Employee Disciplinary Procedure

1. SCOPE AND PURPOSE

1.1 This procedure applies to all members of staff other than “holders of senior posts” as determined by the Corporation and does not confer any contractual rights.

1.2 This procedure will be applied in accordance with the Articles of Government of the Corporation and in accordance with the Advisory, Conciliation and Arbitration Services Code of Practice, ‘Disciplinary and Grievance Procedures’.

1.3 The purpose of the procedure is to help and encourage employees to achieve 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 allegations of unacceptable conduct.

2. GENERAL PRINCIPLES

2.1 All reasonable efforts will be made to avoid the use of disciplinary action where alternatives are appropriate such as informally, by way of counselling, guidance or instruction or by informally cautioning the employee.

2.2 An employee has the right to be present and accompanied and represented by a representative of a trade union or workplace colleague at any stage of the formal disciplinary procedure.

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 officer could be seen as a challenge on the union’s functions. Although normal disciplinary standards will apply to their conduct as employees, no disciplinary action should be taken until the circumstances of the case have been discussed with a full-time official.

2.5 A workplace colleague chosen to accompany a employee attending at a disciplinary hearing will be permitted to take paid time off during working hours to attend the hearing.

2.6 At least 5 working days in advance, an employee must alert the person considering the disciplinary matter to the identity and position of any person which the employee proposes to accompany him or her at a disciplinary hearing.
2.7 If an employee fails to attend without good reason a disciplinary hearing or appeal hearing which he or she has been instructed to attend, the hearing will take place and a decision made notwithstanding his/her absence. If the failure to attend is due to ill health a medical certificate from the employee's general practitioner should be provided.

2.8 All reasonable steps will be taken to maintain confidentiality and written records of any disciplinary proceedings shall be kept and maintained by the Academy in accordance with the Data Protection Act 1998.

2.9 The use of recording devices to record the content of any meetings relating to the disciplinary procedure will not be permitted.

2.10 Any documents relating to the disciplinary process can be made available in an alternative format if requested.

3. INVESTIGATIONS

3.1 No disciplinary action will be taken against an employee until the Academy has fully investigated the circumstances of the particular issue having regard to the employee’s response to allegations. If appropriate, the Academy may suspend the employee, in accordance with Section 11 below, whilst the investigation is carried out.

3.2 If the Academy decides to investigate a complaint against an employee under this procedure, then that employee must be informed at the initial stage in writing.

3.3 An Investigating Officer will be appointed by the Head of Personnel or appointed deputy who has no previous connection with the case being investigated.

3.4 When a disciplinary matter arises which is likely to require consideration under the formal procedure, the relevant investigator will first establish the facts promptly before recollections fade and, where appropriate, will obtain statements from any available witnesses. The Investigating Officer will report the findings from the investigation to the Head of Personnel or appointed deputy who will decide whether to discontinue the matter, to arrange informal coaching or counselling or to arrange for the matter to be dealt with under the formal procedure.

3.5 An investigation carried out following a student complaint, staff complaint or grievance, or under any of the Academy's other procedures may form all or part of an investigation under this procedure as appropriate.

3.6 Any investigation would normally include an investigatory meeting. Where the investigator considers that an investigatory meeting is appropriate and a meeting is arranged with an employee and the employee fails to attend without good reason, the matter will be progressed without the investigatory meeting taking place.
4. **PENALTY**

4.1 No formal disciplinary penalty will be imposed without a disciplinary hearing. Other than in cases of gross misconduct, gross negligence or gross incompetence, when the penalty may be dismissal without notice or payment in lieu of notice, no employee will be dismissed for a first offence. In these rare instances when no hearing is undertaken the modified two step statutory discipline and dismissal procedure should be applied.

4.2 The modified two step statutory procedure would consist of the Academy writing to the employee after dismissal setting out the reasons for dismissal and to hold an appeal meeting, if the employee wants one.

5. **STAGES OF THE PROCEDURE**

5.1 Normally, the procedure will be followed in the order of the stages set out in Sections 6 and 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 (see 8.4).

6. **THE PROCEDURE**

**Informal**

6.1 Before taking formal disciplinary action, all reasonable efforts will be made by the line manager to resolve the matter by informal discussions with the employee, if appropriate.

6.2 Minor lapses from acceptable standards of conduct or work performance will usually be dealt with by the employee’s immediate line manager giving informal oral warnings or reprimands, which will not be recorded on the Personnel Department’s file relating to the employee. The line manager will normally confirm the discussion in writing and provide the employee with a copy.

