

Disciplinary Policy and Procedures

For the attention of: All Employees
Produced by: Group Executive Director of People
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Vision, Purpose & Values

Our Vision

Our students will be recognised locally & nationally for their positive impact on the communities and industries in which they choose to work.

Our Purpose

To inspire our students to gain the skills, knowledge and behaviours they need to be resilient and thrive in an ever-changing world.

Our Values

Excellence: A culture of creativity, high expectations, ambition and aspiration

Respect: Showing fairness, courtesy and mutual respect to each other and our environment

Integrity: Honesty, openness and trust at the heart of College life

Diversity: Celebrating diversity and inclusivity as a key to our success

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1. Scope, Purpose and General Principles

- 1.1. The College recognises its employees as being fundamental to its success. A strategic and professional approach to disciplinary processes helps to enable the College to fulfil its strategic aims and to support and uphold the College's values.
- 1.2. The way in which disciplinary processes are conducted impacts on the College's image and reputation, the morale and performance of employees and subsequently the College's ability to attract, appoint and retain high calibre team members.
- 1.3. The College is committed to ensuring that all disciplinary matters are conducted in a manner that is systematic, efficient, effective, supportive and fair. College managers must uphold this by ensuring that practices and procedures are consistently applied. The Group will ensure that training is provided to those applying the procedures.
- 1.4. Employees will be made aware of, this policy and the procedures during induction and a copy is available on the intranet.
- 1.5. Disciplinary processes should, as far as is possible, be treated as a supportive process with the objective of meeting the performance expected by the College.
- 1.6. The policy and procedures have been produced to provide a definitive framework that promotes good practice and fully supports the College's purpose.

This document is drawn up in accordance with the current Advisory Conciliation and Arbitration Services (ACAS) code of practice and with regard to relevant employment legislation.

- 1.7. These procedures:
 - Apply to all employees of employed at The Windsor Forest Colleges Group except Senior Post Holders for whom a separate policy exists.
 - Do not apply to allegations of substandard performance (for which the Capability policy should be used) unless it is clear that the employee is capable of reaching the required standard and is alleged not to have done so.
 - Will be periodically reviewed.

- Do not apply to dismissals due to redundancy or the non-renewal of fixed term contracts on their expiry.
- Shall not be used in respect of a trade union representative until an appropriate full time official of the union concerned has been notified.

- 1.8. Managers are expected to have regular meetings with employees to ensure that they are aware of expectations and to provide an opportunity to discuss their work. Where possible, managers should address minor misconduct issues on an informal basis. Every effort will be made to avoid the use of disciplinary action where alternatives are appropriate. This may include the use of training or counselling. Where the matter is not resolved informally or is of a serious nature, the formal procedure will be implemented.

Before imposing any disciplinary penalty, all relevant factors will be considered including the extent to which standards have been breached; the employees general record and any special circumstances which might make it appropriate to adjust the severity of the penalty.

It is the responsibility of the manager to draw to an employee's attention any way in which their conduct falls below the required standard. Informal action (Management Advice) will be considered, where appropriate, when the employee is believed to have committed a minor infringement of The Windsor Forest Colleges Group's standards of performance and behaviour to resolve problems.

- 1.9. Employees have an entitlement to be accompanied by a trade union representative or a work colleague at all formal meetings. If the chosen companion is not available at the time proposed the employee must propose a reasonable alternative date which falls within 5 working days of the original day set for the meeting, the College will rearrange the meeting.
- 1.10. If the employee is unable to attend a meeting, they should notify the Chair of the meeting as soon as possible and give the reason for non-attendance. Where the employee fails to attend because of circumstances outside their control, the Chair should invite them to another meeting.

Where it appears likely that the employee will be unable to attend a disciplinary hearing in the near future e.g., for a health reason, the Group, where appropriate, will give the employee the opportunity to attend the meeting virtually, submit written representations and/or be represented in their absence by a workplace colleague or trade union representative.

- 1.11. Where there is no valid reason for non-attendance the Chair may inform the employee that the meeting will continue in their absence. The employee will be allowed to make written submissions in such a situation.
- 1.12. In operating this procedure, managers will demonstrate The Windsor Forest Colleges Group's commitment to equality of opportunity by treating all employees fairly and without discrimination on the grounds of gender, marital status or civil partnership, race, disability, age, sexual orientation, gender reassignment, religion or belief, pregnancy or maternity or trade union membership, making reasonable adjustments where required.

1.13. Recording of Meetings

The employee, or any person acting on their behalf, is not normally permitted to record electronically any meeting held by the organisation as part of the disciplinary process. This is to encourage openness and full participation by all parties during meetings. Any breach of this provision may lead to disciplinary action against the employee, up to and including dismissal.

