

**Loughborough College**  
**DISCIPLINARY CODE**

**1 Aims of Procedure**

This procedure is designed to help and encourage employees to achieve and maintain satisfactory standards of conduct and job performance. The aim is to ensure consistent and fair treatment of all employees.

**2 Staff Covered and Other Provisions**

The procedure applies to all staff under a Contract of Employment or a contract for training with the College and its subsidiary companies. The application of the Code to Senior Officers, as defined in the Instrument and Articles of Government, will be modified by those Instruments and Articles.

**3 Legal Proceedings**

Where an employee is involved in police enquiries, legal proceedings or a conviction on a criminal charge which is either directly related to their employment or which may have a consequential effect on their employment, the College reserves the right to carry out investigations and action in accordance with this Code independent of the outside activities.

**4 Natural Justice**

In all formal disciplinary action the following rights of natural justice will be observed:

- (i) The employee will have the right to know in writing that of which they are accused.
- (ii) They will have the right of reply to the allegations and call witnesses.
- (iii) The employee will have the right to be represented by a trade union representative or a colleague. If requested the college will notify the trade union representative of the hearing.
- (iv) Each case will be judged in good faith on its own merits on the balance of probabilities.

- (v) Staff hearing disciplinary cases or appeals will avoid a conflict of interest.
- (vi) Within the formal process, the person hearing the case will be different to the person investigating it.

## **5 Union Stewards**

- (i) No formal disciplinary action will be taken against a recognised staff representative until the matter has been discussed with a senior representative of the union or a full-time officer. In exceptional circumstances, where the immediate suspension of a staff representative is necessary, the circumstances will be reported as soon as possible to the Personnel Department who will inform the appropriate full-time officer.
- (ii) A recognised staff representative is one who belongs to a trade union recognised by the College and who has been elected/appointed in accordance with the rules of that organisation and whose appointment has been formally notified to management. Normal disciplinary standards will apply to the conduct of staff representatives as employees.

## **6 Disciplinary Rules**

An outline of the College's Disciplinary Rules is included in Appendix 1.

## **7 Definitions and Scope of Authority**

- (i) The responsibility for administering the disciplinary process in accordance with this Code is as follows:
  - (a) Supervisor  
Defined as the team leader. They will have authority to deal with informal action and formal action up to and including Stage 1 (Formal Warning).
  - (b) Manager  
Defined as a Manager next in line to a Director. They will have authority up to and including Stage 2 (Final Warning).
  - (c) Senior Officer  
Defined as the Principal or Director, in accordance with the Instrument and Articles of Government. They will have authority up to and including Stage 3 (Dismissal).
- (ii) If the Principal has participated in a formal disciplinary decision, any appeal will be to a panel of Governors (see Section 11).

- (iii) In the case of designated Senior Officers, their employment can only be terminated by a decision of the Corporation and power of dismissal shall not be delegated to any officer or committee of officers.

## **8 a. Suspension**

Suspension of an employee under this procedure shall only be implemented on full pay. It is anticipated that suspension will only take place in serious circumstances.

- (i) where it is in the interest of the employee;
- (ii) where it is in the interest of safety or student/staff welfare;
- (iii) where it is considered that the continued presence of the employee would impede a thorough investigation of the facts;

Suspension does not imply guilt and it must not be used as a disciplinary sanction.

## **b. Procedure for Suspension**

Suspension will only be undertaken by a Manager. Where a member of the Personnel Department is available they should be consulted.

- (i) The employee will be advised of suspension from duty on full pay, this will subsequently be confirmed in writing, including the reason for suspension.
- (ii) The employee may be represented at the meeting by either a trade union representative or a workplace colleague.
- (iii) The manager will review the suspension at least every 14 days to determine whether it is still necessary. In accordance with the Articles of Government, if a suspension extends to 3 weeks or more, the member of staff may appeal in writing to the Corporation against the suspension.

