

**Conditions of Service for
Teachers and Managers in
*Lancashire Adult Learning***

Section 10

**DISCIPLINARY AND CAPABILITY
PROCEDURES**

CAPABILITY PROCEDURE

1. INTRODUCTION

- 1.1 All employees have a responsibility to achieve a satisfactory standard of performance and should be given all necessary help and assistance to achieve the required standard. It is the responsibility of line managers and supervisors to ensure that employees are aware of the required standard through reference to Job Descriptions/Person Specifications and other job related documentation. Managers must take care to set standards, which are realistic and measurable in respect of quality, quantity, time and cost. Careful attention to recruitment, selection and training will help to minimise instances of poor performance.
- 1.2 Standards of performance should be monitored and discussed as a matter of course utilising normal management processes which include any routine supervision sessions and may also involve appraisal and competency assessment processes in appropriate circumstances.
- 1.3 Where satisfactory standards are not being achieved it is essential at the outset to have discussed any shortcomings with the employee, to have put in place any support mechanism considered necessary, to have issued any necessary oral or written instructions regarding work performance and to have identified the improvement necessary within an agreed timescale. Support mechanisms may include supplementary training, coaching, monitoring, additional supervision by an experienced employee etc. If unsatisfactory performance continues beyond this, the matter may then be addressed within this formal procedure.
- 1.4 Professional difficulties can, however, also arise where an employee experiences ill health or personal stress to such an extent that their work performance is impaired.

2. PURPOSE

- 2.1 This procedure has been developed to deal with all instances where the capability of an employee to perform their duties to an acceptable standard is seriously in question. The procedure is designed to ensure that employees are dealt with equitably and consistently. It is not intended to be used where an employee's poor performance at work is the result of wilful neglect of duty, failure to carry out reasonable instructions or any other act(s) of misconduct which will be considered under the Disciplinary Procedure.
- 2.2 Where an employee refuses to co-operate with any aspect of this procedure, this may be deemed to be wilful non-co-operation and may be addressed directly through the Disciplinary Procedure.
- 2.3 This procedure applies to all permanent and temporary, full and part-time Teachers and Management Spine staff in Lancashire Adult Learning.

- 2.4 No formal action under this Capability Procedure will be taken against any Trade Union representative/shop steward until the circumstances of the case have been discussed with a full time official of the Union concerned (unless the individual concerned chooses to waive this right).
- 2.5 This procedure should not in itself be used as the basis for establishing levels of standard performance. These standards should be set using normal management/supervisory processes including the use of formal productivity measures where appropriate. This Capability Procedure should only be used to address unsatisfactory performance where normal management/supervision/competency assessment processes, including the provision of training and support mechanisms, have failed to produce the necessary improvements in performance within agreed timescales (see Paragraph 1 above).
- 2.6 Line Managers and Supervisors should recognise that a sudden deterioration in the standard of work may be due to a number of factors some of which may be temporary in nature. Efforts should be made to resolve such problems by discussion and support.

3. THE PROCEDURE

3.1 Formal Interview and Action Plan

- (i) Where the normal management and supervision processes, including the provision of necessary support mechanisms and the issuing of any oral or written instructions about work performance, have failed to produce necessary improvements within an agreed timescale, the Principal shall prepare a note clarifying how the employees' performance falls short of expected standards. The note will outline the areas of concern about the employee's performance and the consequences of that poor performance. The note will also identify actions already taken and support given to help achieve an improvement in performance.
- (ii) The Principal will give the employee at least 10 days notice of the interview, explain its purpose and inform him/her of the right to be accompanied by a Trade Union representative or work colleague. The date of the interview should be mutually agreed with the employee and his/her representative if at all possible. Where this is not possible and the employees Trade Union representative or work colleague is not available on the specified date, the interview must be postponed for up to five working days if the employee can provide a reasonable alternative time within this five day period.
- (iii) The purpose of the interview is for the Principal and the employee (accompanied if so desired by his/her trade union representative or work colleague):-
- to discuss the note prepared by the Principal;
 - to allow the employee to comment;

- to allow the Principal to consider the employee's comments;
- to seek to agree an Action Plan;
- to determine a formal performance review date.

