HUMAN RESOURCES POLICIES AND PROCEDURES

DISCIPLINARY

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1 POLICY STATEMENT

1.1 King George V College is committed to helping and encouraging employees to achieve and exceed acceptable standards of conduct at work. It is essential that matters of conduct addressed through the disciplinary procedure should be treated in confidence ensuring that during any investigation or procedure, matters are dealt with sensitively and with due respect.

2 SCOPE

2.1 This procedure applies to all employees other than “designated Senior Post Holders”\(^1\) to whom the College’s disciplinary procedure for Senior Post Holders will apply.

2.2 The procedure will be applied in accordance with the Articles of Government of the Corporation and in Accordance with the Advisory, Conciliation and Arbitration Services (ACAS) Code of Practice, ‘Disciplinary and Grievance Procedures’, dated April 2009.

2.3 The purpose of this procedure is to encourage improvement in individual conduct.

2.4 It is also designed to ensure consistent and fair treatment for all in relation to disciplinary action taken in response to Misconduct or Gross Misconduct.

2.5 The procedure is designed not as a dismissal procedure but as a means of encouraging employees to conform to acceptable standards.

2.6 This procedure applies to issues of alleged Misconduct or Gross Misconduct. A separate procedure will be used to address issues of professional capability and competence.

3 GENERAL PRINCIPLES

3.1 Managers are required to familiarise themselves with the Disciplinary procedure.

3.2 An employee has the right to be accompanied by a representative of a trade union or work colleague at formal disciplinary hearings.

\(^1\) Senior Post Holders are the Principal and such other senior staff so designated by the Board in accordance with the Instrument and Articles of Government.
(Please refer to the Notes Section – Appendix 1 for guidance on the role of work colleague or trade union representative). The College will remind the employee of the right to be accompanied prior to a disciplinary hearing.

3.3 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.

3.4 It is recognised that disciplinary action against a trade union representative could be seen as an attack on the union’s functions. Although normal disciplinary standards will apply to their conduct as employees, the College will seek the employee’s agreement at an early stage to discuss the circumstances of the case with an official employed by the trade union.

3.5 Where appropriate, managers should consider alternative means of resolving problems, for example with training, counselling, coaching or use of other more suitable College procedures, before implementing disciplinary action.

3.6 Informal action will be considered, where appropriate, to resolve problems before moving to the formal disciplinary procedure.

3.7 For formal action, the employee will be advised of the nature of the complaint against him or her and following an investigation, will be given the opportunity to state his or her case at a disciplinary hearing before any decision is made.

3.8 Employees will be provided with any written copies of evidence and relevant witness statements as soon as possible and usually at least five working days in advance of a formal disciplinary hearing.

3.9 Normally, the formal disciplinary procedure will be followed in the order of the stages set out in Section 4 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. At every stage of the procedure, the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.

3.10 No employee will be dismissed for a first breach of discipline except in the case of Gross Misconduct, when the penalty may be summary dismissal without notice or payment in lieu of notice.

3.11 An employee will have the right to appeal against any formal disciplinary action.
4 INFORMAL PROCEDURE

4.1 Before taking formal disciplinary action, every effort will be made by the line manager to resolve the matter by informal discussions with the employee, if appropriate.

4.2 The College recognises that cases of minor Misconduct are often best dealt with informally. Therefore, minor lapses from acceptable standards of conduct will usually be dealt with by the line manager giving informal verbal warnings or reprimands, which will not be recorded on the employee’s Personnel file, but of which line managers may retain notes.

4.3 If, despite informal discussions (or if informal discussions are not appropriate), the employee’s conduct does not meet acceptable standards, the formal procedure, described below in Section 7, should be used.

5 INVESTIGATIONS

5.1 No disciplinary action will be taken against an employee until the College has fully investigated the circumstances of the matter complained of, having regard to the employee’s response to the allegations.