## **9 Records**

- (i) Written records will be kept of all formal disciplinary action. These will detail the nature of the offence, the disciplinary action taken, the result of any appeal and subsequent development. Such records are strictly confidential and will be kept on the employee's personal file.

- (ii) If an employee's conduct or performance remains satisfactory for the period identified in any warning letter that warning will be subsequently disregarded for disciplinary purposes.
- (iii) If any warning is not disregarded for the purposes of taking further disciplinary action because a further disciplinary hearing is pending, the employee must be notified in writing of the reason for this.
- (iv) In subsequent disciplinary action reference will only be made to previous warning which are still current and relate to similar issues.

## **10 Investigations**

- (i) When disciplinary matters arise the Supervisor, Manager or Senior Officer concerned must first establish the facts accurately and promptly. During this process they will arrange for the employee concerned to be interviewed, accompanied if they wish by a trade union representative or workplace colleague.
- (ii) If, during a disciplinary hearing, facts emerge which require further investigation or suggest that the degree of seriousness has been underestimated, the hearing should be suspended either to allow for investigation or for it to be referred to a higher level of management.

## **11 Appeals**

- (i) An employee has the right of appeal against disciplinary action from Stage 1 onwards. This appeal must be made in writing within 10 days of the receipt of written confirmation of action. The decision of the appeal panel will be final and binding.
- (ii) Appeals will be heard in accordance with Appendix 3 of this Code.
- (iii) Appeals against Stage 1 will be heard by the appropriate Manager.
- (iv) Appeals against Stage 2 will be heard by the Senior Officer.
- (v) Appeals against Stage 3 will be heard by the Principal or, if s/he participated in the dismissal, by a sub-committee of at least three Governors.

Requests for an appeal hearing should identify the basis of the appeal – eg. perceived unfairness of the judgement, severity of the penalty, new evidence, procedural irregularities.

## **12. Reinstatement**

Where an appeal against dismissal is upheld this should be dated from the effective date of dismissal and pay will be backdated accordingly.

### **13 Timing**

Except in cases of summary dismissal, a period of at least five working days, excluding weekends and Public Holidays, will be allowed to elapse between the notification of a Disciplinary Hearing or an Appeal Hearing and that Hearing taking place.

If the employee fails, without good reason, to attend a disciplinary hearing which they have been instructed to attend, the hearing will take place and a decision will be made in their absence.

However, if the chosen representative of the employee is unavailable on the date of the initial hearing, the employee may delay the date of that hearing once by up to ten further working days to enable the chosen representative to attend.

### **14 Interpretation**

Any question of interpretation of this Code should be referred to the Personnel Department.

## **DISCIPLINARY PROCEDURE**

It will usually be appropriate to deal with a matter on the basis of counselling. If this fails it may be necessary to issue an oral warning rather than resorting immediately to formal disciplinary action. Where this is the case, it must be made clear to the employee that the informal procedure is being used. If this does not bring about the required improvement the formal procedure will be invoked. A file not will be kept of oral warnings.

### **STAGE 1**

#### **Formal Written Warnings**

Where there is a repetition of a 'minor' offence the supervisor will ensure that a full investigation of the facts is undertaken and will arrange to see the employee. The nature of the offence will be detailed to the employee and, if requested in writing, their representative, and the employee given an opportunity to explain the circumstances. If the Supervisor or Manager considers that it is justified then a formal written warning will be issued. Such a warning will state:

- (i) The offence(s) identified and the action being taken.
- (ii) The expected future conduct of the employee, if appropriate, identifying a timescale for improvement.
- (iii) An explanation that the warning will be entered onto the employee's record.
- (iv) Details of the likely consequences of further similar or related offences.
- (v) The time limitation on the warning (12 months).
- (vi) The rights of appeal, to whom the appeal should be made, and the appropriate time limits.