Written notes will be taken at meetings of an investigatory or disciplinary nature by a manager or HR representative so that there is a record of what has been said at meeting, these notes will not be a verbatim record but serve to capture the essence of what has been discussed. A copy of the notes will be provided to the employee after the meeting.

In certain limited circumstances, the College may permit the meeting to be recorded electronically. For example, where the employee is disabled, it may be appropriate as a reasonable adjustment under the Equality Act 2010. Where the College permits the meeting to be recorded electronically, it will take responsibility for making the recording.

1.14. Data Protection

The College processes personal data collected during the investigation stage and any subsequent stages of disciplinary action in accordance with its [UK GDPR policy](#). In particular, data collected as part of the investigation stage and any subsequent stages of disciplinary action is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the College's UK GDPR policy immediately. It may also constitute a disciplinary offence, which will be dealt with under this disciplinary procedure.

1.15. Support for Employees during the Disciplinary Process

Employees are likely to find the disciplinary process challenging and/or upsetting. Support will be provided to all employees involved in both the investigation and disciplinary meeting stages by the HR team.

Any employee who feels they require additional support can contact Health Assured, the Group's employee assistance programme on 0800 030 5182 who may be able to suggest practical coping strategies or refer them to counselling if necessary.

2. Investigating Alleged Misconduct

- 2.1. Where there has been an allegation of misconduct (examples of which can be found at Appendix 2), an Investigating Officer will be appointed by the Group Executive Director of People to investigate promptly and thoroughly the facts of the matter.
- 2.2. The employee will be informed in writing as soon as possible that an investigation is to be carried out under the disciplinary procedure, the nature of the allegations and will be advised that any information gained during the course of the investigation can be presented at any subsequent disciplinary hearing.
- 2.3. It is important to carry out the necessary investigation without unreasonable delay to establish the facts of the case. No disciplinary action will be taken against an employee until the case has been fully investigated. In some cases, this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. If an investigation meeting is required there is no automatic right to be notified in advance of the meeting. In others, the investigatory stage will be the collation of evidence by the College for use at a disciplinary hearing.
- 2.4. Whilst there is no statutory right to be accompanied at an investigatory meeting, should one be arranged, the employee may be accompanied by their trade union representative or a work colleague to this interview.
- 2.5. The investigating officer may also interview any witnesses and take statements from them. They should also be advised that they may be asked to attend a disciplinary hearing and act as a witness.
- 2.6. At the conclusion of the investigation, the Investigating Officer will produce a management report, outlining their findings and make a decision about whether the allegation appears, on the balance of probability, to be true, and if so, whether the matter should be dealt with informally or that a formal disciplinary hearing should be arranged. If there is no evidence to substantiate the need for further

proceedings, the employee will be advised of this in writing and, if under suspension, will return to work immediately.

- 2.7. If it is felt by the Investigation Officer that, on the balance of probabilities, a complaint of misconduct is justified, and it warrants formal action, a member of the HR Department will arrange a formal disciplinary hearing.
- 2.8. In certain situations there may be the need for the College to fulfil its obligation to proceed with the investigation without unreasonable delay to establish the facts of the case for the welfare of all concerned. In such circumstances, the College will, where possible, offer options in order to resolve the situation and move forward in the interests of all the parties involved, for example the option to meet off-site, submit written submissions etc.
- 2.9. Whilst designed to be a supportive process we understand that employees who are subject to formal meetings under the Disciplinary Policy and Procedure can find this process stressful. We would, however, encourage employees to continue with the process, as by not attending meetings or being absent from college, proceedings may be prolonged further.

This will allow us to resolve the issues as quickly as possible and therefore reduce the amount of stress experienced by the employee. In some cases, it may be appropriate and necessary to continue with the processes in their absence.

3. Specific Cases

- 3.1. In the following instances in addition to any investigation or action taken in accordance with this policy the following will also be applicable:
 - 3.1.1. Cases of alleged workplace fraud and/or irregularity

If an investigation involves alleged workplace fraud and/or irregularity, the Group Principal & CEO must be informed in writing immediately. Action to be taken in the event of a suspected fraud and/or irregularity will adhere to the College's Fraud and Irregularity Policy. In such cases it may be appropriate to involve the police.

- 3.1.2. Cases of alleged criminal activity

It is essential that the conflicting demands of the disciplinary procedures and the criminal prosecution process are managed in a unified manner, and this is best achieved through consultation and communication.