The Action Plan should contain a set of realistic targets to be achieved and standards of work to be attained by given dates. Care should be taken to ensure that such targets and standards are measurable. The Principal should also make arrangements for support, resources and/or training to be available to the employee as appropriate. **At this stage the Principal should caution the employee that failure to improve performance to the standard required within a reasonable period of time could lead to dismissal.** Where appropriate, advice should be sought from the relevant Directorate Personnel Section.

- (iv) The Principal should also outline arrangements for monitoring the employee's performance, which may include workplace observation and regular progress meetings.
- (v) The outcome of the interview and the content of the Action Plan will be confirmed in writing within three working days, unless otherwise agreed by parties concerned.
- (vi) Where the Principal and the employee fail to agree an Action Plan, then the Principal will note the failure to agree and proceed to prescribe a time scaled Action Plan, for the employee to follow, which the Principal considers to be specific, measurable, achievable and realistic.
- (vii) Where the employee believes that the actions taken by the Principal are unreasonable, the employee may submit, within three working days, a written statement setting out his/her concerns which will be considered along with all other relevant documentation by the Head of Service, Lancashire Adult Learning whose decision will be final and will be confirmed in writing within three working days of receipt of the written statement.

3.2 Formal Performance Review

- (i) At the end of the formal monitoring period described in Section 3.1, (or earlier where a satisfactory rate of improvement is not being achieved), the Principal will arrange a formal performance review interview. This interview should specifically address all the issues discussed at the original interview and any new issues that might have arisen or subsequently come to light. The Principal will give at least 10 days written notice of the performance review interview and, where appropriate, identify any further issues which will be considered. The employee has the right to be accompanied by his/her trade union representative or work colleague. The date should be mutually agreed if at all possible on the basis described in Paragraph 3.1(ii) above. A Directorate Personnel representative will also normally attend at this stage in order to advise the Principal.
- (ii) If, in the Principal's judgement, the employee's performance has improved to an acceptable standard during the monitoring period the formal Capability

Procedure will end. This will be confirmed in writing, but the employee will be informed that if at any time within a period of twelve months from written notification of this decision his/her performance again falls below an acceptable standard, then the formal procedure will be reintroduced.

- (iii) If the Principal considers that the employee has failed to, or has not continued to, meet the standards and objectives as set out in the Action Plan and no adequate mitigating circumstances have been identified one of the following options should be considered:
 - (a) The Principal may determine that a further formal review period is necessary in which case the arrangements outlined in Section 3.1 above will apply. This formal period of monitoring may be repeated as many times as the Principal deems necessary but should not normally exceed 12 months from the commencement of the formal exercise;
 - (b) (i) The Principal and the employee may, in conjunction with the employee's Trade Union representative or work colleague, consider the possibility of a mutually agreed reassignment to a different post* (or consider a mutually agreed variation** to the employee's existing contract of employment) for a trial period which will be for three months. If the trial is successful, the arrangements will be confirmed as permanent. If the trial fails, the Principal will reconvene the formal performance review interview and will consider the other options available. Alternatively the Principal may determine with the agreement of the employee that the trial period be extended by a maximum of three further months.

The above reassignment and variation options will only be considered where the postholder has been unable to demonstrate improved capability on substantial elements of their existing duties and responsibilities, despite the processes of training, review and support identified at the various stages of this Procedure. In considering the possibility of alternative employment the Principal should be mindful of the scope for reallocating duties and any potential repercussion on other employees and on the delivery of service, and should seek advice from the relevant Directorate Personnel Section. Any search for a different post to which to reassign the employee should be completed within one month. If no acceptable post is available the Principal should reconvene the formal performance review interview and consider the other options available.

**Where assignment to a different post is to be considered, the Principal would take the lead role identifying suitable alternatives, with the expectation that the employee would take a proactive role in supporting this. In limited circumstances, i.e. in areas where work is of a similar nature, suitable alternative employment may be sought outside the College/Zone.*

***Where the Principal proposes the removal of substantial elements of the postholder's existing duties and responsibilities, advice and approval should be sought through Directorate Personnel as to the appropriate grade/salary*

level for the post in light of the agreed variation. This would also be subject to trade union consultation in the same way as any other restructuring proposal.

