

**JOINT AGREEMENT ON GUIDANCE ON
DISCIPLINARY PROCEDURES IN
FURTHER EDUCATION COLLEGES**

BETWEEN

THE ASSOCIATION OF COLLEGES (AoC)

AND

**ASSOCIATION FOR COLLEGE MANAGEMENT
(ACM)**

**ASSOCIATION OF TEACHERS & LECTURERS
(ATL)**

GMB

UNIVERSITY AND COLLEGE UNION (UCU)

UNISON

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December 2009

Joint agreement on guidance on disciplinary procedures

1 Scope and purpose

- 1.1 This procedure applies to all employees other than “designated senior post holders” as defined in the College’s Articles of Government or the Clerk to the Corporation to whom the College’s disciplinary procedure for senior postholders will apply.
- 1.2 The procedures will be applied in accordance with the Articles of Government of the Corporation and in accordance with the Advisory, Conciliation and Arbitration Services (ACAS) Code of Practice, ‘Disciplinary and Grievance Procedures’, dated April 2009.
- 1.3 The purpose of the procedure is to help and encourage employees to achieve and monitor acceptable standards of conduct at work.
- 1.4 It is also designed to ensure consistent and fair treatment for all in relation to disciplinary action taken in response to misconduct.
- 1.5 This procedure applies to issues of alleged misconduct. A separate procedure will be used to address issues of professional capability and competence.

2 General principles

- 2.1 Managers are required to familiarise themselves with the disciplinary procedure.
- 2.2 An employee has the right to be accompanied by a representative of a trade union or fellow worker at formal disciplinary meetings. (Please refer to the Notes Section for guidance on the role of the companion). The College should remind the employee of the right to be accompanied prior to a disciplinary meeting.
- 2.3 In the interest of ensuring that disciplinary matters are resolved as speedily as possible, time limits are given for appropriate stages in this procedure. These are for guidance. If it is not practicable to adhere to these time limits, they may be amended, ideally by mutual agreement. Due regard will be given to the personal circumstances of all parties involved in the procedure.
- 2.4 It is recognised that disciplinary action against a trade union representative could be seen as an attack on the union’s functions. Although normal disciplinary standards will apply to their conduct as employees, the College will seek the employee’s agreement at an early stage to discuss the circumstances of the case with an official employed by the trade union.
- 2.5 Where appropriate, managers should consider alternative means of resolving problems, for example with training, counselling or use of other more suitable College procedures, before implementing disciplinary action.

- 2.6 Informal action will be considered, where appropriate, to resolve problems before moving to the formal disciplinary procedure.
- 2.7 For formal action, the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case at a disciplinary meeting, following an investigation, before any decision is made.
- 2.8 Employees will be provided with any written copies of evidence and relevant witness statements in advance of a formal disciplinary meeting.
- 2.9 Normally, the formal disciplinary procedure will be followed in the order of the stages set out in Section 7 below. However, offences of a serious nature may be brought into the procedure at any stage, if any earlier stage would not be severe enough or appropriate to deal with it. For example, there may be occasions when misconduct is considered not to be so serious as to justify dismissal, but serious enough to warrant only one written warning which will be both the first and final written warning. At every stage of the procedure, the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.
- 2.10 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty may be summary dismissal without notice or payment in lieu of notice.
- 2.11 An employee will have the right to appeal against any formal disciplinary action.

3 Investigations

- 3.1 No disciplinary action will be taken against an employee until the College has fully investigated the circumstances of the matter complained of, having regard to the employee's response to allegations.
- 3.2 The College will inform the employee as soon as possible that an investigation is to be conducted and once the investigation has been concluded.
- 3.3 It is recommended that Colleges offer the employee the opportunity to be accompanied by a work colleague or trade union representative at an investigation meeting.
- 3.4 Depending on the circumstances of the allegations, it may not always be necessary to conduct an investigation meeting with the employee. If a meeting is held, the College will give the employee advance warning and reasonable time to prepare.
- 3.5 If appropriate, the College may suspend the employee, in accordance with Section 4 below, whilst the investigation is carried out.
- 3.6 A management representative will conduct the investigation. The College should ensure that the person conducting the investigation is different to the person chairing any subsequent disciplinary meeting.

