

POLICY/PROCEDURE: DISCIPLINARY POLICY AND PROCEDURE

Approval required by:	Executive	Y	Governing Body	Y
Senior Lead:	Vice Principal Corporate Services			
Responsible Manager:	Director of Human Resources			
Date approved:	November 2024			
Date to be reviewed:	December 2026			

Significant changes to policy

Appeal decisions to be confirmed in writing within five working days (November 2024).

Impact of changes

SCOPE AND PURPOSE

This procedure applies to all employees of Barnsley College and ITS ("the college"), other than 'holder of senior posts' as defined in the Articles of Government and probationary staff.

This procedure is intended to encourage employees to achieve and maintain acceptable standards of conduct, attendance and job performance. The procedure will be used positively to correct and improve future behaviour and conduct.

Principles

This procedure is designed to ensure fair and consistent treatment of all employees. No disciplinary action will be taken against an employee until the matter has been fully investigated.

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 reached.

At every stage of the procedure, the employee will have the right to be represented or accompanied by a fellow employee or trade union representative.

An employee will not be dismissed for a first breach of discipline, except in the case of gross misconduct, when the penalty may be dismissal without notice and without pay in lieu of notice.

An employee has the right to appeal against any disciplinary action taken against them.

The procedure may be implemented at any stage if the alleged misconduct warrants such action.

In most cases where a disciplinary issue arises, it can be resolved at an early stage through informal discussion/counselling/mediation between the employee and their line manager. However, where this is not resolved or is of a serious nature, the formal procedure will be implemented.

Investigation

Prior to any disciplinary action being taken, a full and proper investigation into the circumstances and facts relating to any allegations of misconduct must be undertaken by an appropriate college manager.

In certain circumstances it may be necessary to suspend an employee with pay, pending an investigation into the alleged offence. The employee will, wherever possible, be given an opportunity to contact their Trade Union representative or colleague to be present at their suspension.

Suspension itself is not a form of disciplinary action but purely a precautionary measure and, as a neutral act, no guilt should be implied from its imposition. An employee may be suspended on full pay by a Senior Post Holder, or an SMT member or manager when authorised to do so by a Senior Post Holder.

Suspension of an employee should usually take place where any of the following conditions apply:

- Their continued presence may unduly influence the disciplinary process.
- It is reasonably believed to be necessary to protect employees or students of the college.
- It is reasonably believed to be necessary to protect the property or equipment of the college or the property of a college employee.

In accordance with Instrument and Articles of Government, a member of staff who has been under suspension for fifteen working days or more may appeal in writing to the Board of Governors via the Director of Governance, against the suspension. The appeal will be to a Panel of Governors.

The investigation should be undertaken without delay with written statements from witnesses and documentary evidence collected. Normally the line manager of the employee will conduct the investigation. A member of Human Resources will support the investigating manager/s with appropriate advice and guidance regarding the investigative process and protocol.

If the employee feels that the investigation has not included all relevant witnesses, they should inform the investigating manager who will include them in the investigation.

Where behaviour is alleged that has harmed or may have harmed a child or that indicates that the employee is unsuitable to work with children, the college will notify the Local Authority Designated Officer as appropriate in accordance with the “management of allegations of abuse made against people who work with children” requirement and the college’s Safeguarding Policy. This notification will not in any way prejudice the college disciplinary procedure.

Note that as defined in the Children’s Acts 1989 and 2004, a child is anyone who has not reached their 18th birthday. ‘Children’ therefore means children and young people.

Disciplinary Hearing (All Levels)

Following the investigation, all evidence collected must be carefully considered and if it appears to the investigating manager/s that there is evidence to suggest a breach of discipline, a disciplinary hearing will be convened. Human Resources will advise on the level of seriousness of the allegation, the consequent seniority of the chair of the hearing and draft the formal letter to the employee detailing the allegation/s against them. Where the investigating manager/s and the member of Human Resources advising them disagree in respect of the nature or seriousness of the allegation/s, the matter will be taken to the Director of Human Resources for adjudication.

The employee will be given five working days' notice in writing of the date, place and time of the hearing. The notice will also inform the employee of their right to be represented or accompanied at the hearing by a work colleague or Trade Union representative. The employee will also be provided with a written statement detailing the allegations together with any documentary evidence and any statements from witnesses.

