



Staff Disciplinary Policy & Procedure

Date approved:	24 November 2011
Approved by:	NCG Executive
Review date:	November 2014
Responsible Manager:	Director of Human Resources
Executive Lead:	Group Director (HR and Corporate Services)
Accessible to Students:	No

1. Consultation

Consultation undertaken with:-

- Newcastle College: Yes
- Group Services: Yes
- West Lancashire College: Yes
- Intraining: No

2. Applicability of Policy to Organisation

This policy applies to:-

- Newcastle College: Yes
- Group Services: Yes
- The West Lancashire College: Yes
- Intraining: No

3. Scope and Purpose of Policy

This procedure does not form part of staff contracts of employment nor does it confer any contractual rights. It applies to any member of staff employed at Newcastle College, NCG Group Services and West Lancashire College under a Contract of Employment other than the "holders of senior posts" as defined in the College's Articles of Government. This procedure does not apply to independent contractors working within the College.

The aim is to give employees as much freedom as possible in how they deliver their work. However, to safeguard everyone's interest it is necessary to have rules and a framework of policies and procedures. NCG and its Divisions aim to ensure that there will be a fair and systematic approach to the enforcement of standards of performance, conduct and attendance at work for a number of reasons:

- So that everyone is treated fairly and consistently
- So that everyone is treated equally regardless of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- So that if a disciplinary or appeal situation occurs, everyone knows what to do and what will happen.

4. **Policy Statement**

On some occasions an employee may not be reaching the standards required NCG. Where appropriate, their manager or supervisor will guide, advise, and support them with a view to solving the problem. If this does not resolve the problem, or the matter is more serious, there may be a need to use the formal disciplinary procedure. The procedure may be implemented at any stage, depending on the seriousness of the matter.

5. **Diversity & Equality Statement**

In accordance with NCG procedures an equality impact assessment has been undertaken for this policy on 17 November 2011.

6. **Linked Policies:**

Attendance Policy
 Grievance Policy
 Capability Policy
 Non Disciplinary Termination Policy
 Respect & Consideration for Others Policy

7. **Linked Procedures**

Attendance Procedure
 Grievance Procedure
 Capability Procedure
 Non Disciplinary Termination Procedure
 Respect & Consideration for Others Procedure

8. **Location and Access to the Policy**

The Policy can be accessed:

- Via the Desk Top College under College Policies
- If employees have no access to Desk Top College, contact the HR Department

9. **Person Responsible for the Policy**

Director of Human Resources

10. **Variations**

No variations to this policy have been made in relation to any Division of NCG to which it applies. Intraining has a separate arrangement which reflects its structure.

Staff Disciplinary Procedure

There are different types of misconduct which can be broadly defined as follows:

Misconduct

An employee has failed to follow the rules, expected behaviours, policies or procedures of NCG and its Divisions. Such circumstances could include (but are not limited to) poor timekeeping or attendance, negligence or incompetence, harassment of others or less serious disregard of safety rules. Absence due to maternity, paternity, adoption, parental, holiday or special leave is covered by separate procedures.

Gross Misconduct

A very serious breach of NCG or Divisional requirements or rules which will normally result in summary dismissal i.e. dismissal without any notice, pay in lieu of notice, or prior written warnings.

Listed below are examples of actions and behaviour that would be considered as gross misconduct. Such circumstances include (but are not limited to):

- theft, fraud, deliberate falsification of records, corruption relating to gifts or hospitality
- bribery or corruption
- deliberate falsification of College registers, reports, accounts, expense claims or self certification forms
- fighting or assault on another person
- threatening behaviour and/or physical violence at work
- deliberate damage to company property
- unauthorised possession of or deliberate damage to property belonging to another employee, NCG or any of its Divisions
- refusal to carry out duties or reasonable instructions or to comply with NCG rules, serious acts of insubordination
- serious incapability through substance abuse, including alcohol or being under the influence of illegal drugs
- the consumption (unless over the counter or medically prescribed), sale or distribution of drugs on NCG or associated company/organisation premises, or in the course of your employment
- gross or serious negligence/incompetence
- serious harassment or discrimination against others
- bringing the NCG or any of its Divisions into disrepute
- making public allegations against employees of NCG or any of its Divisions, subsidiary companies or related companies outside the approach provided by the Disclosure Policy and Procedure
- serious criminal offences committed against NCG or any of its Divisions