- a) In the workplace

All cases of alleged criminal activity in the workplace must be referred to the Group Principal & CEO. The Group Principal & CEO will, in conjunction with the Group Executive Director of People determine who is appropriate to carry out the investigation.

b) Outside the workplace

An employee must notify a Senior Post Holder or a member of the HR team of any convictions or cautions (other than driving offences which do not result in prison) that they receive during their employment with the College as soon as the employee is aware or could reasonably be aware of the same.

A criminal offence outside employment will not be treated as an automatic reason for disciplinary action under these procedures. The main considerations should be whether the offence is one that makes the employee unsuitable for their type of work or unsuitable to remain in their present employment.

If sufficient evidence is gathered and it is believed, on the balance of probabilities the employee committed the offence, and it makes the employee unsuitable for the role, or has a detrimental effect on the reputation of the Group, there is no obligation to wait until the outcome of any criminal proceedings before taking disciplinary action.

3.1.3. Cases of alleged abuse or harm in relation to students

Any allegations of misconduct involving the abuse or harm of a student must be dealt with in line with the College's Safeguarding and Child Protection procedures, and in liaison with the Local Authority Designated Officer (LADO) where allegations may meet the harm threshold, as described in the Keeping Children Safe in Education statutory guidance.

4. Suspension

4.1. At any stage prior to, during, or following the investigation, it may be necessary to suspend the employee.

The suspension should normally only occur exceptionally if there is a serious allegation of misconduct and:

- a) there are reasonable grounds to believe that the employee might seek to tamper with or destroy evidence, influence witnesses and/or sway an investigation into the disciplinary allegation; or

- b) working relationships have severely broken down to the point that there is a genuine risk to other employees, property, students or other business interests if the employee remains in the workplace; or
 - c) the employee is the subject of criminal proceedings which may affect whether they can do their job.
- 4.2. It will be explained to the employee that suspension in itself is not a disciplinary sanction and does not indicate or presume the outcome of any disciplinary hearing.
 - 4.3. Any suspension of an employee shall be with normal pay.
 - 4.4. The decision to suspend an employee will be taken by a Senior Post Holder following discussion with the Group Executive Director of People. The employee will be informed immediately of their suspension, normally in person, and confirmed in writing.
 - 4.5. The reason for the suspension shall be made clear to the employee in writing as soon as possible. Since suspension is not a disciplinary sanction, an employee has no right of appeal against the decision.
 - 4.6. Suspension will be for as short a period as possible and will be kept under regular review. It will usually last until an investigation has been concluded or any resulting disciplinary hearing has been held, although it could be terminated at an earlier point.
 - 4.7. Employees who are or fall ill during the period of suspension will be advised by their line manager that they are required to follow the normal absence procedures and may be requested to be examined by the Occupational Health Doctor and provide a doctor's certificate. In such circumstances, the period of sickness will be recorded and paid in accordance with sickness provisions and be counted for sick pay purposes if and when the suspension is lifted.
 - 4.8. During the period of suspension, the employee will not be allowed access to any Windsor Forest Colleges Group premises, except when required to attend meetings as part of the disciplinary process. The College reserves the right to disable the employees systems access at the point of suspension. In the event that access is required to assist with the investigation, this can be requested by contacting the Group Executive Director of People. The HR department will nominate a person to act as a point of contact and support for the employee; no other employees, with the exception of the trade union representative, may be contacted during a period of suspension.

5. Formal Disciplinary Procedure

- 5.1. The HR department is responsible for arranging the disciplinary hearing without unreasonable delay and notifying the employee of this in writing, with at least 5 working days' notice.
- 5.2. The letter will state the reasons why dismissal or disciplinary action is being contemplated and the pack should contain all papers associated with the case. The hearing should take place on a mutually convenient day and time.
- 5.3. The employee will be given the opportunity to send any written submission or evidence to the Chair prior to the hearing. This must be provided at least three working days prior to the hearing. A copy of any submission should also be made available to the investigating officer.
- 5.4. The Investigating Officer may be required by the Chair to present the supporting facts and material at the hearing.
- 5.5. The Chair will be advised by a member of the HR team. However, in exceptional circumstances, a suitably qualified, alternative person may be present to advise and support the Chair during the hearing.

