

Staff Disciplinary Policy

2016-2018

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1. Policy Statement

- 1.1 This policy and procedure set out expectations of employee conduct and ensures that any disciplinary matters are managed fairly and consistently, in line with current legislation.
- 1.2 This policy is designed to help and encourage all employees to achieve and maintain appropriate standards of behaviour and attendance in line with the UTC Staff Code of Conduct. Energy Coast UTC expects all its employees to recognise their obligations to the UTC, its students, other employees and the public. It provides procedures and actions which will be taken when employees breach the UTC's Staff Code of Conduct.

2 Purpose

- 2.1 In order to achieve high quality and efficient education and encourage appropriate professional conduct and good employee relations, this policy aims to:
 - Improve conduct primarily by advice and correction, rather than disciplinary measures.
 - Provide a fair method of dealing with alleged breaches in standards of conduct.

3 Scope

3.1 This policy applies to all employees at College who either:

- Have a permanent contract of employment.
- Are fixed-term employees with more than six months' continuous service.

3.2 This policy does not apply where there are matters of:

- **Minor misconduct** that can be settled informally by means of counselling or informal reprimand in order to improve conduct;
- **Grievance** which is dealt with under the UTC's Staff Grievance procedure;
- **Competency or capability** which is dealt with under the UTC's Performance Management and Appraisal Policy or; through the UTC's Capability policies;
- **Ill health** which is dealt with through the Sickness and Absence Policy of the UTC unless there is good reason to believe that the absence or ill health is not genuine;
- **Bullying, harassment, discrimination and/or victimisation** which are dealt with in the first instance through the Dignity at Work procedure.

- 3.3 Where an employee raises a grievance during a disciplinary process, the disciplinary process may be suspended temporarily 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 following discussion with the employee and/or their representative and after taking appropriate professional advice.

4 General Principles

- 4.1 This policy and procedure is to be operated in accordance with statutory requirements and the ACAS Code.

- 4.2 Where the ACAS Code does not offer specific guidance the principles of natural justice and the requirements of the statutory dispute resolution procedure will be followed in reaching a conclusion.
- 4.3 Witnesses or employees questioned as part of an investigation have a right to be accompanied by a Trade Union or representative.
- 4.4 All employees are required by their contract of employment to co-operate with the operation of this policy. Refusal to participate in an investigation is a breach of contract.
- 4.5 The TU or Professional Association representative or work place representative supporting an employee under investigation, has no right to be present during the questioning of witnesses other than at the investigatory interview of the employee they are supporting.
- 4.6 Work-based colleagues are entitled to reasonable paid time off work to prepare for and attend disciplinary hearings.
- 4.7 The aim of this policy is to operate within the time limit specified, however, it may not always be possible to achieve this due to the availability of relevant individuals. Failure to adhere to the time limits shall not render the operation of the policy invalid.
- 4.8 No disciplinary action will be taken without investigation into the circumstances.
- 4.9 No employee will be dismissed for a first breach of discipline, except in a case of gross misconduct when the penalty may be dismissal without notice.
- 4.10 The procedure ensures that the employees will be heard in good faith and that there is no prejudgement of the issues. The procedure ensures that where the facts are in dispute, no disciplinary penalty will be imposed until the case has been carefully investigated and a decision is taken looking at the balance of probability that events did or did not occur.

5 Equal Opportunities

- 5.1 The disciplinary procedure must always be applied fairly and in accordance with employment law and the Equal Opportunities Policy of the UTC.

6 What Constitutes Misconduct?

- 6.1 Misconduct involves an employee contravening specific rules concerning behaviour or conduct. It is conduct which falls below expected standards and is usually wilful. There may be occasions when negligent conduct amounts to misconduct.
- 6.2 Examples of misconduct can be found in Appendix 1, however, this list is not exhaustive.
- 6.3 Gross misconduct is a term used to describe serious misconduct which may destroy the employment contract between the employer and employee and make further working relationships and trust impossible, rendering the employee liable to dismissal without notice or payment in lieu of notice.
- 6.4 Examples of gross misconduct can be found in Appendix 1, however, this list is not exhaustive.