- (ii) Where a reassignment or a variation to the employee's contract is mutually agreed, the employee shall be required to accept, in writing the mutually agreed and revised particulars/job description which will be amended to reflect the revised duties and responsibilities and, if necessary, job title. The new contract will be allocated on the terms and conditions attached to the new or revised post save for the caveat in sub-section (iii) below. There will be no other entitlement to protection of earnings or other conditions of service.
- (iii) Where a reassignment or variation to contract involves a reduction in pay, the rate of pay for the assigned post/duties will be effected three months from the date the employee's contractual variation is agreed. If the agreed reassignment or mutually agreed variation to the employee's contract involves a change in working location, then any excess travel expenses incurred will be reimbursed for a period of three months from the date the employee's contractual variation is agreed, after which there is no further entitlement. It is the Zone's responsibility to inform the employee of any implications for pension entitlement and, where appropriate to support the employee in providing certification of the transfer. The three month period referred to in this paragraph includes the period of any trial. This period may be extended by up to three further months where it is agreed that the trial period should be extended by up to three further months.
- (c) The Principal may determine that the matter should be referred to a formal Capability Panel, which will give consideration to the employee's suitability for future employment. The Panel will normally consist of three Managers from the employing Directorate but one or two managers from another Directorate may be substituted where adequate representation from within a Directorate is not available.

3.3 Capability Hearing

- (i) The Principal will be responsible for the arrangements for the Capability Hearing and should liaise with the employee and his/her representative to ensure the earliest realistic date in accordance with the arrangements described in Paragraph 3.1(ii) above. The employee will be given at least 10 working days notice in writing of the date, time and place of the hearing and the name of the officer who will chair the Hearing. The letter will contain details of the areas of competence which are to be considered and will inform the employee of his/her right to be accompanied by a trade union representative or other work colleague. The letter will advise the employee that he/she may be dismissed at the end of the Hearing. Copies of any documentation to be considered at the hearing including written reports, Action Plans, evidence of support and reviews and details of any witnesses to be called will be enclosed with the letter.
- (ii) If the employee wishes to present documentary evidence to the hearing or to call witnesses, details of these should be provided to the Principal at least two working days in advance of the hearing.

- (iii) The Chair of the Hearing will be advised by a Personnel Officer and will produce a summary note of the Hearing.
- (iv) The Hearing will be conducted in the following manner, though this may be varied should both parties agree:-
 - * the case for the Directorate will be presented by the Principal who may call witnesses/refer to documentation as appropriate;
 - * the employee and/or his/her representative and the Panel members will be able to question any witnesses called and also the Principal;
 - * the employee and/or his/her representative will then be entitled to respond calling witnesses and referring to documentation where appropriate;
 - * the Principal and the Panel members will be able to question any witnesses called and also the employee and his/her representative;
 - * the Principal will sum up;
 - * the employee and/or his/her representative will sum up;
 - * both parties will withdraw whilst the Panel considers what action should be taken.
- (v) The options available to the Panel are as follows:-
 - * to take no further action
 - * to direct that a further period of appropriate training, formal monitoring and review in accordance with the arrangements outlined in Section 3.2 should be undertaken. If this subsequently results in a further hearing, the case should be heard, if possible, by the same Panel.
 - * where the Panel forms the view that the employee is not capable of undertaking the duties of his/her post, the Panel may:-
 - (a) require the Principal to seek alternative employment which may include demotion*. The search should be comprehensive and should be completed within one month. Where a suitable alternative post is identified the Capability Panel should be reconvened and the post should be offered to the employee, normally on a three month trial basis (but with the Panel having the option of prescribing that the trial should be for a maximum of up to six months if it considers this to be appropriate). If the trial is successful, the arrangements will be confirmed as permanent. If the level of performance at the end of the trial period is below the standard required, the Capability Panel will be reconvened in order to determine what action should be taken. In these circumstances, the Panel may proceed with dismissal. Also in circumstances where the offer of a trial has been declined by the

employee, without, in the Panel's view, reasonable cause, the Panel should proceed with dismissal. Where no suitable alternative employment is found within the one month period, the Panel should be reconvened and the dismissal effected with due notice from the date of the reconvened hearing.

In considering the possibility of alternative employment the Capability Panel should be mindful of the scope for reallocating duties and responsibilities and any potential repercussion on other employees and on the delivery of service.