- criminal offences (whether committed during or outside the hours of employment with NCG or any of its Divisions) which may adversely affect the reputation of NCG or any of its Divisions, the employee's suitability for the type of work they are employed to perform or their acceptability to other employees or learners
- serious act of insubordination
- serious disregard of safety rules that endangers the individual or others
- unauthorised disclosure of confidential or sensitive NCG or its Divisions' information
- serious misuse of NCG computers/systems/equipment

In addition to gross misconduct summary dismissal may result if the employee has committed an offence amounting to gross or serious negligence, gross or serious incompetence or bringing NCG or any of its Divisions in to disrepute.

Equality & Diversity

Where an employee has a disability or other specific requirement and reasonable adjustments are necessary, the employee should reach prior agreement, about the nature of such adjustments with the manager responsible for the relevant part of the procedure. This should be done as soon as possible but no later than 2 working days prior to the meeting. The manager may take advice from the HR department and will notify the employee of the agreed adjustments.

Right to be Accompanied

Throughout the formal stages of this procedure the employee has the right to be accompanied by a fellow worker or a trade union representative. You should notify the manager hearing the case a minimum of 3 working days in advance of the meeting if you wish to be accompanied and who your companion will be.

The companion may, at the employee's request:

- Assist the employee to prepare for the meeting
- Put forward the employee's response to the allegation(s)
- Sum up the employee's response;
- Respond on the employee's behalf to any view expressed at the meeting
- Confer during the meeting and/or request an adjournment;

However, the companion cannot answer questions on the employee's behalf

Where the chosen companion cannot attend on the date proposed, an employee can propose an alternative time and date so long as it is reasonable and falls within 5 working days of the original date.

Investigation

No disciplinary action will be taken before a proper investigation has taken place. Normally this will be undertaken by the employee's supervisor or manager although, in cases of potential gross misconduct, the investigation may be undertaken by a manager from another Sub Division, School or Service Department. Other departments such as Human Resources or IT may also be involved to assist in the investigation. The investigation should be thorough but conducted without delay in order to progress the issue in a timely manner.

An investigatory meeting may be held solely to establish the facts of a case and it will be made clear that it is not a disciplinary meeting. Written notes will be taken by the HR Advisor/Manager present and kept for future reference of management. This stage is not part of the disciplinary procedure and, therefore, the member of staff has no legal right to be accompanied at the investigatory meeting. If a companion is requested, the request will be considered and will not be unreasonably refused so long as it does not unnecessarily delay the investigation. The employee may take written notes for their reference, or ask their companion to do so on their behalf. It is NCG policy that no audio recordings are permitted to be taken at this or any subsequent meeting other than in exceptional circumstances and by prior agreement e.g. to accommodate visual impairment (see previous section on Equality & Diversity).

Having established the facts, the investigating manager will report their findings to the appropriate manager who will determine, in liaison with a member of the Human Resources Department, whether the matter should be dealt with under the disciplinary procedure.

If the matter is of a more serious nature that could potentially lead to a Level 4 dismissal the report should be presented by the investigating manager to the Sub Divisional, School or Service Director/Head who will then review the findings, in liaison with a member of the Human Resources Department, and if appropriate chair the disciplinary meeting.

Notification

If a disciplinary meeting is required, the employee will be informed in writing by the manager hearing the case. They will be advised of the nature of the matter to be discussed and a date for the meeting. Where possible, copies of all relevant evidence will be provided to the employee before the meeting.

Preparation for the Disciplinary Meeting

Any papers to be submitted as evidence must be provided to the manager hearing the case and the employee a minimum of 3 working days in advance of the meeting. This must include the names of any witnesses and their written statements. It is recognised that, in certain circumstances, the anonymity of a witness may need to be maintained.

If the employee wishes to call witnesses, and they agree to attend, the employee must notify the manager hearing the case at least 24 hours prior to the meeting. The employee is responsible for making arrangements for the witnesses to attend.

Disciplinary Meeting

The meeting will normally be conducted by the employee's line manager or, where the line manager has been involved in any way in the investigation, an alternative manager at the appropriate authorised level. Guidelines for conducting the disciplinary meeting are attached at Appendix B.