7 Responsibilities

- 7.1 Energy Coast UTC is responsible for maintaining fair, consistent and objective procedures for all matters relating to staff discipline.
- 7.2 The Governing Body has the overall responsibility for dismissing staff, with power delegated to the Principal for responsibility up to and including initial staff dismissal decisions (except in certain circumstances – see 7.3) following which there is an opportunity to appeal to a panel of governors. Dismissal and notice periods are effective from the initial dismissal decision. Should the appeal be successful, reinstatement will also be from the original date with no break in continuity of service.
- 7.3 The Principal may therefore lead the process of making the initial dismissal decision unless he/she has been directly involved in the disciplinary procedures leading to dismissal, has instigated a proposal to dismiss or is a witness of particular conduct giving grounds for the dismissal in question.
- 7.4 In a situation where it is not appropriate for the Principal to perform these functions (see paragraph 7.3) a governor will be responsible for the process of making such decisions.

8 Informal Action

- 8.1 Less serious breaches of conduct (i.e. first occurrences of some types of misconduct) can be dealt with informally by counselling the employee.
- 8.2 This involves drawing to the employee's attention the unsatisfactory conduct, explaining what conduct is required, and setting a clear and reasonable timescale for the employee's conduct/behaviour to improve.
- 8.3 Consideration should be given to any difficulties which an employee may be facing and a genuine attempt should be made to help the employee to overcome them. Where considered appropriate, managers should seek Occupational Health advice when managing staff who may be suffering from mental illness or alcohol or substance abuse.
- 8.4 In some cases, it may be beneficial to use external mediators to resolve conflict in the workplace.

9 Disciplinary Sanctions

- 9.1 The following formal stages of disciplinary action can be taken for breaches of conduct (see Appendix).
- 9.2 Warnings are progressive from First to Final except for:
- Cases of gross misconduct (which if substantiated through the disciplinary process, may result in summarily dismissal with no entitlement to statutory notice).
 - Cases which are less serious than gross misconduct but warrant a Final Warning being issued, regardless of prior formal warnings.
- 9.3 In the event that a disciplinary action is warranted, one of the sanctions below may be issued. A sanction may be imposed at any level including summarily dismissal, depending on the circumstances.

Oral Warning

In the case of minor offences or under-performance the employee will be given a formal oral warning. The employee will be advised of the reason for the warning, the formal nature of the warning and possible future consequences and specifying, if appropriate, the improvement required and over what period (authority to issue - members of the SLT/Principal).

First Written Warning

In the case of more serious offences or under performance, a further offence or a repetition of earlier minor offences or a failure to improve, the employee will be given a written warning, setting out the precise nature of the offence, the likely consequences of further offences and specifying, if appropriate, the improvement required and over what period (authority to issue - members of the SLT/Principal/chair of disciplinary panel. Duration of warning on file – 9 months).

Final Written Warning

In the case of a sufficiently serious offence or under performance, or a repetition of earlier offences the employee will be given a final written warning, setting out the precise nature of the offence, the likely consequences of further offences and specifying, if appropriate, the improvement required and over what period. This may include a statement that any recurrence or no improvement may lead to a dismissal or to some other action short of dismissal (authority to issue - members of the SLT/Principal/chair of disciplinary panel. Duration of warning on file – 12 months).

Dismissal

This stage will normally result from continued failure by the employee to act on previous warnings or an act of gross misconduct. In the case of gross misconduct the employee will normally be dismissed without notice or payment in lieu of notice. If the decision to dismiss is made, the employee will be informed in writing of the reason for dismissal, the date on which the contract between the parties will terminate and the appropriate period of notice (authority to issue – Principal/chair of disciplinary panel).

- 9.4 Further misconduct may occur during the term of a first written warning. Where this results in a formal hearing and a final written warning is issued, the duration of the final written warning will supersede that of the first written warning.
- 9.5 Upon expiry, all disciplinary warnings will be removed from an employee's personnel file except for warnings relating to the safety and welfare of children or young people.
- 9.6 An employee with a final written warning on file who is alleged to have committed a further occurrence of misconduct must be treated as if the allegation was of gross misconduct. This is because if the allegation is substantiated, the employee will be dismissed. Therefore, letters to the employee should include the warning of dismissal (as for allegations of gross misconduct).
- 9.7 Where a member of teaching staff is dismissed, misconduct cases that relate to the safety of children and young people will be referred to the Independent Safeguarding Authority (ISA).

10 Child Protection

- 10.1 If allegations are made against staff which involve child protection issues, the procedures identified in the UTC Safeguarding Policy must be followed, irrespective of how the allegation arises. Employees may be suspended on full pay pending the outcome of the Safeguarding procedure. If the relevant child protection agencies decide not to pursue action against the employee, the matter will be referred back to the College for consideration under the appropriate procedure.
- 10.2 If Safeguarding procedures are involved, other disciplinary procedures will begin only if and when, the matter has been referred back to the College. The fact that external agencies have not taken action should not be taken as an indication of the employee's innocence or guilt.