** Where any alternative post involves a reduction in pay, a change in work location etc. the arrangements described at Paragraph 3.2.(b)(iii) of this procedure will apply. The three month period described therein will include the period of any trial but the period may be extended by up to three further months where the trial is prescribed for a period beyond three months.*

- (b) Dismiss the employee from the service of the County Council, with due entitlement to the statutory/contractual period of notice.
- (vi) An oral decision will be given by the Panel wherever possible on the day. This will be confirmed in writing within three working days and this notification will summarise the main reasons for the decision. This notification will also set out the right of appeal against the decision.
- (vii) Where a decision is taken to dismiss the employee, the full contractual period of notice will be given and details for the employee's right of appeal will be set out. In the event of an appeal being registered, the period of notice will continue to run. If the appeal hearing is after the date of dismissal and the appeal is successful, the employee will be reinstated retrospectively to the date of dismissal.

3.4 Right of Appeal

- (i) An appeal must be made in writing to the Chief Officer within five working days of receipt of the official notification of the Capability Panel's decision.
- (ii) The appeal will be heard by the County Council's Appeals and Complaints Committee as quickly as possible and wherever practicable no later than 20 working days from the date of the receipt of notification of appeal.
- (iii) The Appeal date will be determined in accordance with the arrangements set out at Paragraph 3.1(ii) above and will provide a minimum of five working days notice of the date, time and place of the hearing. The documentation considered by the Capability Panel together with the written decision will be placed before the Appeals and Complaints Committee which will be advised by a Clerk to the meeting who will be a Solicitor employed by the Authority.
- (iv) The appeal hearing will follow the same format as that used in the Capability Panel hearing outlined in Paragraph 3.3.

- (v) The following decisions are open to the Appeals and Complaints Committee:
 - (a) Disallow the appeal and uphold the original decision of the Capability Panel.
 - (b) Allow the appeal and reinstate the employee to his/her former position.
 - (c) Reinstatement of the employee to his/her former position with a recommendation for a further period of target setting, monitoring and review.
 - (d) Consider the possibility of a suitable alternative post in accordance with the principles set out in Paragraph 3.3(v)(a) above.

DISCIPLINARY PROCEDURE

1. PURPOSE

This procedure is intended to clarify the rights and responsibilities of management, trade unions and employees. It sets out the course of action that will be followed in the event of disciplinary action being considered necessary.

2. SCOPE

This procedure applies to all permanent and temporary, full and part-time Teachers and Management Spine Staff in Lancashire Adult Learning.

3. CONTEXT

- (i) This procedure does not apply where notice is given during probationary service and dismissal arises from unsuitability for confirmation of appointment (or during any period of extension of any probationary period).
- (ii) This procedure does not apply on the termination of a fixed term or temporary contract of employment where the term of that contract expires without being renewed, or where the contract specifies an event which terminates the contract and the event has occurred.
- (iii) In many cases the right word at the right time and in the right way may be all that is needed and will often be a more satisfactory method of dealing with a breach of discipline or unsatisfactory conduct than taking action via a formal investigation and a formal hearing and this procedure should not be used in these circumstances.

4. INVESTIGATION

No disciplinary action will be taken against an employee until the matter has been investigated. Details will be gathered promptly and will include any comments the employee concerned wishes to make at this stage. During the course of the investigation the right to be accompanied applies to the employee concerned whenever he/she is interviewed or is involved in any meetings arising therefrom. The employee concerned must be kept informed of progress with the investigation in all instances. Where the employee is suspended from duty the arrangements set out in Paragraph 6 must be followed.

5. SHOP STEWARDS/TRADES UNION REPRESENTATIVES

No formal disciplinary proceedings will be taken against a shop steward/trade union representative until the circumstances of the case have been discussed with a full time official of the Union concerned (unless the individual concerned chooses to waive that right).

6. SUSPENSION

Where a **Principal** (or a designated senior officer) considers that suspension may be appropriate in circumstances of alleged or suspected misconduct (including where considered appropriate to facilitate investigation), s/he may suspend an employee with pay (i.e. pay inclusive of all those payments which would have been made in respect of normal working arrangements).

Suspension with pay is not a disciplinary measure and must not be viewed as a judgement upon alleged or suspected misconduct. However, in any interview for the purpose of suspension, the right to be accompanied applies, except in circumstances where the nature of the offence is such that it is impracticable to have prior consultation and notification. An employee shall be informed of the reason for suspension at the time and will be given confirmation of the suspension in writing.