If the matter is of a more serious nature that could potentially lead to a Level 4 dismissal the meeting will be chaired by the relevant Sub Divisional, School or Service Director/Head.

At the meeting the facts will be set out and the employee may be given copies of any additional evidence that has become available. The employee or their companion may request a short adjournment to consider this new evidence. The employee will be given the chance to present evidence, comment on the evidence and, where appropriate, raise points about any information provided by witnesses, ask questions and, if advance notification has been given, call witnesses. The submission of new evidence may come from either party and the above will apply.

If the appropriate disciplinary action is a recommendation to dismiss the case must be referred and presented to a Senior Post Holder (SPH) for consideration.

Formal Stages

Appendix A outlines the minimum levels of authority for taking disciplinary action and chairing appeals.

Disciplinary issues may progress straight to any appropriate stage of the procedure where the matter is of a serious nature and it would be inappropriate to use a lesser penalty.

At all stages of the formal disciplinary process managers must consult a member of the Human Resources Department before any warnings are issued.

Oral Warning

In the case of minor misconduct, a formal oral warning may be given. The manager will advise the employee of the reason for the warning, and of the right of appeal. The employee will receive a written note of the oral warning from the manager. This will be disregarded for disciplinary purposes after a period of 6 months.

Written Warning

If the misconduct is regarded as more serious, or where there is a failure to improve or change behaviour within the period of a formal oral warning, the manager may issue a written warning. This will specify details of the complaint, the improvement or change in behaviour required, the timescale allowed for this and the right of appeal. A copy of the warning will be kept on the employee's file, but will be disregarded for disciplinary purposes after a period of 12 months.

Where appropriate, a date may be set to informally review progress against the improvements needed.

Final Written Warning

Where there is failure to improve or change behaviour within the period of a current warning, or where the misconduct is sufficiently serious, the manager may issue a final written warning. This will give details of the complaint, warn the employee that failure to improve or modify behaviour within timescales may lead to dismissal or to some other action short of dismissal and refer to the right of appeal. A copy of the warning will be kept on the employee's file but will be disregarded for disciplinary purposes after a period of between 18 and 24 months. The employee will be informed of the specified timescale.

Dismissal or other sanction

If conduct still fails to improve, or the employee commits a further example of misconduct, they will be invited to a meeting with the Sub Divisional, School or Service Director/Head to discuss the options. These may be a disciplinary transfer within the Division or Group, demotion, or dismissal. If the outcome of this meeting is a recommendation to dismiss, the Sub Divisional, School or Service Director/Head will inform the employee in writing with an invitation to attend a representation meeting with a Senior Post Holder (SPH).

The Director of Human Resources or their representative must be informed of all cases where a recommendation to transfer, demote or dismiss is being considered.

The recommendation to dismiss will be presented to an SPH for consideration. No decision to dismiss will be taken before the SPH makes a full examination of the facts. This may include the employee making representation directly to the SPH. Alternatively an employee may choose to submit a written statement to the SPH.

The SPH will endeavour to decide on the outcome of the representation meeting within 10 working days and will explain the reason for the decision. If the outcome is a decision to dismiss, this will be confirmed in writing to the employee, specifying the reasons for dismissal. This letter will confirm the date on which the employment will terminate, the appropriate period of notice

(if applicable) and the right to appeal against the outcome. The SPH may decide not to uphold the recommendation to dismiss but may impose a lesser warning, or action short of dismissal.

Suspension

In certain circumstances an employee may be suspended, normally with pay, to allow further investigation into an allegation. Suspension does not in itself constitute disciplinary action.

The Director of Human Resources or their representative must be informed in advance of an employee being suspended, pending investigation into a disciplinary matter.

The Sub Divisional, School or Service Director/Head or in their absence another Sub Divisional, School or Service Director/Head has the authority to suspend an employee. The suspension will be confirmed in a meeting with the employee and may be in the presence of an appropriate representative, subject to availability. The employee may be required to return at a suitable time for a full investigation meeting. The Sub Divisional, School or Service Director/Head will be responsible for confirming the suspension in writing to the employee, outlining the grounds on which this decision has been taken.