4 Suspension pending a disciplinary meeting

- 4.1 There may be circumstances during an investigation where suspension from duty pending the holding of a formal disciplinary meeting may be appropriate. Examples of circumstances in which suspension may be appropriate, depending on the facts of the situation, include some gross misconduct cases; situations where there are risks to an employee's or the College's property; or where there are reasonable grounds for concern that evidence has been tampered with, destroyed or witnesses pressurised.
- 4.2 The decision to suspend can only be made by the Principal or a senior post holder to whom the responsibility has been designated.
- 4.2 Suspension should only be imposed after careful consideration and it should be made clear to the employee that it is not considered a disciplinary act.
- 4.3 If the Principal (or designated senior post holder) decides to suspend an employee from duty, he/she shall:
- i. confirm the suspension in writing to the employee without unreasonable delay; and
 - ii. inform the employee in writing of the reasons for the suspension, without unreasonable delay.
- 4.4 A period of suspension pending a disciplinary meeting should be kept as brief as possible and will be kept under regular review (please refer to the Notes section for further details).
- 4.5 An employee who is suspended from duty shall, throughout the period of suspension, continue to be entitled to his/her full pay unless there is a provision in the contract to the contrary.
- 4.6 If an employee is suspended without pay, then he/she shall have a right to appeal against that suspension, and the appeal shall be heard and action taken in a timely manner. Suspension without pay may only be used where this is expressly provided for in the contract.

5 Informal procedure

- 5.1 Before taking formal disciplinary action, every effort will be made by the line manager to resolve the matter by informal discussions with the employee, if appropriate.
- 5.2 The College recognises that cases of minor misconduct are often best dealt with informally. Therefore, minor lapses from acceptable standards of conduct will usually be dealt with by the employee's manager giving informal oral warnings or

reprimands, which will not be recorded on the Personnel Department's records relating to the employee.

- 5.3 If, despite informal discussions (or if informal discussions are not appropriate), the employee's conduct does not meet acceptable standards, the formal procedure, described below, should be used.

6 Formal procedure for disciplinary meetings

- 6.1 If, upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct, the College will invite the employee to attend a disciplinary meeting. The employee will be advised in writing of the nature of the alleged misconduct, the possible consequences of the meeting and any relevant papers (such as written evidence and witness statements) to enable the employee to prepare for the meeting. The College should write to the employee with all the above information at least [] working days before the meeting. The written notification should also detail the date and venue of the meeting and the employee's right to be accompanied.
- 6.2 If the employee wishes to call relevant witnesses to the meeting, he / she should advise the College of this in advance of the meeting. The employee will be informed prior to the meeting if the College intends to call relevant witnesses.
- 6.3 Before the meeting takes place, the employee should inform the College who they have chosen as a companion.
- 6.4 At any disciplinary meeting, the employee will be given an opportunity to state his or her case and will have the right to be accompanied by the trade union representative or fellow worker of his or her choice, subject to a reasonable request being made (please refer to the Notes Section for further guidance). However, if the chosen companion of the employee is unavailable on the date of the initial meeting, the employee may delay the date of that meeting once by up to ten working days to enable the chosen companion to attend. The location and timing of any alternative meeting should be convenient to both the employer and the employee, but should not unduly delay the process.
- 6.5 Representatives of the College, the employee and the employee's companion should make every effort to attend the meeting. If the employee fails persistently, without good reason, to attend a disciplinary meeting which the College has instructed him or her to attend, the meeting will take place, and a decision will be made, in his or her absence. In other circumstances where it seems likely that for a lengthy period, the employee will be unable to attend a disciplinary meeting, the College reserves the right to go ahead with that meeting, affording the employee the right to either submit written representations and/or be represented by a workplace colleague or trade union representative.
- 6.6 The disciplinary meeting will usually be chaired by the employee's immediate manager, unless dismissal is a possible outcome of the meeting. Where dismissal is a

possible outcome, the meeting will be chaired by the Principal or a senior post holder to whom the authority to dismiss has been delegated by the Principal.