6.3 If, despite informal discussions (or if informal discussions are not appropriate) the employee’s conduct does not meet acceptable standards, the following formal procedure should be used.

7. **DISCIPLINARY HEARINGS**

**Formal**

7.1 If the Academy decides to hold a disciplinary hearing relating to the matter complained of, the employee will be advised in writing of the nature of the complaint against him or her at least 5 working days before such a hearing. Documentation to be used at the hearing should be exchanged by the employer and the employee at least 2 working days before such hearing. The recommended procedure for a disciplinary hearing is attached as Appendix 1.

7.2 However if the chosen representative of the employee is unavailable on the date of the initial hearing, the employee may delay the date of that hearing once up to 15 working days in exceptional circumstances to enable the chosen representative to attend. The location and
timing of any alternative hearing should be convenient to both the employer and the employee.

**Stage 1 - Oral Warning**

7.3 If conduct or work performance does not meet acceptable standards, the employee will normally be given a formal ORAL WARNING by his or her Line Manager or nominated deputy.

7.4 The employee will be advised in writing of the reason for the warning, that it is the first stage of the formal disciplinary procedure; the action or improvement (if any) which is required of the employee.

7.5 If appropriate the timescale for implementing any such action; the consequences for the employee of not implementing the required action or of further misconduct; when the warning will cease to have effect and be removed from the file subject to satisfactory conduct (or performance). This will normally be after six months but a longer period may be stated in exceptional circumstances. A copy of the oral warning will be placed on the Personnel Unit’s file relating to the employee.

7.6 The note will also remind the employee of their right to appeal against the decision as detailed in Section 9 below. All of these matters will be confirmed in writing by the Head of Personnel or nominated deputy.

**Stage 2 - Written Warning**

7.7 A WRITTEN WARNING may be given to the employee by his or her Line Manager, or appointed deputy if:

(i) the employee commits a serious offence of misconduct or the standard of his or her work performance is seriously inadequate; or

(ii) the employee fails to achieve the required improvement within any time scale stated in the formal oral warning given under Stage 1; or

(iii) Despite having been given, under Stage 1, a formal oral 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 during the currency of the warning.

7.8 This written warning will give a reason for the warning against the employee, the improvement required and the time limit within which such improvement must be achieved. It will state that it is the second stage of the Academy’s Disciplinary Procedure.

7.9 In the case of misconduct, the warning will state that, if the employee commits a further offence of misconduct during the period specified in the warning, actions under Stage 3 will be considered which could be a final warning.
7.10 In the case of unsatisfactory work performance, 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 which could be a final warning.

7.11 A copy of the written warning will be placed on the Personnel Unit's file relating to the employee. The employee should be given a date when the warning will be spent, and will be removed from the Personnel Unit's file after twelve months, subject to the employee's conduct and work performance having been satisfactory throughout that period.

7.12 The employee will be informed by the Head of Personnel (or nominated deputy) of their right to appeal against the decision as detailed in Section 9 below and will be reminded that the Academy will make a positive commitment to support any employee who is attempting to improve his/her conduct/performance.

Stage 3 - Final Written Warning

7.13 A FINAL WRITTEN WARNING will normally be given to the employee by the Head of Personnel or nominated deputy in the following circumstances:

(i) if the employee fails to achieve the required improvement within any time scale stated in the formal written warning given under Stage 2; or

(ii) despite having been given, under Stage 2, a first 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; or

(iii) The employee's misconduct or unsatisfactory work performance, although not considered to be serious enough to justify summary dismissal, is sufficiently grave to warrant only one written warning (in effect both the first and a final written warning).

7.14 This final written warning will give reasons for the warning, the improvement required and the time limit within which such improvement must be achieved.

7.15 In the case of misconduct, 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.

7.16 In the case of unsatisfactory work performance, 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.

7.17 The Academy will make a positive commitment to support any employee who is attempting to improve his/her conduct/performance.

7.18 The employee will be told when the warning will be spent and removed from the Personnel Unit’s file. This will be after twelve 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.

7.19 The employee will be informed by the Head of Personnel (or nominated deputy) of their right to appeal against the decision as detailed in Section 9 below.

**Stage 4 - Dismissal**

7.20 The Director may, having complied with the procedure above, 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.

(iii) The employee commits gross misconduct, gross negligence or gross incompetence – refer to section 8 below.

7.21 Prior to being given such notice of dismissal, the Director shall send to the employee a written statement setting out the alleged conduct, characteristics or other circumstances which led to that employee being considered for dismissal, and the employee shall be afforded a reasonable opportunity to respond to it in writing. The Director shall invite the employee to a meeting with himself/herself and no disciplinary action, except paid suspension, shall be taken against the employee until that meeting has taken place. At this meeting the employee shall have the right to make oral or written representation to the Director, for which purpose he or she may be accompanied and represented by a trade union representative, or workplace colleague.