The need to continue with the suspension of an employee shall be reviewed at not less than monthly intervals by the Principal (or a designated senior officer) and, if suspension is continued, the employee will be informed of this and the reasons for its continuation

The suspended employee must be kept informed of progress at not less than monthly intervals and must be notified of a 'Contact Officer' who will agree with the suspended employee the arrangements for the regular monthly contact. The employee or employee representative may, at any time, write to the Principal with relevant information for consideration at the time of the review of suspension.

7. DISCIPLINARY MISCONDUCT

7.1 CONSIDERATION OF DISCIPLINARY ACTION

On completion of the investigation, the Investigating Officer's report will be considered by the Principal (or a designated senior officer) who will determine whether, on the basis of the evidence collected, arrangements should be made for a formal Disciplinary Hearing to proceed. Where the alleged misconduct is gross misconduct, or further misconduct following a 'live' final written warning, or where the circumstances of the case otherwise justify it, a Disciplinary Hearing will be arranged before a Directorate Disciplinary Panel. In other cases

of misconduct the Hearing will be arranged before the Principal (or a designated senior officer).

7.2 LEVELS OF DISCIPLINARY MISCONDUCT

It is not the purpose of this procedure to classify all levels of misconduct. Each incident which may give rise to the consideration of disciplinary action will be judged independently according to the particular circumstances of the case including the previous conduct of the particular employee. However, a general guide is attached as Annex 1. Attention is specifically drawn to the fact that any act of gross misconduct as listed could result in dismissal with or without notice.

8. **THE PROCEDURE**

8.1 NOTICE OF THE HEARING/RIGHTS TO REPRESENTATION

The employee will normally be given 10 working days written notice of the Hearing, the purpose of it (with the nature of his/her alleged misconduct being outlined), any relevant documentation and be invited to attend together with his or her Trade Union representative or legal representative or work colleague and/or personal friend. A mutually convenient date should be agreed with the employee and his/her representative if possible. Where this is not possible and the employee's chosen Trade Union representative or work colleague is not available on the specified dates, the employee has a statutory right for the hearing to be postponed for up to five working days if he/she can provide a reasonable alternative time within this five day period. This statutory right relates only to the availability of the chosen Trade Union representative or work colleague. It does not apply in relation to any legal representative or personal friend.

Where the employee fails to attend or to be represented at a meeting of a Directorate Panel or at the Appeals and Complaints Committee, the matter may be considered in his/her absence if the Panel or Committee consider this to be appropriate in all the circumstances.

8.2 THE HEARING

The procedure to be followed at any Disciplinary Hearing (or any Disciplinary Appeals Hearing) is as set out in Annex 2.

The Investigating Officer will not be the Designated Officer who considers the case (nor a member of the panel considering the case) (other than where the concern is over an issue which the employee readily accepts) but he/she may be asked to present the supporting facts and material.

8.3 DISCIPLINARY ACTION

8.3.1 Officer Level Hearings

Following Investigation

In cases other than those involving gross misconduct (or for those involving serious further misconduct within the defined period following a previous warning or warnings for misconduct) or in other circumstances which warrant immediate referral to a Disciplinary Panel, the matter may be considered at an officer level hearing and the following disciplinary action may be taken (note – disciplinary proceedings may be commenced at any of the stages set out below depending upon the nature of the employee's alleged misconduct, the sanctions are not necessarily sequential):-

Oral Warning

If conduct does not meet acceptable standards, the employee may be given a formal ORAL WARNING. S/he will be advised of the reason for the warning, that it is the first stage of the disciplinary procedure, of the areas in which improvement is required and of his/her right of appeal. This will be confirmed in writing and a copy of the letter will be placed on the employee's file, but it will be removed (subject to the exception described in Notes (a) and (b) below) after a period of six months.

Written Warning

If the misconduct is more serious than would warrant an oral warning or if further misconduct occurs, whether of a similar nature to the previous misconduct or otherwise, a WRITTEN WARNING may be given to the employee. This will give details of the concerns, and the improvement required and the timescale within which it is to be achieved/reviewed. It will warn that further action will be considered if there is no satisfactory improvement and will advise of the right of appeal. A copy of this written warning will be kept on the employee's file but it will be removed after twelve months (subject to the exceptions described in Notes (a) and (b) below).

Final Written Warning

If there is still a failure to improve conduct or if conduct is still unsatisfactory, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal (in effect both first and final warning) a FINAL WRITTEN WARNING will normally be given to the employee. This will give details of the concerns, will warn that dismissal may result if there is no satisfactory improvement and will advise of the right of appeal. A copy of this final warning will be kept on the employee's file, but it will be removed after

eighteen months (subject to the exceptions described in Notes (a) and (b) below).