The hearing will be conducted in the following manner:

- The chair of the hearing will introduce those present, outline their roles, establish the right to accompaniment, the process for the hearing, and specify the allegations against the employee.
- The investigating manager will report on the evidence found during the investigations, and any witness statements.
- The employee or their representative will have the opportunity to question the investigating manager.
- The employee or their representative will then have the opportunity to present the employee's case and refer to any witness statements.
- The investigating manager will have the opportunity to question the employee: however, the representative should not answer on behalf of the employee.
- Once both sides have presented their case both sides shall have the opportunity to sum up. No new evidence is to be produced at this stage.
- The chair may ask any questions or seek clarification on any matter presented at any stage of the hearing.
- Either side may request an adjournment to the hearing at any stage. Separate and private rooms will be available for both sides in these circumstances.
- Both sides will be asked to withdraw while the chair considers the cases and the evidence presented. Where the chair requires clarification of any particular matter both sides shall be recalled. In reaching a decision the chair will take into account any mitigating circumstances including the employee's length of service and employment record.
- The chair will then recall both sides and convey their decision orally. The chair may defer conveying their decision for up to two working days. The decision will be confirmed in writing to the employee within five working days.
- Should any new evidence emerge during the hearing, which requires further investigation, the hearing will be adjourned until this has been completed. Notes will be taken during the hearing and will be retained.
- Either side may call witnesses, details of which must be provided to all parties at least two days before the hearing
- The employee may submit evidence in support of their response to the allegations, subject to providing the Human Resources department with copies of the documents at least two working days in advance of the hearing for distribution.
- A Human Resources representative may accompany an investigating manager at the hearing. This is more likely in complex cases. The chair of the hearing will be advised by a member of Human Resources.

Disciplinary Action

Verbal Warning

If conduct does not meet acceptable standards and is considered to be reasonably minor, the employee may be given a Formal Verbal Warning by the chair. The warning will give details of the complaint, the improvement or change in behaviour or conduct required, the timescales allowed for the improvement and the employee's right of appeal.

A brief note of the Verbal Warning will be placed on the employee's personal file. After six months, the warning will be spent and the note removed from the personal file.

Written Warning

If conduct is of a more serious nature, and/or the employee has failed to comply with the Formal Verbal Warning, a formal written warning may be given.

A Formal Written warning will give details of the complaint, the improvement or change in conduct required, the timescale allowed for this and the right of appeal. The Written Warning should also inform the employee that a Final Written Warning may be considered if there is no satisfactory improvement or change.

A copy of the Written Warning will be placed on the employee's personal file. After twelve months the warning will be spent, and the warning removed from the personal file.

Final Written Warning

Where the offence warrants only one warning but is insufficient to justify dismissal, or where further misconduct occurs whilst the employee is in receipt of a "live" warning and the misconduct merits this, a Final Written Warning will be issued to the employee.

A Final Written Warning will give details of the complaint, the improvement or change in conduct required, the timescale allowed for this and will also inform the employee that a failure to improve their conduct or the committing of another offence with the Final Written Warning still live may make them liable to dismissal. It will also include a statement of the right of appeal.

A copy of the Final Written Warning will be placed on the employee's personal file. After twelve months, the warning will be spent, and the warning removed from the personal file.

Dismissal

Where the employee fails to meet the prescribed standards following a final written warning, dismissal with notice will result.

Where the employee is already in receipt of a "live" warning and the offence is a serious breach of conduct not considered of itself to be an act of gross misconduct, but which justifies such action, then dismissal with notice may result.

Where the offence constitutes gross misconduct, dismissal without notice or pay in lieu of notice will result. Gross misconduct is where the offence is so grave as to go to the root of the employment contract and such that no reasonable employer could tolerate the continued employment of the employee.

In all cases of dismissal, the employee will be provided with written reasons for dismissal, the date on which employment will terminate, and the employee's right of appeal.

Authority to take disciplinary action

Line Managers (as identified by the existence of an appraiser/appraisee relationship) or other appropriate managers, are able to carry out investigations under the disciplinary procedure.

Heads of Department are able to chair disciplinary hearings and issue disciplinary action up to the Written Warning stage.

SMT members are able to chair Disciplinary Hearings, can issue warnings at all levels up to Final Written Warning and can suspend employees when authorised to do so by a Senior Post Holder.

Senior Post Holders are able to chair disciplinary hearings, issue warnings at all levels, and can suspend and dismiss employees.

A representative from Human Resources will be present at every stage of the disciplinary procedure in the capacity of advisor to ensure that disciplinary action is taken consistently and fairly and in line with the disciplinary procedure. The Human Resources representative will also ensure that a detailed record of the hearing and any subsequent appeals is taken.

Disciplinary Appeals

An employee has the right to appeal against any disciplinary penalty imposed under this procedure.

An employee should lodge an appeal against a disciplinary penalty to the Human Resources Department within ten working days of the disciplinary action being confirmed, stating the reason for the appeal.

The appeal will normally be heard by a manager who is of greater seniority to the manager who originally imposed the disciplinary action.

The appeal hearing will take place without undue delay and, where possible, within five working days.

All information from the original disciplinary hearing will be copied to the manager hearing the appeal and the appellant prior to the appeal hearing.