11 Suspension

- 11.1 Where an employee is accused of an act of serious or gross misconduct, or where the circumstances otherwise warrant it, after careful consideration he/she may be suspended from work on full pay pending the outcome of the disciplinary procedure. Such suspension is not a form of disciplinary action. The period of the suspension should be as brief as possible and should be kept under review.
- 11.2 Where appropriate, during any disciplinary investigation or suspension, the Principal will appoint a senior member of staff, who is not involved in the disciplinary procedure, to provide guidance and support to the member of staff under investigation or suspension.
- 11.3 Where suspension occurs, this should be confirmed in writing giving broad details of the allegation. In all cases, the Chair of Governors needs to be informed.
- 11.4 A suspension of a member of staff is a neutral act and should only be used to enable a matter to be investigated or in the interest of protecting children and/or staff. Suspensions are precautionary measures and should not be regarded as prejudicing the outcome of any investigation. If at any stage during or at the end of the investigation or at any stage of the disciplinary procedure it is considered that this suspension should be lifted, the employee should be informed immediately.
- 11.5 Suspension from duty is a 'working arrangement'. The employee must not enter the UTC building or contact any UTC employee without the express permission of the Principal or the Investigating Officer. Suspended employees may not contact students or their parents/carers or anyone else with whom they would come into contact during the course of their duties.
- 11.6 Where an employee is suspended and needs to contact witnesses to provide evidence at a hearing, this may be achieved through their Trade Union or Professional Association representative.

12 Formal Disciplinary Procedure

- 12.1 **Investigation** – when a disciplinary situation arises, the Principal or a senior member of staff will appoint an Investigating Officer who must be competent to undertake the role and, as soon as reasonably practicable, carry out an investigation into the matter.
- 12.2 The investigation will be confined to establishing the facts and gathering any relevant documentation. Where necessary, the Investigating Officer will obtain statements from any relevant individuals. An investigatory meeting with the employee may take place if considered appropriate by the Investigating Officer.

- 12.3 The case must be thoroughly investigated, a clear report written which is supported by evidence.
- 12.4 In certain cases it will be necessary to gather information regarding incidents and allegations before the start of a disciplinary investigation. This type of information gathering is only appropriate for prima facie situations which are particularly sensitive or complex in determining whether there is any substance to the complaint and a full disciplinary investigation is appropriate or where allegations warrant suspension of the employee.
- 12.5 This is not a formal stage in the procedure and would not be considered within the stipulated timescales of the procedure but must be carried out as speedily as possible. Any information uncovered at this stage would be provided to the Investigating Officer as appropriate.
- 12.6 **Notification** – if, as a result of the investigation, it is decided that there is a disciplinary case to answer, the employee will be invited to attend a disciplinary meeting.
- 12.7 The employee will be informed in writing of the nature of the complaint and where appropriate, will be provided with copies of any written evidence gathered during the investigation.
- 12.8 Where either party intends to call any relevant witnesses at the disciplinary meeting, advance notice of their intention to do so must be given.

13 Timescales for Investigation

- 13.1 All allegations and complaints against employees must be investigated without delay (particularly in cases of potential gross misconduct). The Principal/member of the SLT should ensure the Investigating Officer has reasonable time off from normal duties to complete the investigation promptly.
- 13.2 As a guide, from the time the Investigating Officer begins their investigation, the investigation report should be completed within 15 working days for allegations of misconduct and other cases where the fact finding is relatively straightforward. For allegations of gross misconduct and more complex cases, the investigation process should take no longer than 20 working days, unless agreed by mutual consent in advance.
- 13.3 In all cases, these should be viewed as maximum periods and investigations should be completed as soon as is reasonably practicable. In exceptional circumstances e.g. very complex cases or where the Investigating Officer or an important witness falls sick, the Principal/member of the SLT can agree to extend the investigation following consultation with the individual. However, a reasonable date for completion should be set.
- 13.4 On completing the investigation, the Investigating Officer will recommend to the Principal/member of the SLT whether a formal disciplinary hearing is necessary and, if so, on what basis.

14 Allegations against Principal and Members of the SLT

- 14.1 Where allegations of misconduct involve the Principal, the chair of the Governing Body, or another designated governor, replaces the Principal in initiating any action that may be taken.
- 14.2 The power to suspend the Principal will rest with the chair of the Governing Body. Any investigation of the Principal will be carried out by a nominated governor.
- 14.3 Where allegations of misconduct involve a member of the SLT, the Principal will initiate any necessary action and have responsibility for suspension if appropriate.