Where disciplinary action is being taken for reasons of sexual, racial or other forms of harassment including bullying and where following consultation with the Head of Legal Services, it is concluded that a potential may exist for a sustainable claim of victimisation and that it is necessary in order to separate and protect the two parties, a transfer may be imposed. In these circumstances, before a final decision is taken, it may be necessary to adjourn the hearing to allow options to be considered.

In addition to the above, there may be circumstances in which transfer or demotion is mutually agreed as action which would benefit both parties.

NOTES.

- a) A warning will not be disregarded if a subsequent warning is issued in relation to further misconduct whether of a similar nature or otherwise which occurs whilst a warning remains 'live' on file (it is the date of the further misconduct not the date of the hearing in respect of the later misconduct etc. which determines whether an earlier warning remains alive). The original warning will run concurrently with the most recent warning.
- b) Details of "expired" warnings in relation to disciplinary issues (which would otherwise be disregarded in relation to further misconduct) shall, where they relate to employees working with children or other vulnerable service users, be retained on a separate file.
- c) In the event of further misconduct, relevant warnings so retained shall be taken into account in any further disciplinary proceedings where the employee has, or is alleged to have, harmed or put at risk of harm a child or other vulnerable service user.
- d) After considering the facts before him/her at the conclusion of a Disciplinary Hearing the Designated Officer conducting the hearing may decide to refer the matter to a Directorate Disciplinary Panel. In this event the employee will be informed that an adverse report is being submitted.

8.3.2 Directorate/DSO Disciplinary Panel

If there is further misconduct after the issue of a Final Written Warning, or where the circumstances are such as to warrant immediate submission of a report, an adverse report on the relevant issues will be prepared for consideration by a Directorate Disciplinary Panel and the employee shall be informed that an adverse report is being submitted.

The Panel will hear the evidence and will determine any appropriate penalty which may include any of the penalties available to individual officer level hearings. In cases where the Panel are of the view that the circumstances warrant severe action, any penalty may include:-

- a) summary dismissal without notice, or
- b) dismissal with payment in lieu of notice, or
- c) dismissal with notice.

Alternatively, some other penalty, e.g. transfer and/or demotion, may be determined. However, transfer and/or demotion should only be imposed:-

- (i) as an alternative to dismissal in cases where severe action beyond a Final Written Warning is considered to be justified and, in these instances, it should always be accompanied by a Final Written Warning, or
- (ii) in cases where the disciplinary action is taken for reasons of sexual, racial or other forms of harassment including bullying and where, following consultation with the Head of Legal Services, it is concluded that a potential may exist for a sustainable claim of victimisation and that it is necessary to impose a transfer in order to separate and protect the two parties; in these cases the transfer would only be accompanied by demotion where severe action beyond a Final Written Warning is considered to be justified and it would be accompanied by a Final Written Warning.

In such circumstances, before a final decision is taken, it may be necessary to adjourn the hearing to enable options to be considered.

NOTE Details relating to any disciplinary transfer and/or demotion should be removed from file after 24 months and treated in the same manner as Final Written Warnings.

The Panel will be selected from a standing list of panel officers nominated by each Director/DSO General Manager and will comprise two panel officers from the employing Directorate selected by the Director (or a designated senior officer) and one panel officer from another Directorate selected by the Director of Resources (or a designated senior officer). No person having a direct personal involvement or close personal interest in the case under consideration shall be a member of the Panel. The quorum will be three members. The Panel will be advised on law, procedure and evidence by a Clerk to the meeting who may be a solicitor employed by the Authority where the Authority considers this to be appropriate. Where matters of sexual harassment are to be considered, at least one member of the Panel shall be of the same gender as the complainant. Where matters of racial harassment are to be considered, consideration should be given

as to whether or not there is an officer of a suitable racial group on the Panel list.

The employee or his/her representative will be informed of the membership of the Panel when it is selected and will be entitled to indicate a view that any individual member of the Panel has a direct personal involvement or close personal interest in the case. The Director (or a designated senior officer) will then take a final decision on the composition of the panel.