During the period of suspension the employee will not be permitted to come onto NCG premises unless invited to do so in order to attend meetings concerning the allegations. The employee will be asked not to contact other employees or other parties involved in the investigation, and not to discuss the matter with them. This excludes the employee's chosen representative, providing they are not themselves directly involved in the investigation. During the period of suspension the employee will be given the contact details of one of the HR team should they have any questions or concerns. If the College deems it appropriate, access to computer systems may be withdrawn during the period of suspension.

The investigation meeting will take place at the earliest opportunity and normally within 10 working days from the date of suspension.

Appeal against Disciplinary Action other than dismissal

If an employee considers that the decision taken in a disciplinary hearing is unreasonable they may lodge an appeal. The appeal should be made in writing to the Director of Human Resources, and be received within 10 working days of the date of the letter confirming the warning.

The letter must give full detail of the grounds on which the appeal is being made.

The employee will be notified in writing, at least 5 working days in advance, of the time, date, and venue of the appeal hearing.

The appeal will normally be heard within 10 working days of receipt of the appeal, by an authorised manager not directly involved in the original disciplinary decision. If working conditions make this impractical, it will take place as soon as possible. Any delays will be explained in writing.

Records and access to all relevant documentation of the original disciplinary meeting will be made available to the person hearing the appeal. Guidelines for conducting the appeal meeting are attached at Appendix C.

After careful consideration of the grounds for appeal, a decision will be made.

The decision could be to:

- uphold the original disciplinary decision
- overturn the original disciplinary decision
- issue a lesser penalty

The manager hearing the appeal will confirm, in writing, the outcome to the employee

Appeal against Dismissal

If the employee considers that the decision taken to terminate employment is unjustified, they may lodge an appeal. The appeal should be made in writing to the Clerk of the Corporation and be received within 10 working days of the date of the letter confirming dismissal.

The letter must give full detail of the grounds on which the appeal is being made.

The appeal will be heard by the Chief Executive of NCG or, in exceptional circumstances, designated SPH. Guidelines for conducting the appeal meeting are attached at Appendix C.

A member of the Human Resources Department will also be present. The SPH who took the decision to dismiss may also be present.

The decision, and the reasons for it, will be confirmed in writing normally within 10 working days of the appeal. If the decision to dismiss is upheld, this will be made clear and the effective date of termination will remain the date of the original dismissal.

The decision from the appeal will be final and binding.

APPENDIX A

NOTE: The Chief Executive of NCG has overall responsibility for the dismissal of staff other than senior post-holders (SPH) and the Clerk to the Corporation. The Corporation has delegated authority to the Chief Executive of NCG to make rules setting out disciplinary and dismissal procedures for staff. The Chief Executive of NCG has delegated authority to dismiss a member of staff to designated Senior Post Holders. Any appeal against the dismissal will be heard by the Chief Executive of NCG or, in the absence of the Chief Executive, a designated senior post holder other than the individual who made the decision to dismiss.

Levels of authority are described as minimum levels. The actual level may depend on the seniority of the employee in question.

A member of the HR Department may be present at each stage in an advisory capacity to the authorised Manager.

(a) Minimum Levels of Authority for Taking Disciplinary Action

Stage of Procedure	Level of Manager
Level 1 - Oral Warning	Line Manager who is a Member of Wider Management Team
Level 2 - Written Warning	Line Manager who is a Member of Wider Management Team
Level 3 - Final Written Warning	Member of Wider Management Team
Recommendation to Dismiss or other sanction.	Sub Divisional, School or Service Director/Head
Level 4 - Dismissal	Senior Post Holder

(b) Minimum Levels of Authority for Disciplinary Appeals

Stage of Procedure	Level of Manager
Level 1 – Oral Warning	Member of Wider Management Team
Level 2 – Written Warning	Member of Wider Management Team
Level 3 – Final Written Warning	Sub Divisional, School or Service Director/Head
Level 4 - Dismissal	Chief Executive of NCG or in exceptional circumstances designated Senior Post Holders

(c) Minimum Levels of Authority for Suspension

Stage of Procedure	Level of Manager
Suspension	Sub Divisional, School or Service Director/Head

APPENDIX B

Disciplinary Meeting Guidelines

Introduction

The Manager conducting the meeting will introduce all those present and outline the procedure for the meeting including the use of adjournments. They will ask whether any new evidence has been made available that could not be circulated prior to the meeting and will make a judgement as to whether to allow such evidence to be considered. It will be the responsibility of each side to take their own notes of the meeting.