15 Disciplinary Meetings

- 15.1 Where the results of an investigation recommends that there are reasonable grounds to suggest gross misconduct, a disciplinary meeting should be arranged within 4 weeks of the completion of the investigation.
- 15.2 The Investigating Officer's report and all relevant documentation should be sent to the employee and their representative with a letter specifying the date, time and place for the hearing, giving 10 working days' notice. The letter must contain sufficient information on the alleged misconduct and its possible consequences.
- 15.3 A disciplinary meeting will be conducted by the Principal or governor (or an appropriate senior member of staff appointed by them, who has no prior involvement). The employee may be accompanied by a Trade Union or Professional Association representative or colleague if desired. The employee and their companion should make every effort to attend the disciplinary meeting.
- 15.4 The employee will be given the full opportunity at the disciplinary meeting to explain the matter and respond to the allegations.
- 15.5 If a note taker is present they will not be involved in the decision making process. They minute significant points and the decision of the panel, but do not produce a verbatim record.
- 15.6 Advisers may be invited to attend disciplinary hearings by either party as appropriate.

16 Conducting the Hearing

- 16.1 All parties present will be given an opportunity to ask questions or challenge the reports and evidence submitted (see Appendix 2).
- 16.2 The employee and their representative should be informed of the decision of the hearing immediately (unless there is an adjournment to clarify any facts).
- 16.3 If following the disciplinary meeting it is decided that disciplinary action is warranted, within 5 working days, the employee will be advised in writing of the decision by the chair of the meeting, and will specify:
 - The details of the failure to meet the required standard;
 - Any action required by the employee to remedy the situation;
 - Any relevant review period/duration of warning and the consequences or subsequent failure to reach and sustain the required standard of performance or conduct;
 - The right of appeal.
- 16.4 In the event that disciplinary action is warranted, one of the sanctions outlined in section 9.3 may be issued. A sanction may be imposed at any level, including summarily dismissal, depending on the circumstances.

17 Appeals Procedure

- 17.1 An employee may appeal against any disciplinary sanction imposed against him/her, with the exception of an informal oral warning.
- 17.2 The appeal will be heard by a senior manager or governor who has not been involved in the decision to impose the disciplinary sanction on the employee.

- 17.3 The employee will have the right to be accompanied at any appeal hearing by a colleague or Trade Union or Professional Association representative.
- 17.4 Appeals must be registered in writing with the Principal within 10 working days of the date of the letter confirming the disciplinary decision.
- 17.5 A quorum for the disciplinary panel will be two.
- 17.6 When lodging an appeal, the employee should state:
- The grounds of appeal.
 - Appeals against disciplinary action will usually be considered by the panel in relation to one or more of the following grounds
 - i) The PROCEDURE, – the grounds of appeal should detail how procedural irregularities prejudiced the disciplinary decision.
 - ii) The FACTS, – the grounds of appeal should detail how the facts do not support the decision or were misinterpreted or disregarded. They should also detail any new evidence to be considered.
 - iii) The DECISION, – the grounds of the appeal should state how the act(s) of misconduct did not justify the level of disciplinary action taken or the act was one of misconduct rather than gross misconduct.
- 17.7 The employee will be given 10 working days' notice of the time and place of the appeal hearing. The appeal hearing will be convened as soon as is reasonably practical.
- 17.8 The appeal will concentrate on the area(s) of dispute only and will not be a re-run of the previous disciplinary hearing. It is important that the employee is explicit about the grounds for appeal.
- 17.9 The result of the appeal and the reasons for the decision will be conveyed to the appellant immediately after the hearing and will be confirmed in writing to the appellant and his/her representative within 5 working days by the chair of the appeals panel.
- 17.10 The organisation's decision at the appeal is final.
- 17.11 Where an appeal lies against a dismissal by the panel, the panel's decision to dismiss will have had immediate effect and, therefore, if the dismissal is by notice, the period of notice will already have commenced on the date that the decision was given by the panel. If the panel's decision was to dismiss the employee summarily without notice, the organisation will be under no obligation to reinstate or pay the employee for any period between the date of the original dismissal and the appeal decision and the original date of termination will stand.
- 17.12 In the event that the panel's decision to dismiss is overturned, the employee will be reinstated with immediate effect and he/she will be paid for any period between the date of the original dismissal and the successful appeal decision. His/her continuous service will not be affected.