A Directorate Panel will, wherever practicable, meet within 20 working days of the date the employee is informed by the Director (or a designated senior officer) that an adverse report is being submitted to the Disciplinary Panel. The employee will be given 15 working days notice of the date of the hearing and will be supplied with a copy of the adverse report as soon as it is available. The adverse report must be supplied at a minimum of 15 working days prior to the hearing date. (Where the employee has a nominated representative, the representative will be provided with a copy of the adverse report, at the same time as the employee).

NOTE This does not preclude an earlier or later hearing date where justified by the particular circumstances.

The employee will be given written confirmation of the Disciplinary Panel's decision (including reasons) by the Clerk to the Disciplinary Panel and the decision will include reference to the employee's right of appeal.

9. EQUAL OPPORTUNITY POLICY IN EMPLOYMENT

Attention is drawn to the County Council's Equal Opportunity Policy in Employment and procedures designed to deal with matters of sexual, racial and other forms of harassment including bullying. Disciplinary action may be taken, if appropriate, following the investigation of complaints submitted under the provisions of these procedures.

10. APPEALS AGAINST DISCIPLINARY ACTION

An employee will have the right of appeal against any disciplinary penalty imposed. The original decision may only be upheld at appeal or a lesser penalty imposed. The penalty may not be increased. There is no further right of appeal against a decision of an appeal body (this does not remove any statutory rights to appeal to an Employment Tribunal).

Where an employee wishes to appeal against any disciplinary action taken at Officer level, the appeal is to the Head of Service, Lancashire Adult Learning unless the Head of Service has personally taken the disciplinary action in which case the appeal is to the Director (or other designated officer). Appeals against decisions of a Directorate

Disciplinary Panel are to the County Council's Appeals and Complaints Committee. The procedure to be followed in the event of any appeal is as set out at Annex 2.

Where an employee lodges an appeal against the decision of a Directorate Disciplinary Panel short of dismissal then that decision will not take effect pending the outcome of the appeal hearing.

Where a Directorate Disciplinary Panel decides to dismiss an employee without notice then the dismissal will take immediate effect. However, if an appeal is then lodged, and is successful, the employee will be reinstated, with full pay, retrospectively to the date of dismissal with no break in continuity of employment.

Where a Directorate Disciplinary Panel decides that an employee should be dismissed with notice then the date of dismissal will be the date of expiry of the notice period. If an appeal is lodged the notice period will continue to run. If the appeal hearing is after the date of dismissal and is successful, the employee will be reinstated, with full pay, retrospectively to the date of dismissal.

The date of an appeal hearing will be fixed in consultation with the employee or his/her representative in accordance with the principles outlined at Paragraph 8.1 above.

10.1 APPEALS TO OFFICERS

All notices of appeal at officer level must be in writing and must be submitted to the Head of Service Lancashire Adult Learning within five working days of the receipt by the employee of notification in writing of the disciplinary action. The appeal will be heard by the County Manager or other designated officer wherever practicable within twenty working days of the receipt of the notice of appeal. The appellant shall be given, in writing, not less than five working days notice of the date, time and place of the hearing.

The appellant will have the right to attend and be accompanied by a trade union representative or legal representative or work colleague and/or a personal friend. (See paragraph 8.1 in relation to postponement rights and attendance matters).

10.2 APPEAL TO THE APPEALS AND COMPLAINTS COMMITTEE

All notices of Appeal to the County Council's Appeals and Complaints Committee must be in writing and must be submitted to the Director of Resources within five working days of the receipt by the employee of the notification in writing of the disciplinary action imposed by the Disciplinary Panel.

The appeal shall be by way of a re-hearing of the case. New evidence coming to light may be introduced by either party at this stage but details must be provided to the other party in advance in order to allow for any response to be considered.

The Appeals and Complaints Committee shall hear the appeal as quickly as possible but, wherever practicable, no later than twenty working days after receipt of the notice of Appeal and the appellant will be given five working days notice of the date, time and place of the hearing. (See paragraph 8.1 in relation to postponement rights and attendance matters).

11. **CONFIDENTIALITY**

All those involved in any aspect of this Disciplinary Procedure shall treat all information in connection with any particular case as confidential and shall not divulge any such information to any third party without the consent of the Director. This requirement shall be treated as a condition of employment of all employees and any breach of this requirement may be regarded as misconduct and dealt with under the provisions of this Procedure. In the event of any uncertainty as to the confidentiality requirement in this clause, advice must be sought from the Head of Legal Services prior to the disclosure of any information.