It is anticipated that the chair of the original disciplinary hearing will have responsibility for presenting the case for management at the appeal hearing. Where this is not possible (for example where this may cause an undue delay) the case for management shall be presented by the investigating manager at the initial disciplinary hearing.

No new evidence may be presented at an appeal hearing without the prior agreement of all the parties.

The manager hearing the appeal may endorse the original decision, may substitute a lesser penalty or exonerate the employee.

An appeal against a dismissal notice will be heard by the Principal, or if the Principal was involved in the case, the Appeal would be to a panel of Governors convened in accordance with the procedures set out in the Procedure for Governors' Appeal Panels.

The outcome of the appeal will be confirmed in writing within five working days and will confirm any disciplinary action imposed and the reasons for this.

Trade Union Representatives

This disciplinary procedure will apply in full to trade union representatives. No disciplinary action should be taken, however, against trade union representatives until the circumstances of the case have been discussed with a senior trade union representative or full time official, provided the employee has no objection.

Examples of Misconduct and Gross Misconduct

The following list provides examples of offences which the college may normally regard as misconduct:

- Persistent lateness.
- Unauthorised absence.
- Minor breaches of health and safety rules.
- Poor work performance as a result of negligence, carelessness, attitude or idleness.
- Refusal to carry out reasonable instructions.
- Poor attitude and acts of insubordination.
- Failure to abide by college policies and procedures.

NB: This list is not exhaustive.

The following list provides examples of offences which the college may normally regard as gross misconduct:

- Theft, bribery, fraud and deliberate falsification of records.
- Physical violence.
- Serious bullying or harassment.
- Deliberate damage to property.
- Serious insubordination.
- Bringing the employer into serious disrepute.
- Possession or distribution of drugs not medically prescribed.
- Serious incapability brought on by alcohol or drugs.
- Serious negligence which causes or may cause unacceptable loss, damage or injury.
- Serious infringement of health and safety rules.
- Serious breaches of confidence (subject to the Public Interest (Disclosure) Act 1998).
- Viewing, copying or distributing sexually explicit material in paper or electronic format.
- Serious safeguarding breaches
- Engaging in inappropriate personal relationships with a learner.
- Behaviour which seriously affects the learner's education.

NB: This list is not exhaustive

Sickness Absence and Disciplinary Hearings

If an employee becomes ill and is unable to attend a disciplinary or appeal hearing, the Director of Human Resources must be notified immediately. Where the illness is short term, the hearing will normally be arranged for a later date.

Where the employee is too ill to attend a hearing in the reasonably near future, the disciplinary hearing may proceed in their absence with their Trade Union representative or nominated work colleague representing them at the hearing. In all such cases a representative from the Human Resource Department must be present. The ultimate test, however, should be whether, without the employee being present to state their case personally, the evidence gives sufficient basis for reaching a conclusion on the balance of probabilities as to what actually happened and whether these events justify the disciplinary action taken.

In these circumstances there will be a preliminary discussion between the parties concerned prior to a decision on whether the disciplinary hearing can move forward and a medical opinion sought.

Refusal to Co-operate

Where an employee refuses to attend meetings or hearings in accordance with this Procedure without good reason (e.g. illness, for which a Doctors Medical Certificate will be requested as proof), they are potentially in breach of contract. They will be advised of this fact, in writing, and further advised that unless they do attend, a disciplinary decision will be taken on the basis of the information available, in their absence. This shall not, however, prejudice an individual's right of appeal against the decision taken.

If they have good reason for not attending the disciplinary hearing, the hearing can either be delayed slightly or they could request for their representative to represent them in their absence. The employee may also submit a written response to the hearing to allow the hearing to proceed in their absence.

Availability of a Companion

In the event that the employee's chosen companion is unavailable to attend the hearing at the nominated time, a request may be made for a postponement of the hearing to a date within five working days of the original date. This request may be made once.

Monitoring

It will be the responsibility of the SMT lead to monitor the effectiveness of this policy by:

- assessing the nature and frequency of complaints or cases and identifying any patterns which need to be addressed.
- monitoring individual complaints or cases to ensure that they are effectively resolved and that no victimisation occurs.

As part of the process, the SMT lead will consult with the trade unions on changes to this policy and procedures.

While this policy is to be followed by all employees of the college, it does not form part of an employee's Contract of Employment.

EQUALITY AND DIVERSITY

An EqIA is available for this policy.

LINKED POLICIES AND PROCEDURES

- Capability Procedure.
- Bullying and Harassment Policy.
- Grievance Procedure.
- Code of Conduct.
- Sickness Absence Procedure.
- Alcohol and Drugs Policy.
- Governors Appeal Panel Policy.
- Safeguarding Policy
- Single Equality Scheme

LOCATION AND ACCESS TO THIS POLICY

This policy is available on the college's intranet.