- 6.7 The manager who conducted the investigation shall not be a member of the panel at the disciplinary meeting, but may attend in order to present the findings of the investigation and any supporting material.
- 6.8 The outcome of the disciplinary meeting will be confirmed in writing to the employee. Where disciplinary action is the outcome, the employee will be informed of the nature of the action and the right to appeal under this procedure.

7 Disciplinary action

- 7.1 Normally the stages described in Section 7 will be cumulative; however, the College reserves the right to implement the procedure at stage 2 or 3 if the employee's alleged misconduct warrants this. The right will also apply in circumstances where an employee commits a further act of alleged misconduct, that is sufficiently serious, whilst a formal warning is in place.

Stage 1: Verbal Warning

- 7.2 If it is established through the disciplinary meeting that the employee's conduct (see 7.3) or work performance (see 7.4) does not meet acceptable standards, the employee will normally be given a formal verbal warning by his or her [immediate superior/supervisor] [Head of Section/Department].
- 7.3 In misconduct cases: this formal verbal warning will give details of the employee's misconduct, the improvement required and the time limit within which such improvement must be achieved. The warning will clarify that, if the employee commits a further offence of misconduct during the period specified in the warning, action under Stage 2 will be considered. However, the employee will also be advised that if any further act of misconduct is sufficiently serious, the College reserves the right to go to a further stage in the procedure. The employee will be advised of the right of appeal in accordance with Section 9 below.
- 7.4 In performance cases: this formal verbal warning will give details of the employee's unsatisfactory work performance, the improvement required and the time limit within which such improvement must be achieved. The warning will advise the employee as to what steps he or she should take to improve and will state that, unless such improvement is achieved within the period specified in the warning, action under Stage 2 will be considered. The employee will be advised of the right of appeal in accordance with Section 9 below.
- 7.5 A brief note of the verbal warning will be placed on the Personnel Department's file relating to the employee. The warning will be spent, and will be disregarded for disciplinary purposes after [] months, subject to the employee's conduct and work performance having been satisfactory throughout that period.

Stage 2: First written warning

- 7.6 A first written warning will usually be given to the employee by his or her [immediate superior/supervisor] [Head of Section/Department] if:
- i. the employee commits a serious act of misconduct or the standard of his or her work performance is seriously inadequate;
 - ii. the employee fails to comply with a formal verbal warning given under Stage 1;
 - iii. or despite having been given, under Stage 1, a formal verbal warning as the result of either misconduct or unsatisfactory work performance, the employee commits a further offence of misconduct, or his or her work performance continues to be unsatisfactory.
- 7.7 In misconduct cases: this written warning will give details of the employee's misconduct, the improvement required and the time limit within which such improvement must be achieved. The warning will state that, if the employee commits a further offence of misconduct during the period specified in the warning, action under Stage 3 will be considered. The written warning will also advise the employee of the right of appeal in accordance with Section 9 below.
- 7.8 In performance cases: this written warning will give details of the employee's unsatisfactory work performance, the improvement required and the time limit within which such improvement must be achieved. The warning will advise the employee as to what steps he or she should take to improve and will state that, unless such improvement is achieved within the period specified in the warning, action under Stage 3 will be considered. The written warning will also advise the employee of the right of appeal in accordance with Section 9 below.
- 7.9 A copy of the written warning will be placed on the Personnel Department's file relating to the employee. The warning will be spent, and will be disregarded for disciplinary purposes after [] months, subject to the employee's conduct and work performance having been satisfactory throughout that period.

Stage 3: Final written warning

- 7.10 A final written warning will normally be given to the employee if:
- i. the employee fails to comply with a first written warning given under Stage 2;
 - ii. despite having been given, under Stage 2, a first written warning as the result of misconduct or unsatisfactory work performance, the employee commits a further offence of misconduct, or his or her work performance continues to be unsatisfactory; or
 - iii. the employee's misconduct or unsatisfactory work performance, although not considered to be serious enough to justify summary dismissal, is sufficiently serious to warrant a final written warning.