### **STAGE 2**

#### **Final Written Warnings**

In instances of misconduct which are sufficiently serious not to be tolerated again (whether or not a first formal written warning has been given), the Manager will ensure that a full investigation of the facts is undertaken and will arrange to see the employee. The nature of the offence will be detailed to the employee and their representative in writing, and the employee given an opportunity to explain the circumstances. If the Manager considers that it is justified then a final written warning will be issued. Such a warning will state:

- (i) The offence(s) identified and the action management is taking.

- (ii) The expected future conduct of the employee, if appropriate, identifying a timescale for improvement.
- (iii) An explanation that the warning will be entered onto the employee's record.
- (iv) That repetition of a similar or related offence will lead to dismissal.
- (v) The rights of appeal, to whom the appeal should be made and the appropriate time limits.
- (vi) Time limitation of warning (18 months).

## **STAGE 3**

### **Dismissal**

#### **1 Following a Final Written Warning**

Where there is a repeat of a similar or related offence by an employee who has received a final written warning, then the following action will arise:

- (i) The Senior Officer will ensure that a full investigation of the latest incident is carried out in order that the facts can be established. If it is deemed necessary to suspend the employee pending the result of the investigation, then this will be undertaken in accordance with Paragraph 8 of the Code.
- (ii) The Senior Officer will inform the employee, in writing, and if requested, in writing to their representative, of the allegations made against them.
- (iii) The Senior Officer will convene a meeting with the employee and, if requested in writing, their representative, and give them the opportunity to answer the allegations.
- (iv) The Senior Officer will determine whether, on the balance of probabilities, the offence was committed. The Senior Manager will also determine the existence or otherwise of any mitigating circumstances.
- (v) If appropriate, dismissal will be confirmed in writing by the Senior Officer within seven days of the date of the interview, indicating:
  - (a) The alleged offence(s).
  - (b) A résumé of the discussions held.
  - (c) The date that dismissal will occur.
  - (d) The rights of appeal, to whom an appeal should be made, and the appropriate time limits.

- (e) The amount of notice which will be given and whether pay will be in lieu of notice.
- (vi) If dismissal is not thought to be appropriate, then the Senior Officer will confirm in writing within seven days of the date of the interview:
  - (a) The alleged offence(s)
  - (b) A résumé of the discussions held.
  - (c) The future conduct expected of the employee.
  - (d) Details of the likely consequences of further similar or related offences and the appropriate time limits.
  - (e) The proposed Management action.
  - (f) The rights of appeal, to whom the appeal should be made, and the appropriate time limits.

## **2 Following Gross Misconduct**

Where an allegation of gross misconduct is brought against an employee, the following action will be pursued:

- (i) The Senior Officer will ensure that a full investigation of the facts surrounding the allegation is made. If it is deemed necessary to suspend the employee then this will be undertaken in accordance with Paragraph 9 of the Code.
- (ii) The Senior Officer will inform the employee in writing and, if requested in writing, their representative of the allegations against them.
- (iii) The Senior Officer will convene a meeting with the employee and, if requested in writing, their representative, and give them the opportunity to answer the allegations. The employee and Management may arrange for witnesses to be called in support of their case at this meeting.
- (iv) The Senior Officer will determine whether, on the balance of probabilities, there is reasonable belief that the offence was committed and whether dismissal is appropriate. They will also determine the existence or otherwise of any mitigating circumstances.
- (v) Dismissal will be confirmed in writing by the Senior Officer within seven days of the date of interview indicating:
  - (a) The alleged offence(s).
  - (b) A résumé of the discussions held.

- (c) The date that dismissal will occur.
- (d) The rights of appeal, to whom an appeal should be made, and the appropriate time limits.
- (e) Whether notice will be given and, if so the length of notice and whether it will be paid in lieu.

These procedures will in no way seek to prevent an employee from registering an appeal against dismissal with an Employment Tribunal. An Employment Tribunal hearing will normally only take place following the exhaustion of the College's appeals procedure.

## Loughborough College

### Disciplinary Rules

#### Introduction

The Disciplinary Rules are applicable to all employees of Loughborough College, and are to be read in conjunction with the Disciplinary Procedure. They do not purport to reflect all circumstances leading to disciplinary action, and are meant to be illustrative of the main disciplinary rules only.