5.6. The Hearing

- 5.6.1. The hearing will be conducted according to Appendix 1 – Procedure for Hearings/Appeals.
- 5.6.2. The employee's chosen representative has the right to address the hearing to put the employee's case, sum up the case and respond on the employee's behalf to any view expressed at the hearing. The representative may also confer with the employee during the hearing. However, the representative cannot answer questions on behalf of the employee or address the hearing where the employee indicates that he/she does not wish this.
- 5.6.3. Any witnesses involved in the process will be reminded of the need for confidentiality and be told not to discuss the case in any way outside the hearing.
- 5.6.4. The Chair will consider the matter with the HR department representative in private. In coming to a decision on the outcome of the hearing, they will consider whether or not the allegations have been substantiated on the balance of probabilities.
- 5.6.5. If an immediate decision cannot be made then in normal circumstances a decision will be made without unreasonable delay.

5.7. Possible Outcomes

5.7.1. In terms of a disciplinary response to the conduct of the employee, the following options are open to the Chair:

a) There is no case to answer, this will be confirmed in writing.

b) First Written Warning

If the infringement is regarded as more serious the employee should be given a first written warning. This will set out the nature of the misconduct, the change in behaviour required and the right of appeal. The 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 6 months.

c) Final Written Warning

Where there is a failure to improve or sustain behaviour or where the offence is sufficiently serious, a final written warning may be given to the employee. This will give details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to dismissal (or some other action short of dismissal) and will refer to the right of appeal. A copy of this written warning will be kept but will be disregarded for disciplinary purposes after 12 months subject to achieving and sustaining satisfactory conduct.

In all of the above cases, any suspension will be lifted immediately, and the employee will return to work.

d) Dismissal

Where there is a failure to improve or sustain behaviour following a final written warning, or where the offence is considered to be gross misconduct, the employee may be dismissed.

Where dismissal is due to a failure to improve or sustain behaviour following a final written warning, dismissal will be with notice.

Where dismissal is due to gross misconduct, this will be summary dismissal, which means that no notice will be due or given.

5.7.2. Expired warnings

Expired warnings will be retained on an employee's personnel record as it may be necessary to take account of the warning when considering future conduct,

for example establishing a pattern of behaviour or an awareness of the relevant expiry rules. Documentation relating to the expired warning will not normally be retained unless there is a justification for this.

5.8. Alternative Disciplinary Measures

- 5.8.1. Alternative disciplinary measures may be appropriate and would be in place of, or in conjunction with, a formal written warning, or as an alternative to dismissal and with the express agreement of the employee.
- 5.8.2. Where there is an alternative to dismissal, it will be accompanied by a final written warning.
- 5.8.3. The alternative disciplinary measures available are:
 - Repayment by agreed deductions from remuneration for any damage done to the property of, or loss sustained by The Windsor Forest Colleges Group or its employees.
 - Transfer to another post if one is available by agreement.

6. **Appeals**

- 6.1. An employee has a right to appeal against a disciplinary decision where they believe the action taken against them is wrong or unjust or there has been a procedural error and will be told that they have 5 working days to appeal from receipt of the letter confirming the decision, 10 days where the decision was to dismiss.
- 6.2. The appeal must be made in writing to the Group Executive Director of People and set out the grounds for appeal e.g., new evidence, undue severity, or inconsistency of the penalty.
- 6.3. The employee should be given notice in writing at least 5 working days in advance of the time and place of the hearing.
- 6.4. The Appeal will be heard by a manager that has not previously been involved in the case, and, where possible, more senior to the manager making the original decision. The Chair of the Appeal Panel will remind all parties that the proceedings shall remain confidential until a final decision has been taken.
- 6.5. The procedure for hearing an appeal is the same as that for the disciplinary hearing itself.
- 6.6. The decision of the Chair will be communicated, in writing, within five working days of the appeal hearing.

6.7. There is no further right of appeal.

7. Appendix 1

PROCEDURE FOR HEARINGS AND APPEALS

- Read in advance any papers submitted for consideration at the hearing.
- Explain the procedure to be followed, introduce the parties taking part and ensure that someone has been appointed to take notes on the proceedings.
- Make sure that the employee is aware of their right to be accompanied.
- Check that each side has all relevant documents.
- The Chair will ask the Investigating Officer to provide a brief summary of their findings. The employee (or their work colleague or trade union representative) will have the opportunity to ask questions.
- The Chair will call any witnesses to provide evidence. The employee (or their work colleague or trade union representative), the Investigating Officer and The Chair will have the opportunity to ask questions.
- The employee (or their work colleague or trade union representative) will present their case in response and call any witnesses. The Investigating Officer and Chair will have the opportunity to ask questions of the employee and his/her witnesses.
- The Chair will ask further questions of the Investigating Officer and/or the employee to clarify any matters which require further consideration.
- The employee (or their colleague or trade union representative) and the Investigating Officer will have an opportunity to sum up their case.
- Adjourn if there is a breach of procedure that needs to be corrected or if new matters arise that require investigation.
- Adjourn to consider the decision and weigh up all the evidence presented.
- The manager chairing will consider the case on a balance of probabilities. If an immediate decision cannot be made, then in normal circumstances a decision will be made without unreasonable delay.
- The Chair will inform the employee, normally within 5 days of the hearing, of the decision and the reasons for it and of their right of appeal.