- 7.11 In misconduct cases: the final written warning will give details of the employee's misconduct, the improvement required and the time limit within which such improvement must be achieved. The warning will state that, if the employee commits a further offence of misconduct, during the time limit specified in the warning, his or her employment may be terminated. The final written warning will also advise the employee of the right of appeal in accordance with Section 9 below.
- 7.12 In performance cases: the final written warning will give details of the employee's unsatisfactory work performance, the improvement required and the time limit within which such improvement must be achieved. The warning will advise the employee as to what steps he or she should take to improve and state that, if such improvement is not achieved within the period specified in the warning, his or her employment may be terminated. The final written warning will also advise the employee of the right of appeal in accordance with Section 9 below.
- 7.13 A copy of the written warning will be placed on the Personnel Department's file relating to the employee. The warning will be spent, and will be disregarded for disciplinary purposes after [] months (although, in exceptional cases, the period may be longer), subject to the employee's conduct and work performance having been satisfactory throughout that period. Spent warnings should be removed from an employee's Personnel file.

Stage 4: Dismissal

- 7.14 The Principal or a senior post holder to whom the authority to dismiss has been delegated by the Principal may, following a disciplinary meeting, give notice of dismissal to the employee if:
- i. the employee fails to comply with a final written warning given under Stage 3;
 - ii. or despite having been given, under Stage 3, a final written warning as the result of either misconduct or unsatisfactory work performance, the employee commits a further offence of misconduct or his or her work performance continues to be unsatisfactory.
- 7.15 The decision to dismiss will be communicated in writing to the employee and will specify the reasons for dismissal and the date on which the employment will terminate. The communication must also notify the employee of his/her right of appeal against the decision in accordance with Section 9 below.

8 Gross misconduct

- 8.1 The Principal may summarily dismiss the employee without notice or pay in lieu of notice if, on completion of an investigation and a disciplinary meeting, it is established that the employee has been guilty of gross misconduct.
- 8.2 In the event of summary dismissal the Principal shall, without unreasonable delay, provide the dismissed employee with a written statement of the alleged misconduct

which has led to the dismissal and the reasons why the Principal considers that the employee was guilty of such misconduct and notifying that employee of the right to appeal against the dismissal.

8.3 Any steps which the Principal can take under sections 8.1 – 8.2 can also be taken by a senior post holder to whom the responsibility has been delegated by the Principal, and the provisions of sections 8.1 – 8.2 shall be read accordingly.

8.4 The following offences are examples of offences which are normally regarded as grounds for summary dismissal:

- Theft or unauthorised possession of any property or facilities belonging to the College, or to any employee or student.
- Serious damage deliberately sustained to College property.
- Deliberate falsification of College registers, reports, accounts, expense claims or self-certification forms.
- Bribery or corruption.
- Deliberate refusal to carry out duties or reasonable instructions or to comply with College rules.
- Serious acts of insubordination.
- Serious negligence/incompetence which causes unacceptable loss, damage or injury.
- Serious incapability and/or misconduct as a result of being intoxicated by reason of alcohol or illegal drugs.
- Violent, dangerous or intimidatory conduct.
- Bullying.
- Violation of the College's rules and procedures concerning health and safety at work.
- Unlawful discrimination or harassment.
- A criminal offence, which may (whether it is committed during or outside the employee's hours of work for the college) adversely affect the College's reputation, the employee's suitability for the type of work he or she is employed by the College to perform or his or her acceptability to other employees or to students.
- Deliberately accessing internet sites containing pornographic, offensive or obscene material.

The above examples are not exhaustive or exclusive and offences of a similar nature will be dealt with under this procedure.

9 Appeal

9.1 An employee who wishes to appeal against a disciplinary decision must do so within [10] working days of the date of the decision. To do so, the employee should inform the [Head of Personnel] in writing, stating the grounds for appeal.

9.2 Where the appeal is against a written warning, it will be heard by a senior manager who has not been involved in the disciplinary process in question so far. Wherever

possible, the manager hearing the appeal will be senior to the manager who chaired the original disciplinary meeting.