The rules are divided into three main groups:

- (i) Minor Misconduct;
- (ii) Serious Misconduct; and
- (iii) Gross Misconduct.

#### **1 Minor Misconduct**

Minor breaches of discipline will have been the subject of counselling before becoming a matter for the disciplinary procedure. If counselling has failed it will become a matter for an oral warning in the first instance.

- 1.1 Frequent lateness
- 1.2 Non-notification of absence
- 1.3 Unauthorised absence (depending on the seriousness of the potential consequences).

#### **2 Serious Misconduct**

An employee committing any of the following offences will be treated in accordance with Stage 1 or 2 of the Disciplinary Procedure.

- 2.1 Absence other than for a recognised or justifiable reason:
  - (i) Persistent lateness.
  - (ii) Persistent absence (unless related to certified ill health).
  - (iii) Unauthorised absence.
- 2.2 Failure to observe Health and Safety instructions or policy (see also Paragraph 3 below).
- 2.3 Personal misconduct of a nature sufficiently serious to affect employee's position at work.

- 2.4 Unauthorised use of the Corporation's resources or abuse of information gained during the course of one's employment.
- 2.5 Negligence in job performance.
- 2.6 Repetition of minor misconduct.
- 2.7 Negligent or deliberate failure to comply with legal requirements.

### **3 Gross Misconduct**

Set out below are examples of what will normally be regarded as gross misconduct. The list is neither exclusive nor exhaustive and each case needs to be considered individually. It follows therefore that other offences of similar gravity may constitute gross misconduct. It would normally be anticipated that gross misconduct could potentially or actually have serious or harmful consequences. Behaviour whilst off duty may constitute gross misconduct.

- 3.1 Commission of a criminal offence\*
- 3.2 Violence on duty or physical assault.
- 3.3 Sexual offences and sexual misconduct at work.
- 3.4 Serious acts of discrimination or harassment against students or staff on grounds of ethnic origin, gender, sexual orientation, age or religion.
- 3.5 Negligent or deliberate failure to comply with the legal requirements and/or College's Regulations, Policies and Procedures or to obey reasonable instructions.
- 3.6 Acts likely to cause or causing major damage to College property.
- 3.7 Serious disregard for the safety/well being of any person including the employee.
- 3.8 Unauthorised removal or use of the College's property (including computers).
- 3.9 Theft or fraud.
- 3.10 Deliberate falsification of records including timesheets, subsistence and expenses claims etc.
- 3.11 Other offences involving dishonesty including serious wilful misrepresentation. Deliberate disclosure of privileged and confidential information to unauthorised people.
- 3.12 Bringing the College into serious disrepute.
- 3.13 Serious incapability whilst on duty brought about by alcohol or illegal drugs.

- \* Commission of a criminal offence outside employment should not automatically be regarded as gross misconduct, even if it has relevance to the employee's duties. The Senior Officer should discuss the situation with the Personnel Department before any decision is taken regarding suspending the employee.

#### **4 Discretion**

Team Leaders, Managers and Senior Officers will use discretion as appropriate in deciding the classification of any particular offence, having considered the surrounding facts and circumstances.

## PROCEDURE FOR DISCIPLINARY HEARING

Disciplinary Hearings will normally be held by the relevant Supervisor/Manager accompanied by at least one other Supervisor/Manager who is on a higher grade than the employee. A member of the Personnel Department may act as Secretary.

1. If either party wishes to submit written evidence, this should be sent to the Chair at least two working days before the hearing. A copy will be given to the other side.
2. During the hearing, adjournments may be requested by either party or by the Chair of the hearing and will not be refused unreasonably. Where such a request is denied, an explanation will be given.
3. The Chair of the hearing will ask whether any new written evidence has been made available that could not be circulated prior to the hearing and will make a judgement as to whether an adjournment is necessary to allow consideration of such evidence.
4. The Chair will introduce all those present.
5. If appropriate, the Chair may vary the procedures at the hearing after consultation with both parties.