5.2 The College will inform the employee as soon as possible that an investigation is to be conducted and once the investigation has been concluded.

5.3 The College will offer the employee the opportunity to be accompanied by a work colleague or trade union representative at an investigation meeting.

5.4 Depending on the circumstances of the allegations, it may not always be necessary to conduct an investigation meeting with the employee. If a meeting is held, the College will give the employee advance warning and reasonable time to prepare.

5.5 If appropriate, the College may suspend the employee, in accordance with Section 6 below, whilst the investigation is carried out.

5.6 A management representative will conduct the investigation. The College will ensure that the person conducting the investigation is different to the person chairing any subsequent disciplinary hearing. The investigating officer will, however, usually be required to present the management case in the event of a disciplinary hearing being called.
6 SUSPENSION PENDING A DISCIPLINARY HEARING

6.1 There may be circumstances during an investigation where suspension from duty pending the holding of a formal disciplinary hearing may be appropriate. Examples of circumstances in which suspension may be appropriate, depending on the facts of the situation, include: some Misconduct or Gross Misconduct cases; situations where there are risks to an employee’s or the College’s property; or where there are reasonable grounds for concern that evidence has been tampered with, destroyed or witnesses pressurised.

6.2 The decision to suspend can only be made by the Principal or a Senior Post Holder to whom the responsibility has been designated.

6.3 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.

6.4 If the Principal (or designated Senior Post Holder) decides to suspend an employee from duty, he/she shall:

   i. Confirm the suspension in writing to the employee without unreasonable delay; and
   ii. Inform the employee in writing of the reasons for the suspension, without unreasonable delay (this will usually be within two working days).

6.5 A period of suspension pending a disciplinary hearing should be kept as brief as possible and will be kept under regular review (please refer to the Notes Section - Appendix 1 for further details).

6.6 An employee who is suspended from duty shall, throughout the period of suspension, continue to be entitled to his/her full pay.

7 FORMAL PROCEDURE FOR DISCIPLINARY HEARINGS

7.1 If, upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of Misconduct, the College will invite the employee to attend a disciplinary hearing.

7.2 The employee will be advised in writing of the nature of the alleged Misconduct, the possible consequences of the meeting and any relevant papers (such as written evidence and witness statements if available) to enable the employee to prepare for the meeting.
7.3 The College will write to the employee with all the above information at least ten working days before the meeting. The written notification should also detail the date and venue of the meeting and the employee’s right to be accompanied.

7.4 In cases where an employee requests that the disciplinary hearing be held on an earlier date every effort will be made to accommodate this request, while being mindful of the need for both parties to have adequate time to plan and prepare for the hearing.

7.5 Any documentary evidence relating to the investigation into the allegation(s) against the employee should be circulated at least five working days in advance of the disciplinary hearing to all parties. If the employee wishes to present any evidence in advance of the hearing they may do so; evidence should be submitted to the Assistant Principal Human Resources & Estates, a minimum of 2 working days prior to the hearing, who will ensure copies are distributed to all relevant parties in preparation for discussion during the hearing. Alternatively, in the course of the hearing the employee will be asked, and will be given the opportunity, to present to the panel any evidence relevant to the allegation(s) against them.

7.6 If the employee wishes to call relevant witnesses to the meeting, he/she should advise the College, a minimum of 2 working days in advance of the meeting. The employee will be informed prior to the meeting if the College intends to call relevant witnesses.

7.7 The employee should inform the College whom they have chosen as a work colleague or trade union representative, a minimum of 2 working days prior to the hearing.

7.8 At any disciplinary hearing, the employee will be given an opportunity to state his or her case and will have the right to be accompanied by a trade union representative or work colleague of his or her choice, subject to a reasonable request being made (please refer to the Notes Section - Appendix 1 for further guidance). However, if the chosen work colleague or trade union representative of the employee is unavailable on the date of the initial hearing, the employee may delay the date of the disciplinary hearing once, by up to ten working days to enable the chosen work colleague or trade union representative to attend. The location and timing of any alternative hearing should be convenient to both the employer and the employee, but should not unduly delay the process.