7.22 After taking any representations into account, the Director shall take such action as he/she considers appropriate, which may include dismissal, and shall communicate the decision to the employee concerned without unreasonable delay. The communication must be in writing, and if the decision is to dismiss, it will specify the reasons for dismissal and the date on which the employment contract will be terminated. The communication must also notify the employee of his/her right of appeal against the decision in accordance with Sections 10 and 11 below.

7.23 The dismissal will take effect upon the date of the dismissal by the Director regardless of whether there is an appeal or not. Therefore, entitlement to pay will cease with effect from this date. Should the employee be reinstated following a successful appeal then a backdated payment will be made from the date of dismissal.

**8. GROSS MISCONDUCT**

8.1 An employee who is accused of serious or gross misconduct may be suspended from work, in accordance with the provisions of Section 11 below, whilst the Academy investigates the alleged offence. The Director may summarily dismiss the employee if, on completion of
an investigation and a disciplinary hearing carried out as stated above, it is established that the employee has been guilty of serious or gross misconduct.

8.2 If the Director decides to suspend an employee from duty, he/she shall without unreasonable delay:

(i) Provide written notification of the suspension setting out the grounds on which the decision to suspend has been taken; and
(ii) Invite the employee to a meeting for a short discussion of the reason for suspension.

8.3 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.

8.4 If an employee is accused of serious or gross misconduct and the Director considers that the circumstances are such that the Academy would be entitled to summarily dismiss the employee without the need to undertake the process of investigation and hearing detailed above, then the Director may dismiss the employee without undertaking any process of investigation or hearing. This will normally be confined to the most exceptional cases (that is, a small subset of serious or gross misconduct cases), where the evidence of the serious or gross misconduct is clear and compelling, and there is no realistic possibility that the employee can produce evidence which casts doubt on the fact of his/her being guilty of serious or gross misconduct, or by way of mitigation of possible penalty.

8.5 In the event of summary dismissal in the circumstances detailed in section 8.1 or 8.2, the Director 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 Director considers that the employee was guilty of such misconduct and notifying that employee of the right to appeal to the Corporation against the dismissal (see 10.1).

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

i. Theft or unauthorised possession of any property or facilities belonging to the Academy, or to any employee or student.
ii. Serious damage deliberately sustained to Academy property.
iii. Deliberate falsification of Academy registers, reports, accounts, expense claims or self-certification forms.
iv. Bribery or corruption.
v. Refusal to carry out duties or reasonable instructions or to comply with Academy rules.
vi. Serious acts of insubordination.
vii. Serious negligence/incompetence which causes unacceptable loss, damage or injury.
viii. Serious incapability as a result of being intoxicated by reason of alcohol or illegal drugs.
ix. Violent, dangerous or intimidatory conduct.
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x. Violation of the Academy's rules and procedures concerning health and safety at work.

xi. Sexual, racial or other harassment of another employee or a student.

xii. Unauthorised use or access of computer or other IT systems.

xiii. Misuse of e-mail or of the Internet (including downloading or transmission of material which is defamatory, offensive, obscene, malicious, sexist, racist or protected copyright material)

xiv. A criminal offence, which may (whether it is committed during or outside the employee’s hours of work for the Academy) adversely affect the Academy’s reputation, the employee’s suitability for the type of work he or she is employed by the Academy to perform or his or her acceptability to other employees or to students.

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

8.8 When the Director is of the view that an employee may have been guilty of serious or gross misconduct, the Director may suspend the employee from duty pending an investigation and the holding of a formal disciplinary hearing.

8.9 Such a 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.

9. APPEALS AGAINST DISCIPLINARY PENALTIES OTHER THAN DISMISSAL

9.1 An employee who wishes to appeal against a formal oral warning, a written warning or a final written warning should inform the Head of Personnel in writing, within 5 working days of receipt of the decision which forms the subject of the appeal. The appeal will be heard by an appropriate level of Management as determined by the Head of Personnel or Director.

9.2 The appropriate level of management will conduct an appeal hearing as soon as reasonably practicable after the notice to appeal has been received. At the hearing of the appeal, the employee will be given an opportunity to state his or her case and will be entitled to be accompanied and represented by the trade union representative or workplace colleague.

9.3 However, if the employee’s representative is unavailable on the date of the initial Appeal, the employee may delay the date of the Appeal once up to 15 days to enable the chosen representative to attend.