Appeals

This follows the same procedure as above. Following the decision of the Chair there is no further right of appeal.

8. Appendix 2

EXAMPLES OF MISCONDUCT AND GROSS MISCONDUCT

These lists are not exhaustive.

Gross Misconduct

The following will be regarded as 'Gross Misconduct'.

- Any offences contrary to the Theft Act (e.g., theft of money or property).
- Malpractice, examples of which include but are not limited to:
 - Producing falsified witness statements, for example, for evidence the learner has not generated.
 - Facilitating and allowing impersonation.
 - Falsifying records/certificates, for example, by alteration, substitution, or by fraud.
 - Fraudulent certificate claims, that is, claiming for a certificate prior to the learner completing all the requirements of assessment.
 - Obtaining unauthorised access to assessment/examination/test material prior to an assessment/examination/test.
- Fraud.
- Sexual offences and inappropriate behaviour involving fear, force or fraud, or committed with persons below the age of legal consent.
- Actual or threatened violence, intimidating conduct, bullying or behaviour which provokes violence.
- Bribery and corrupt practices.
- Illegal possession of weapons.
- Criminal Damage.
- Appearing to be under the influence of alcohol, illegal drugs or the use, possession or supplying of drugs – Class A, B and C or smoking in any of the Group's buildings or vehicles.
- Deliberate or sustained neglect of animal welfare.
- Any other serious offence which could lead to a breach of trust and confidence in the employment relationship.

The following may be regarded as Gross Misconduct depending upon the circumstances:

- Unauthorised removal of or damage to the College's property.
- Serious cases of offensive words or conduct during working hours or in connection with employment by the College.

- Committing any wilful act or omission which is likely to weaken the confidence of the public in, or bring discredit on, The Windsor Forest Colleges Group.
- Failure to observe the Diversity Policy, Equality Schemes, and the Dignity at Work Policy.
- Incapability in the workplace caused by alcohol or substance abuse.
- Serious misuse of the College's property or name.
- Serious breach of the College's rules, including, but not restricted to health and safety rules and rules on computer use.
- Serious insubordination.
- Causing loss, damage or injury through serious negligence.
- Falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee.
- Falsification of records, reports, accounts, expense claims or self-certification forms, whether or not for personal gain.
- Sexual misconduct at work.

These lists of definitions are not exhaustive.

Misconduct

Misconduct which, of its nature, would not lead to instant dismissal, i.e., which is not Gross Misconduct, may include the following:

- Lateness for work.
- Unauthorised absence from work.
- Abuse of the conditions relating to sick leave.
- Undertaking secondary employment which conflicts with, or affects detrimentally the College's interests, or weakens public confidence in the conduct of the College.
- Falsehood or prevarication in connection with employment by the College.
- Offensive words or behaviour to other employees, members of the public or any person during, or in connection with, the discharge of duties.
- Failure to carry out the reasonable instructions of a more senior team member.
- By act or omission failure to diligently and efficiently perform the duties specified for the post, whether these be in writing or verbal.
- Misuse of College property, services or facilities.
- Conduct, language, lack of hygiene or standards of dress which may cause distress or embarrassment to other employees or persons with whom the employee comes into contact in the performance of duties.
- Oppressive conduct towards other employees or abuse of authority.
- Failing to keep any mark schemes secure.
- Alteration of any mark schemes.

- Alteration of assessment and grading criteria.
- Assisting learners in the production of work for assessment, where the support has the potential to influence the outcomes of assessment, for example where the assistance involves centre staff producing work for the learner.
- Allowing evidence, which is known not to be the learners own, to be included in a learner's assignment/task/portfolio/coursework.
- Misusing the conditions for special learner requirements, for example, where learners are permitted support, this is permissible up to the point where the support has the potential to influence the outcome of the assessment.
- Failing to keep learner computer files secure.
- Failing to keep assessment/examination/test papers secure prior to the assessment/examination/test.
- Criminal offences committed whilst the employee is off duty, other than those referred in the section relating to Gross Misconduct will not normally be regarded as misconduct, but it must be borne in mind that, if the penalty imposed by the court adversely affects the employee's capability to perform the job for which appointed, this could constitute grounds for dismissal other than for disciplinary reasons.
- Failure to observe College procedures.