7.9 Representatives of the College, the employee and the employee’s work colleague or trade union representative should make every effort to attend the hearing.
If the employee fails persistently, without good reason, to attend a disciplinary hearing that the College has instructed him or her to attend, the hearing will take place, and a decision will be made, in his or her absence.

In other circumstances where it seems likely that for a lengthy period, the employee will be unable to attend a disciplinary hearing, the College reserves the right to go ahead with that hearing, affording the employee the right to either submit written representations and/or be represented by a workplace colleague or trade union representative.

7.10 The disciplinary hearing will usually be chaired by a Senior Post Holder, accompanied by a member of staff with line management responsibility, not associated with the case. Where dismissal is a possible outcome, the meeting will be chaired by the Principal or a Senior Post Holder to whom the authority to dismiss has been delegated by the Principal.

7.11 The manager who conducted the investigation shall not be a member of the disciplinary panel at the disciplinary hearing, but will usually attend in order to present the findings of the investigation and any supporting material.

7.12 The decision on the outcome of the disciplinary hearing will be that of the Chair of the disciplinary panel.

7.13 The outcome of the disciplinary hearing will be confirmed in writing to the employee, ideally within two working days of the date of the hearing. Where disciplinary action is the outcome, the employee will be informed of the nature of the action and the right to appeal under this procedure.

8 DISCIPLINARY ACTION

8.1 Normally the stages described in this section will be cumulative; however, the College reserves the right to implement the procedure at stage 2 or 3 (First Written Warning and Final Written Warning respectively) if the employee’s alleged Misconduct warrants this. The right will also apply in circumstances where an employee commits a further act of alleged Misconduct that is sufficiently serious, whilst a formal warning is in place.

Stage 1: Verbal Warning

8.2 If it is established through the disciplinary hearing that the employee’s conduct does not meet acceptable standards, the employee will normally be given a formal verbal warning.
8.3 This formal verbal warning will give details of the employee’s Misconduct, the improvement required and the time limit within which such improvement must be achieved. The warning will clarify that, if the employee commits a further offence of Misconduct during the period specified in the warning, action under Stage 2 will be considered. However, the employee will also be advised that if any further act of Misconduct or Gross Misconduct is sufficiently serious, the College reserves the right to go to a further stage in the procedure. The employee will be advised of the right of appeal in accordance with the College’s Appeals Procedure.

8.4 A brief note of the verbal warning will be placed on the employee’s Personnel file. The warning will be spent, and will be disregarded for disciplinary purposes after 6 months, subject to the employee’s conduct having been satisfactory throughout that period.

Stage 2: First Written Warning

8.5 A first written warning will usually be given to the employee following the disciplinary hearing if:

i. The employee commits a serious act of Misconduct;

ii. The employee fails to comply with a formal verbal warning given under Stage 1;

iii. Or despite having been given, under Stage 1, a formal verbal warning as the result of Misconduct, the employee commits a further offence of Misconduct.

8.6 This written warning will give details of the employee’s Misconduct, the improvement required and the time limit within which such improvement must be achieved. The warning will state that, if the employee commits a further offence of Misconduct during the period specified in the warning, action under Stage 3 will be considered. The written warning will also advise the employee of the right of appeal in accordance with the College’s Appeals Procedure.

8.7 A copy of the written warning will be placed on the employee’s Personnel file. The warning will be spent, and will be disregarded for disciplinary purposes after 12 months, subject to the employee’s conduct and work performance having been satisfactory throughout that period.
Stage 3: Final Written Warning

8.8 A final written warning will normally be given to the employee if:

i. The employee fails to comply with a first written warning given under Stage 2;

ii. Despite having been given, under Stage 2, a first written warning as the result of Misconduct, the employee commits a further offence of Misconduct;

iii. The employee’s Misconduct, although not considered to be serious enough to justify summary dismissal, is sufficiently serious to warrant a final written warning.