Investigation Findings

1. The Investigating Manager will present the facts from their investigation, which may include statements by witnesses. If it has been agreed in advance that witnesses may attend in person they will only be present in order to give their evidence.
2. The employee (or their companion) may ask questions for clarification of the Investigating Manager or witnesses.
3. The Manager hearing the case may ask questions.
4. The Investigating Manager may ask further questions of witnesses.

Employee Response

1. The employee (or their companion) will have the opportunity to respond to the allegations and explain any special circumstances or mitigating circumstances which may exist. In responding the employee (or their companion) may, if appropriate, include statements by witnesses. If it has been agreed in advance that witnesses may attend in person they will only be present in order to give their evidence.
2. The Investigating Manager may ask questions for clarification of the employee or witnesses.
3. The Manager hearing the case may ask questions of the employee or witnesses.
4. The employee may ask further questions of witnesses.

Summing Up

1. The Investigating Manager will sum up the findings of the investigation. No new evidence may be introduced at this point.
2. The employee (or their companion) will sum up their response. No new evidence may be introduced at this point.

Adjournment

1. Both parties will withdraw to enable the Manager hearing the case to consider the evidence presented and decide whether disciplinary action is warranted and, if so, the appropriate level of sanction.
2. The Manager hearing the case may instigate further enquiries for clarification before making their decision.

Communicating the Decision

1. If, having heard evidence from both parties and statements from witnesses, the Manager hearing the case considers an offence has been committed, then they will take into account the following before deciding upon an appropriate disciplinary sanction:
 - Any mitigating factors, e.g. health, domestic, bereavement
 - Current disciplinary record of the employee
 - Seniority of the post
 - Nature of the misconduct
 - Any sanctions imposed in the past for similar offences
2. Except in the case of a recommendation to dismiss, the decision will be communicated orally immediately after the meeting if possible. If this is not possible, the Manager hearing the case will advise those present of the timescale for reaching a decision and agree how this will be communicated. In all cases written confirmation of the decision will be sent to the employee and this will also include information about the right of appeal. Where the decision is a 'recommendation to dismiss' this will be confirmed in writing advising the employee that the case will be considered by a Senior Post Holder.

APPENDIX C

Appeal Meeting Guidelines

Introduction

The Manager hearing the appeal will introduce all those present and outline the purpose and procedure for the meeting including the use of adjournments. The Manager will ask whether any new evidence has been made available that could not be circulated prior to the meeting and will make a judgement as to whether such evidence can be considered. It will be the responsibility of each side to take their own notes of the meeting.

The Case against the Appeal

1. The College or NCG representative who chaired the meeting in which the original decision was made, (or their representative) will present the case, including:
 - The detail of the disciplinary complaint
 - If the employee was suspended and why
 - The events of the disciplinary meeting
 - Why the decision made was reached and what the penalty was
2. The College or NCG representative may include or refer to statements from witnesses that are relevant. If it has been agreed in advance that witnesses may attend in person they will only be present in order to give their evidence.
3. The employee (or their companion) may ask questions for clarification of the College or NCG representative.
4. The Manager hearing the appeal may ask questions of the College or NCG representative.

The Case for the Appeal

5. The employee (or their companion) will present the case for the employee explaining why they are appealing and produce any evidence to support their appeal, including statements from witnesses that are relevant. If it has been agreed in advance that witnesses may attend in person they will only be present in order to give their evidence.
6. The College representative may ask questions for clarification of the employee.
7. The Manager hearing the appeal may ask questions of the employee.

Summing Up

8. The College or NCG representative will sum up the case against the appeal. No new evidence may be introduced at this point.
9. The employee (or their companion) will sum up the case for the appeal. No new evidence may be introduced at this point.

Adjournment

10. Both parties will withdraw to enable the person hearing the disciplinary appeal to consider the evidence presented and decide whether the appeal should be upheld.

Communicating the Decision

11. Except in the case of an appeal against dismissal the decision will be communicated orally immediately after the appeal meeting if possible. If this is not possible, the person hearing the appeal will advise those present of the timescale for reaching a decision. The decision will be confirmed in writing, to the employee, after the meeting. The decision from the appeal will be final and binding.