18 Record Keeping

- 18.1 Managers and Panels must keep written records of meetings and discussions relating to the disciplinary process. These must be written during or as soon after the event as possible to

ensure the accuracy of the record. Written records must be signed and dated by all parties. Copies of all final meeting records must be given to employees and their representatives. Written confirmation of the outcome of any meetings will be sent to the employee and their representative for their information and a copy kept on the employee's personnel file in accordance with the Data Protection Act (1998). Records should include:

- The nature of the alleged misconduct;
- What was decided and actions taken;
- The reason for the actions;
- Whether an appeal was lodged;
- The outcome of the appeal;
- Any subsequent developments.

18.2 Employees may also wish to keep records of events to support their case.

19 Review

19.1 This policy will be reviewed every two years in consultation with the recognised Trade Unions.

Appendix One: Examples of Misconduct and Gross Misconduct

GROSS MISCONDUCT

The following are examples of gross misconduct but are not intended to be exhaustive:

- 1 Prolonged unauthorised absence from work (at least 10 working days without contact).
- 2 While purporting to be absent through sick, working or engaging in activities, which are likely to be inconsistent with the reason for absence and/or which are unlikely to be conducive to recovery.
- 3 Inappropriate conduct towards or contact with students.
- 4 Serious acts of insubordination including serious act(s) or persistent repetition or failure to comply with a reasonable instruction
- 5 Serious breaches of the Academies Financial Handbook or the UTC Code of Conduct.
- 6 Theft or misappropriation of, or failure to account for, or falsely claiming entitlement to, the property, assets or funds of the UTC or its employees.
- 7 Fighting or acts of violence, indecent or immoral conduct at the work place, serious threatening or abusive behaviour towards students, parents/carers, fellow employees or members of the public.
- 8 Criminal offences outside work (including fraudulent activities) which may affect the individual's employment suitability.
- 9 Malicious damage to property or unauthorised removal and use of UTC premises, property or equipment.
- 10 Failure to report or record any serious matter which it is the employee's contractual duty (either expressed or implied) to report.
- 11 Fraud, falsification of documents or any other deliberate financial irregularities likely to be of financial benefit to the employee or other persons e.g. bonus /expense claims, qualifications etc.
- 12 Obtaining a job by lies or deception in the course of selection procedures including claiming false qualifications or other material fact, age or previous experience or good health essential for employment at Energy Coast UTC. Failure to disclose a conviction detrimental to the performance of the employee's job (including a spent conviction) and any bind over order or caution if the employee's job involves access to children under 18 years and under 21 years assessed as being 'in need' as in the Children's Act (2004).
- 13 Making false claims under any of the policies and/or procedures of the College.
- 14 Discrimination/harassment against a student, employee or parent/carer, on the grounds of sex, transgender status, sexual orientation, religion or belief, marital status, civil partnership status, age, race, colour, nationality, national origins, ethnic origin or disability.
- 15 Bullying or harassment.
- 16 Being incapable of adequately performing duties as a result of the intake of alcohol or drugs.

Possessing, displaying or dealing in illegal drugs.

- 17 Deliberate and serious breaches of the Health and Safety policies or practices of the UTC.
- 18 Serious contravention of the UTC Acceptable User Policy on Internet access including misuse or unauthorised use of the UTC's computer system/equipment, eg: email, internet facilities, personal use.
- 19 Acts or omissions that would expose the UTC or its sponsors to criticism or cause reputational damage, for example, misuse of the UTC's name or engaging in activities which would bring the UTC or its sponsors into disrepute.
- 20 Unauthorised use or misuse of information. This includes issues involving confidentiality and the Data Protection Act (1928).
- 21 Sexual misconduct at work including off-site and residential activities.

MISCONDUCT

The following are examples of misconduct but are not intended to be exhaustive:

- 1 Regular lateness for work.
- 2 Regular failure to follow employment rules eg: reporting absence.
- 3 Refusal to obey a reasonable instruction of a manager.
- 4 Negligence at work leading to loss, damage or wastage of College or other property.
- 5 Improper, disorderly or unacceptable conduct at, in or near the College.
- 6 Wilfully inadequate work performance (poor performance or lack of capability will normally be the subject of Capability procedure).
- 7 Private trading.
- 8 Betting or gaming.
- 9 Consistently poor standards of dress or hygiene.
- 10 Absence without permission during the working day.
- 11 Rudeness or incivility to students, parents/carers or other employees.