8.9 The final written warning will give details of the employee’s Misconduct, the improvement required and the time limit within which such improvement must be achieved. The warning will state that, if the employee commits a further offence of Misconduct, during the time limit specified in the warning, his or her employment may be terminated. The final written warning will also advise the employee of the right of appeal in accordance with the College’s Appeals Procedure.

8.10 A copy of the written warning will be placed on the employee’s Personnel file. The warning will be spent, and will be disregarded for disciplinary purposes after 18 months (although, in exceptional cases, the period may be longer), subject to the employee’s conduct having been satisfactory through that period. Spent warnings should be removed from an employee’s Personnel file.

Stage 4: Dismissal

8.11 The Principal or a Senior Post Holder to whom the authority to dismiss has been delegated by the Principal may, following a disciplinary hearing, give notice of dismissal to the employee if:

a. The employee fails to comply with a final written warning given under Stage 3;

b. Or despite having been given, under Stage 3, a final written warning as the result of Misconduct, the employee commits a further offence of Misconduct.
8.12 The decision to dismiss will be communicated in writing to the employee and will specify the reasons for dismissal and the date on which the employment will terminate. The communication must also notify the employee of his/her right of appeal against the decision in accordance with the College’s Appeals Procedure.

9 **GROSS MISCONDUCT**

9.1 The Principal may summarily dismiss the employee without notice or pay in lieu of notice if, on completion of an investigation and a disciplinary hearing, if it is established that the employee has been guilty of Gross Misconduct.

9.2 In the event of summary dismissal the Principal shall, without unreasonable delay, provide the dismissed employee with a written statement of the alleged Gross Misconduct which has led to the dismissal and the reasons why the Principal considers that the employee was guilty of such Gross Misconduct and notifying that employee of the right to appeal against the dismissal.

9.3 Any steps which the Principal can take under sections 8.1 – 8.2 can also be taken by a Senior Post Holder to whom the responsibility has been delegated by the Principal, and the provisions of sections 8.1 – 8.2 should be read accordingly.

9.4 The following list provides examples of offences that are normally regarded as grounds for summary dismissal:

- Serious damage deliberately sustained to College property
- Deliberate falsification of College registers, reports, accounts, expense claims or self-certification forms
- Bribery or corruption
- Deliberate refusal to carry out duties or reasonable instructions or to comply with College rules
- Serious acts of insubordination
- Serious negligence/incompetence which causes unacceptable loss, damage or injury
- Serious incapability and/or drunkenness or disorderly conduct sufficient to have an effect on the employee’s ability to carry out their duties
- Violent, dangerous or intimidatory conduct
- Bullying
- Violation of the College’s rules and procedures concerning health and safety at work
- Unlawful discrimination or harassment
- A criminal offence, which may (whether it is committed during or outside the employee’s hours of work for the College) adversely affect the College’s reputation, the employee’s suitability for the type of work he or she is employed by the College to perform or his or her acceptability to other employees or students

- Serious breaches of confidence (subject to the Public Interest (Disclosure) Act 1998)

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

10 **APPEAL**

10.1 An employee who wishes to appeal against a disciplinary decision must do so in accordance with the College’s Appeals Procedure.
APPENDIX 1
NOTES RELATING TO THE DISCIPLINARY POLICY AND PROCEDURE
MISCONDUCT OR GROSS MISCONDUCT

Section 3
3.2 General Principles - page 1

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

The trade union representative can be an officer employed by a trade union, or a lay trade union officer.

An employee may ask an official from any trade union to accompany them at a disciplinary hearing, regardless of whether or not he or she is a member or the union is recognised by the College. If a non-union member approaches one of the College’s trade union representatives to accompany them at a disciplinary hearing, the trade union representatives reserve the right to decline the request.