### Order of Hearing

- (a) The Investigating Officer (IO) will present the details of the allegation and a report on the investigation undertaken.
- (b) The member of staff and his/her representative may question the IO.
- (c) The Chair or panel members may question the IO.
- (d) The IO may call witnesses and ask questions of them.
- (e) The employee or representative may question the witness.
- (f) The Chair or panel members may question the witness.
- (g) The IO may re-examine their witness.
- (h) The employee and/or representative will present the case against the allegations and explain any special circumstances which may exist.
- (i) The IO may question the employee.
- (j) The Chair or panel members may question the employee.

- (k) The employee and/or representative will call any witness.
- (l) The IO may question the witnesses.
- (m) The Chair or panel members may question the witnesses.
- (n) The employee and/or representative may re-examine their witness.
- (o) Should the Chair wish to clarify any issue with either the employee or the IO, or of the witness, they will do so at this point.
- (p) The IO will summarise the case against the employee without introducing any new factors.
- (q) The employee or their representative will summarise the case without introducing any new factors.
- (r) The employee, representative, IO and any other management representative will withdraw and the Chair will decide whether or not an offence has been committed. They may seek guidance from a member of the Personnel Department.
- (s) If, in the opinion of the Chair, an offence has been committed, they will take into account the following before deciding upon an appropriate disciplinary sanction:
  - Any mitigating factors, eg. health, domestic, bereavement;
  - Current disciplinary record of the employee;
  - Length of service at the College;
  - Nature of the offence;
  - Evidence produced by either party at the hearing;
  - Statements and answers provided by witnesses;
  - Any sanctions imposed for similar offences.
- (t) Once that decision is made, the two parties will be recalled and advised of the decision.
- (u) The employee will be advised of their right to appeal against the decision and informed who that appeal should be lodged with and in what timescale.
- (v) Written confirmation of the decision will normally be sent to both parties within five working days of the hearing.

## RECOMMENDED PROCEDURE FOR APPEALS

The Appeals Panel will normally consist of the relevant Manager/Senior Officer or the Principal together with at least one other Manager/Senior Officer, wherever possible on the same grade. A representative of the Personnel Department may act as Secretary. If the Principal has been involved at an earlier stage, the panel will be made up of governors.

The process for the appeal hearing will depend on the nature or basis of the appeal. After consultation with the two sides, the Chair will decide whether a full re-hearing of the case would be appropriate, in which case the order as in Appendix 2 will be used. If not, the order detailed below will be adopted unless all parties agree to a variation.

### Order of Business

- (a) If an Appeals Committee is used, then the Chair should introduce those present.
- (b) The Management representative to give a short résumé of the Appellant's post within the College and place in the organisational structure.
- (c) The Appellant/representative to state their case and explain any special circumstances which may exist and the precise nature of the remedy sought.
- (d) The Appellant/representative to introduce any witnesses.
- (e) The Management representative to ask questions of the witnesses and Appellant as appropriate.
- (f) The Principal (or Committee) to question the witnesses.
- (g) The Appellant/representative to re-examine the witnesses.
- (h) Appellant's witnesses to withdraw.
- (i) The Management representative to state the Management case with the assistance of relevant members of Management.
- (j) Management representative to introduce any witnesses to give evidence.
- (k) The Appellant/representative to ask questions of the witnesses and Management representative as appropriate.
- (l) The Principal (or Committee) to question the witnesses.
- (m) Management representative to re-examine the witnesses.
- (n) Management representative's witnesses to withdraw.

- (o) Management representative to summarise the College's case; no new factors to be introduced.
- (p) The Appellant/representative to summarise the appeal; no new factors to be introduced.
- (q) Principal (or Committee) to review case and make decision.
- (r) Management representative, Appellant and advisers to be recalled and informed of the decision by the Principal (or Chair of Appeals Committee).

The decision of the appeal hearing will be final.

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