- 9.3 Where the appeal is against dismissal (including summary dismissal), it will be heard by either:
- i. the Principal, where the decision to dismiss was made by a senior post holder; or
 - ii. a committee of the Corporation, where the decision to dismiss was made by the Principal. The committee shall not include the Principal, staff members or student members.
- 9.4 The appeal meeting will be held as soon as reasonably practicable after the notice to appeal has been received. The employee will be given at least five days notice of the meeting date to allow him or her to prepare for the meeting.
- 9.5 At the appeal meeting, the employee will be given the opportunity to state his or her case and has the right to be accompanied by a representative of a trade union or fellow worker (please see Notes Section for further guidance).
- 9.6 If the chosen companion of the employee is unavailable on the date of the initial meeting, the employee may delay the date of that meeting once by up to ten working days to enable the chosen companion to attend. The location and timing of any alternative meeting should be convenient to both the employer and the employee, but should not unduly delay the process.
- 9.7 At the appeal, the disciplinary penalty imposed will be reviewed, but it cannot be increased. The appeal decision will be notified to the employee (and, where it is a decision of a committee of the Corporation, also notified to the Principal) in writing without unreasonable delay following the appeal meeting. The appeal decision is final.

Notes relating to the model disciplinary procedure

Section 2

Employees have the statutory right to be accompanied by a fellow worker or trade union representative, where they are required or invited by the employer to attend a formal disciplinary meeting and when they make a reasonable request to be so accompanied.

The trade union representative can be an officer employed by a trade union, or a lay trade union officer, so long as (in the latter case) they have been reasonably certified in writing by their union as having experience of, or as having received training in, acting as an employee's companion at disciplinary meetings.

An employee may ask an official from any trade union to accompany them at a disciplinary meeting, regardless of whether or not he or she is a member or the union is recognised by the College.

A fellow worker or trade union representative who is to accompany the employee at the disciplinary meeting should be permitted to take a reasonable amount of paid time off to fulfil this. This should cover the disciplinary meeting and it is also good practice to allow time for the companion to familiarise themselves with the case and confer with the employee before and after the meeting.

To exercise the statutory right to be accompanied, an employee must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However, it would not normally be reasonable for an employee to insist on being accompanied by a companion whose presence would prejudice the meeting nor would it be reasonable for an employee to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site.

The companion should be allowed to address the meeting to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the meeting. The companion does not, however, have the right to answer questions on the employee's behalf, address the meeting if the employee does not wish it or prevent the employer from explaining their case.

Section 4

Under the ACAS Code of Practice (April 2009), suspension with pay should only be used where necessary. This means that suspension should not be used as a matter of course in all disciplinary investigations. The supplementary ACAS guidance explains that suspension should only be used after careful consideration, in circumstances where it is deemed necessary. Section 4.1 of this agreement outline some examples of situations where paid suspension may be deemed necessary.

In addition, the Code of Practice states that any period of suspension should be kept as brief as possible and must be kept under review. Colleges should monitor each instance of paid

suspension to ensure that is still necessary for the employee to be removed from the workplace and that this is not unduly prolonged.

Section 7

The period during which warnings should be kept on the Personnel Department's file might, for example, be as follows:

Verbal warning	6 months
First written warning	12 months
Final written warning	18 months

Example procedure for a disciplinary meeting

1. During the meeting, adjournments may be requested by either party or by the manager conducting the meeting and will not be refused unreasonably. Where such a request is denied, an explanation will be given.
2. Each party shall inform the other party prior the meeting if they wish to call witnesses.
3. The manager or committee members conducting the meeting will ask whether any new evidence has been made available that could not be circulated prior to the meeting and will make a judgement as to whether an adjournment is necessary to allow consideration of such evidence.
4. The manager, or chair of the committee, conducting the meeting will introduce all those present, including each person's role in the meeting, and will explain the purpose of the meeting.