12. **POSITION OF PRINCIPALS**

The procedures relating to warnings which may be issued to Principals are the same as described in paragraphs 7-10, with the exceptions that consideration of the Investigation report and the issuing of any warning would be the responsibility of the Head of Service Lancashire Adult Learning. Any appeal against such a warning shall be heard by the Director (or a designated senior officer).

LEVELS OF DISCIPLINARY MISCONDUCT

Examples of minor misconduct

Minor time wasting
Occasional lateness
Minor instances of insubordination.

Examples of serious misconduct

Significant unauthorised absences from work
Persistent or serious instances of insubordination
Persistent bad timekeeping
Continued repetition of previous offences

Examples of gross misconduct

Gross misconduct, which will result in the immediate referral of an adverse report to a Disciplinary Panel and may result in dismissal, is regarded as misconduct of such a nature that it fundamentally breaches the contractual relationship between the employee and the employer. **Examples of gross misconduct all of which may result in dismissal include:-**

- Stealing from the employer, members of staff, clients or the public, other offences of dishonesty;
- Sexual misconduct at work;
- Racial harassment of other employees, clients or members;
- Fighting, physical assault;
- Serious violation of the County Council's policies relating to conduct at work, e.g. anti-bullying policy, computer security policy, etc;
- Falsification of a qualification which is a stated requirement of employment or which results in financial gain;
- Deliberate damage to or misuse of the employers property;
- Drunkenness or being under the influence of drugs at work, (note - the County Council's Policy Statement in respect of Drinking/Drug Abuse needs to be considered in these cases);
- Falsification of records or claims for personal gain etc;
- Willful disregard of health and safety regulations;
- Serious negligence which causes unacceptable loss damage or injury;
- Serious violation of catering hygiene regulations;
- Intimidation of whistleblowers or witnesses to Hearings;
- Other similar acts of misconduct may come within the general definition of gross misconduct.

It should also be noted that disciplinary action may be considered in relation to acts of misconduct which take place outside of work hours, for example, in instances of criminal prosecution and/or conviction/caution for such actions. The main considerations should be the relevance of the offence to the employee's duties and/or the effect on the contractual relationship with the employer and on clients/colleagues. Disciplinary measures will not automatically be appropriate in these instances.

DISCIPLINARY HEARINGS/APPEALS PROCEDURE

1. The following procedure is appropriate for any officer level hearing, Disciplinary Panel Hearing, Officer Appeal hearing and Appeals and Complaints Committee hearing. Any Disciplinary Panel or Appeals and Complaints Committee hearing will be advised on law, procedure and evidence by a Clerk to the meeting who may be a solicitor employed by the Authority in the event of an appeal to the Appeals and Complaints Committee, who will be a Solicitor.
2. **PROCEDURE AT THE HEARING**
 - 2.1 The employing directorate's case will (normally) be presented by a senior officer of the directorate (the nominated officer) who will be entitled to call witnesses to support the case.
 - 2.2 The employee and/or his/her representative and the person/body hearing the case will be entitled to question the persons referred to at 2.1 above.
 - 2.3 The employee and/or his/her representative will be entitled to present a statement of case and will be entitled to call witnesses to support the case.
 - 2.4 The nominated officer and the designated person/body hearing the case will be entitled to question the persons referred to at 2.3 above.
 - 2.5 The nominated officer will have the opportunity to sum up. (No new evidence may be introduced at this stage).
 - 2.6 The employee and/or his/her representative shall then also have the opportunity to sum up. (No new evidence may be introduced at this stage).
 - 2.7 At the conclusion, all parties will withdraw except the person/body conducting the hearing and, if present, the Clerk to the meeting (advising on law, procedure and evidence only) who will deliberate in private. Should any parties need to be recalled to clarify any points of uncertainty, all parties should return notwithstanding that the point giving cause for concern relates to one party only.
 - 2.8 The parties will be informed of the decision and the employee will be given written confirmation of the decision which will also indicate any right of appeal.

- NOTES:**
- (a) Where the concern is something minor and the employee readily accepts the allegation there may not be a separate nominated officer/presenter at an officer level hearing and the above procedure would be followed as appropriate.
 - (b) Witnesses called by either side who are in County Council employment shall be allowed time off from work with pay to attend the hearing. Attendance as a witness will not lead to less favourable treatment or victimisation of an employee.