorised to receive it);
- minor breach of College safety regulations or rules;
- minor breach of the Financial Regulations;
- minor breach of College rules about e-mail, web usage (including social media) or other computer usage procedures;
- minor incapacity to perform the duties of the post due to the influence of alcohol, drugs or other intoxicating substances;
- rudeness to colleagues, students, contractors or visitors;
- minor breach of a specified condition of employment.

3.3 Gross Misconduct

The following are examples of conduct which the College will take extremely seriously. The list is not exhaustive or exclusive, however, the following will be considered as acts of gross misconduct:

- any form of harassment or bullying relating to race, creed, colour, nationality, ethnic origin, age, language, religion or similar belief, political or other opinion, affiliation, gender, gender reassignment, sexual orientation, marital status, disability, national or social origin, birth or other status, membership or non- membership of a trade union;
- the victimisation of someone because they have complained (whether formally or otherwise) that someone has been bullying or harassing them or someone else;
- serious or wilful failure to comply with the College's Equal Opportunities and Diversity Statement;
- threatening behaviour or the use of physical violence or gross abuse against any member of, or visitor to, the College, or any other authorised person present on College property;
- serious insubordination or refusal, without reasonable cause, to carry out a legitimate instruction given by an authorised member of staff;
- wilful negligence or disregard of duties or instructions relating to employment;
- negligence resulting in serious loss, damage or injury;

- wilful and serious breach of the College's health and safety rules, regulations or instructions;
- serious breach of the College's Financial Regulations;
- serious breach of College rules about e-mail, the internet, social media or other computer usage procedures, including the downloading or deliberate accessing of pornographic, offensive or obscene material;
- wilful and serious breach of confidentiality;
- forgery involving the deliberate falsification of documents or other materials;
- the acceptance of bribes or other serious breach of the College's anti-bribery policy;
- use for personal gain of confidential information obtained by a member of staff during the course of employment;
- theft or unauthorised removal of property belonging to the College or one of its employees or visitors;
- receipt of property known to be the stolen property of the College, its members of staff or a visitor to the College;
- wilful damage to any property within the precincts of the College, irrespective of ownership;
- serious incapacity to work due to being under the influence of alcohol or non-prescription drugs or other intoxicating substances, where conduct could endanger staff, students or the public. In such cases, where possible, a medical doctor will be asked to make an assessment of the staff member's health or state of mind;
- criminal conviction, the subject of which has a direct bearing on a member of staff's suitability to do the job and their relationship with the College, work colleagues and customers. Please refer to section 2.2.9 of the Disciplinary and Dismissal Procedure - Special Cases;
- unauthorised entry into an area of the College, or premises on which its courses are delivered, which is specifically barred or where a clear notice to this effect is displayed.

Birkbeck reserves the right to review, revise, amend or replace the content of this procedure and / or introduce new policies and procedures from time to time, subject to good practice principles of consultation where applicable, to reflect the changing needs of the College and to comply with legislation.

4.0 RESPONSIBILITIES

The following have direct responsibilities under this policy:

- **Line Managers**
 - Hold informal discussions with staff members to resolve issues, where appropriate and record the main points of discussion.
 - Ensure a fair and equitable process is followed.
 - Consult HR in all formal disciplinary and dismissal cases.
 - Instigate a workplace investigation where it is suspected the conduct of the member of staff causes concern (see section 3.2 & 3.3 for guidance on examples of breach of conduct and gross misconduct).
 - Carry out an investigation or nominate a work colleague not associated with issue where a serious breach has occurred.
 - If appropriate, hold a meeting with the staff member and/or witness(es) regarding the issue to establish the facts and determine if further formal action is required.
 - If appropriate, suspend staff member in order to carry out an investigation.
 - Discuss findings of investigation with HR to determine an appropriate course of action.

- **Employees**
 - Attend informal discussion meeting with line manager to resolve informal issues, where appropriate.
 - Where attendance at a disciplinary meeting is required provide, in advance, copies of written evidence (where applicable), the name of the companion and any witnesses giving evidence on your behalf to HR.

- **Human Resources**
 - Provide information and guidance on mediation to managers, where appropriate.
 - Attend all formal disciplinary and dismissal meetings to provide guidance and ensure correct procedures and processes are followed.
 - Ensure fair and equitable process is followed.
 - Provide notification of disciplinary hearing to member of staff and any witnesses where appropriate.
 - Where an appeal has been lodged, notify employee of the outcome.
 - Consider involving an additional manager in a case where a grievance is raised during the disciplinary process, if the grievance and disciplinary case need to be dealt with concurrently.
 - Discuss any cases involving trade union representatives with line manager and trade union officials, prior to any proposed disciplinary hearing.

- **Disciplinary Meeting Chair**
 - Ensure fair and equitable process is followed.
 - Explain allegations being made against the employee and instruct investigating officer to outline the evidence during the disciplinary meeting.

- Adjourn disciplinary meeting to consider the evidence or clarify/gather additional information.
- Decide whether disciplinary or any other action is required and ensure the decision is communicated to the employee.
- Issue first written warning to employee, where a decision has been taken to issue a disciplinary sanction.
- Where the matter is sufficiently serious issue final written warning letter to employee in consultation with the line manager.

- **Investigating Officer**
 - Attend disciplinary hearing and outline details of the case.

- **College Secretary (or nominee) /Executive Dean**
 - Consider option to dismiss employee if misconduct is sufficiently serious.

- **Head of HR Services (or nominee)**
 - Process requests from employee to appeal against disciplinary and dismissal decisions.

- **Chair of Appeal Hearings**
 - Ensure fair and equitable process is followed.
 - Review the evidence based on the grounds of the appeal.
 - Where an appeal has been lodged, ensure employee is notified of the outcome.