9.4 At the appeal, the disciplinary penalty imposed will be reviewed, but it cannot be increased. The outcome of the appeal will be notified to the employee in writing without unreasonable delay following the appeal hearing.

10. APPEALS AGAINST DISMISSAL OR NOTICE OF DISMISSAL

10.1 An employee who wishes to appeal against dismissal or notice of dismissal should inform the Clerk to the Corporation in writing within 14 days of the date of the Director’s decision. This appeal will be heard by an Appeal Committee established by the Corporation.
and consisting of three members of the Corporation, excluding the Director, the staff members and the student member.

10.2 The appeal hearing will take place as soon as reasonably practicable after the notice to appeal has been received by the Clerk to the Corporation. The employee will be given at least ten working days' notice of the date, time and place fixed for the appeal hearing (unless an earlier date has been mutually agreed). The Director shall attend the appeal hearing if so requested by the Corporation. At the appeal hearing, the employee will be given an opportunity to state his or her case and will be entitled to be accompanied and represented by a trade union representative or workplace colleague of his or her choice. The Appeal Committee shall take into account any representations made by or on behalf of the employee and the Director's decision, and take such action as it considers appropriate. The decision will be notified to the employee and, as appropriate to the Director in writing without unreasonable delay.

11. **APPEAL AGAINST SUSPENSION**

11.1 An employee who has been suspended may appeal both in writing and orally to the Corporation against the suspension. Notice of such appeal shall be given in writing by the employee to the Clerk to the Corporation and the appeal shall be heard as soon as possible by an Appeal Committee established by the Corporation, consisting of three members of the Corporation, excluding the Director, the staff members and the student members.

11.2 A suspension against which an appeal by an employee is made shall continue to operate pending the determination of the appeal.

11.3 Where an appeal against suspension is made by an employee to the Corporation, the employee shall be given at least five working days' notice of the date, time and place fixed for the hearing, unless an earlier date has been mutually agreed.

11.4 At the hearing of an appeal against suspension, the employee may be accompanied and represented by a trade union representative or workplace colleague of his or her choice.

11.5 Following the hearing of an appeal against suspension, the Appeal Committee appointed to hear the appeal may either confirm the suspension or lift the suspension. The decision of the Appeal Committee, and the reasons for the same, shall be confirmed by the Clerk to the Corporation in writing to the employee without unreasonable delay following the hearing of the appeal.

12. **RECORDS PRODUCED**

Confidential files

13. **DISTRIBUTION**

All Staff

**RECOMMENDED PROCEDURE FOR DISCIPLINARY HEARING**
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During the hearing, adjournments may be requested by either party or by the Manager conducting the hearing and will not be refused unreasonably. Where such a request is denied, an explanation will be given.

The Manager conducting the hearing will ask whether any new evidence has been made available that could not be circulated prior to the hearing and will make a judgement as to whether an adjournment is necessary to allow consideration of such evidence.

The Manager conducting the hearing will introduce all those present.

**ORDER OF HEARING**

a) The Investigating Officer (IO) will introduce those present and explain their role at the hearing

b) The IO will explain the purpose of the hearing and present details of the allegation and a report on the investigation undertaken

c) The employee and his/her representative may question the IO

d) The Manager conducting the hearing or panel members may question the IO

e) The IO may call witnesses and ask questions of them

f) The employee or representative may question the witness

g) The Manager of panel members may question the witness

h) The employee and/or representative will present the case against the allegations and explain any special circumstances which may exist and the precise nature of the remedy sought

i) The IO may question the employee

j) The Manager may question the employee

k) The employee and/or representative will call any witness

l) The IO may question the witnesses

m) The Manager may question the witnesses

n) Should the Manager conducting the hearing wish to clarify any issue with either the employee or IO, or of the witness, 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 representative will summarise the case against the allegation.

q) The employee, representative, IO and any other management representative will withdraw and the Manager conducting the hearing will decide whether or not an offence has been committed. The manager may seek guidance from a member from Personnel on procedural matters.

r) If, in the opinion of the Manager conducting the hearing an offence has been committed, that Manager will take into account the following before deciding upon an appropriate disciplinary sanction

i. any mitigating factors, e.g. health, domestic, bereavement;

ii. current disciplinary record of the employee;

iii. length of service at the Academy;

iv. nature of the offence;

v. evidence produced by either party at the hearing;

vi. statements and answers provided by witnesses;

vii. any sanctions imposed in the part for similar offences.
s) Once that decision is made, the two parties will be recalled and advised of the decision.

t) 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.

u) Written confirmation of the decision will be sent to both parties within 3 working days of the hearing.