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

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

The work colleague or trade union representative should be allowed to address the hearing to put and sum up the employee’s case, respond on behalf of the employee to any views expressed at the hearing and confer with the employee during the hearing. The work colleague or trade union representative does not, however, have the right to answer questions on the employee’s behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case.
Section 6  
Suspension Pending a Disciplinary Hearing - page 4

Under the ACAS Code of Practice (April 2009), suspension with pay should only be used where necessary. This means that suspension should not be used as a matter of course in all disciplinary investigations. The supplementary ACAS guidance explains that suspension should only be used after careful consideration, in circumstances where it is deemed necessary. Section 6.1 (page 4) of this procedure outlines some examples of situations where paid suspension may be deemed necessary.

In addition, the Code of Practice states that any period of suspension should be kept as brief as possible and must be kept under review. Colleges should monitor each instance of paid suspension to ensure that it is still necessary for the employee to be removed from the workplace and that this is not unduly prolonged.

Section 8 – Disciplinary Action

The period during which warnings will usually be kept on the employee’s Personnel file is as follows:

- Verbal warning 6 months
- First written warning 12 months
- Final written warning 18 months
APPENDIX 2
EXAMPLE PROCEDURE FOR A DISCIPLINARY HEARING
MISCONDUCT OR GROSS MISCONDUCT

During a disciplinary hearing, adjournments may be requested by either party or by the disciplinary panel conducting the hearing and will not be refused unreasonably. Where such a request is denied, an explanation will be given.

Each party shall inform the other party prior to the meeting if they wish to call witnesses, a minimum of 2 working days prior to the hearing.

The disciplinary panel 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 Chair of the disciplinary panel conducting the hearing will introduce all those present, including each person’s role in the hearing, and will explain the purpose of the hearing.

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

Hearing procedure

a) The Investigating Officer (IO) will present the details of the allegation and a report on the investigation undertaken.

b) The employee and his/her work colleague or trade union representative may question the IO.

c) The disciplinary panel conducting the hearing may question the IO.

d) The disciplinary panel conducting the hearing may call witnesses individually and ask questions of them.

e) The employee or work colleague or trade union representative may question the witness.

f) Each witness will attend only for his/her own evidence and will withdraw once his/her evidence is given.
g) The employee and/or work colleague or trade union representative will present the case against the allegations and explain any special circumstances which may exist.

h) The disciplinary panel may ask the IO if he/she has any comments on what has been said by the employee and/or the witnesses.

i) The disciplinary panel may question the employee.

j) The employee and/or work colleague or trade union representative may call any witness.

k) The disciplinary panel may question the witnesses.

l) The disciplinary panel may ask the IO if he/she has any comments on what has been said by the witnesses.

m) As above, each witness will attend only for his/her own evidence and will withdraw once his/her evidence is given.

n) Should the disciplinary panel conducting the hearing wish to clarify any issue with either the employee or IO they will do so at this point.

o) The IO will summarise the case against the employee without introducing any new factors.

p) The employee and/or work colleague or trade union representative will summarise the case against the allegation.

q) The Chair of the disciplinary panel will conclude the hearing.

r) After the hearing, the disciplinary panel will decide whether or not an offence has been committed. The disciplinary panel members may seek guidance from a HR representative on procedural matters.

s) If, in the opinion of the disciplinary panel conducting the hearing an offence has been committed, relevant factors will be taken into account before deciding upon an appropriate disciplinary sanction. Examples of relevant factors include:

- Any mitigating factors, e.g. health, domestic, bereavement;
- Current disciplinary record of the employee;
- Length of service at the College;
- Nature of the offence;
- Evidence produced by either party at the hearing;
- Statements and answers provided by witnesses;
• Any sanctions imposed in the past for similar offences.

t) Once that decision is made, written confirmation of the decision will be sent to the employee without unreasonable delay.

u) The employee will be advised of their right to appeal against the decision and informed who that appeal should be lodged with and in what timescale.