Not every meeting will be conducted in exactly the same way and will depend on the particular circumstances and nature of the allegations. However, a typical procedure to be followed at a disciplinary meeting is outlined below:

Meeting procedure

- (a) The Investigating Officer (IO) will present the details of the allegation and a report on the investigation undertaken.
- (b) The employee and his/her companion may question the IO.
- (c) The manager or committee members conducting the meeting may question the IO.
- (d) The manager or committee members conducting the meeting may call witnesses individually and ask questions of them.
- (e) The employee or companion may question the witness.
- (f) Each witness will attend only for his/her own evidence and will withdraw once his/her evidence is given.
- (g) The employee and/or companion will present the case against the allegations and explain any special circumstances which may exist.
- (h) The manager may ask the IO if he/she has any comments on what has been said by employee or the witnesses.
- (i) The manager may question the employee.

- (j) The employee and/or companion may call any witness.
- (k) The manager may question the witnesses.
- (l) The manager may ask the IO if he/she has any comments on what has been said by the witnesses.
- (m) As above, each witness will attend only for his/her own evidence and will withdraw once his/her evidence is given.
- (n) Should the manager conducting the meeting wish to clarify any issue with either the employee or IO they will do at this point.
- (o) The IO will summarise the case against the employee without introducing any new factors.
- (p) The employee and/or companion will summarise the case against the allegation.
- (q) The manager, or chair of the committee, will conclude the meeting.
- (r) After the meeting, the manager or committee members will decide whether or not an offence has been committed. The manager or committee members may seek guidance from an HR representative on procedural matters.
- (s) If, in the opinion of the manager or committee members conducting the meeting an offence has been committed, relevant factors will take into account the following before deciding upon an appropriate disciplinary sanction. Examples of relevant factors include:
 - any mitigating factors, e.g. 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 meeting;
 - statements and answers provided by witnesses;
 - any sanctions imposed in the past for similar offences.
- (t) Once that decision is made, written confirmation of the decision will be sent to the employee without unreasonable delay.
- (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.

Example procedure for appeals

Where the appeal is against a written warning, it will be heard by a senior manager who has not been involved in the disciplinary process in question so far. Wherever possible, the manager hearing the appeal will be senior to the manager who chaired the original disciplinary meeting.

Where the appeal is against dismissal (including summary dismissal), it will be heard by either:

- the Principal, where the decision to dismiss was made by a senior post holder; or
- a committee of the Corporation, where the decision to dismiss was made by the Principal. The committee shall not include the Principal, staff members or student members.

Not every meeting will be conducted in exactly the same way and will depend on the particular circumstances and nature of the allegations. However, a typical procedure to be followed at an appeal meeting is outlined below:

Meeting procedure

- (a) The chair of the meeting will introduce those present, including each person's role in the meeting, and will explain the purpose of the meeting.
- (b) The employee or companion will state the precise nature of the appeal. He/she will then explain his/her case and any special circumstances which may exist.
- (c) Where appropriate, the employee or companion may introduce any witnesses.
- (d) The chair of the meeting, or committee member, may question any witnesses.
- (e) Each witness will attend only for his/her own evidence and will withdraw once his/her evidence is given.
- (f) If necessary, the chair of the meeting may call the manager who made the original disciplinary decision in order to ask any relevant questions.
- (g) The employee or companion may question the manager who made the original disciplinary decision.
- (h) The manager who made the original disciplinary decision will withdraw.
- (i) The employee or companion to summarise the appeal, with no new factors to be introduced.
- (j) After the meeting, the chair of the meeting (or Committee) will review case before making decision. The chair of the meeting (or Committee) to take account of the original disciplinary decision and the employee's representations from the appeal meeting.

- (k) Once that decision is made following the meeting, written confirmation of the decision will be sent to both parties without unreasonable delay.

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SIGNATURES OF THE PARTIES TO THIS AGREEMENT

AoC *Nick Lewis*

ACM *Modrell*

ATL *S. Crane*

GMB *R. Azar*

UCU *Bangaya*

UNISON *C. Kelly*

Unite - the Union *Mike Robinson*

Date of Commencement of this Agreement:

December 2009