



## Scarborough College

### DISCIPLINARY POLICY AND PROCEDURE

***This is a whole College policy, including EYFS and the boarding community.***

Scarborough College has high but fair expectations of its staff in relation to their conduct and professionalism. These are clearly explained and re-iterated from the recruitment stage and are published in the Staff Handbook for all staff. In addition to these, the Code of Professional Conduct for Teachers applies to all teaching staff. This policy and procedure provides the framework for dealing with misconduct for all staff, including the Headmaster.

Scarborough College will follow a fair procedure in the event that disciplinary action is required but this procedure does not have contractual effect. There may be occasions when the College considers it appropriate to change or omit parts of this process.

This procedure does not apply to incompetence, incapability or other poor performance unless this is attributable to misconduct, for example, the impact of the misuse of drugs or alcohol.

Scarborough College may, at its sole discretion, appoint someone to take notes or make a recording of any interview or hearing under this procedure. No other recordings shall be made without the express consent and prior approval of all those present at the interview or hearing. Copies of notes, when appropriate will be provided to all parties under the disclosure process.

Scarborough College is a reasonable and responsible employer and expects its staff to behave similarly. The College expects all staff to facilitate in the investigation and resolution of disciplinary matters. If an employee is the subject of disciplinary action they are expected to behave reasonably and make every effort to facilitate the process. This is in their best interest and will lead to an expedited conclusion.

In addition, College staff may be required to provide information as a witness, which may entail answering questions and providing a signed statement at the investigation stage and may involve attending a subsequent hearing. All staff are expected to engage in any process with which they are involved and be aware of their duty of confidentiality. Once given, all witness statements are expected to be signed and will not be redacted nor given anonymity, unless there are exceptional circumstances and at the discretion of the Headmaster.

All steps under this disciplinary procedure should be taken without unreasonable delay. However, if a disciplinary issue arises close to, or during an academic holiday, the Headmaster or the Chair of Governors will decide whether to:

- 1 Postpone investigating the disciplinary, but give a clear timeframe for dealing with it when term resumes;
- 2 Pursue the disciplinary investigation during the holidays, being mindful of the College staff's contractual obligation to attend work if required and in the interest of fairness and quick resolution; and,
- 3 Hold the Disciplinary Hearing in the absence of the employee if they are unavailable to attend.

## DEALING WITH ISSUES INFORMALLY

Wherever possible any issues regarding conduct will be raised informally with the employee first.

The College will attempt to correct a situation and prevent it from getting worse without using the formal disciplinary procedure. A counselling approach may be used, where appropriate, and the matter discussed. Where improvement is required, the employee will be given clear management guidelines as to:-

- What is expected in terms of improving the shortcomings in conduct.
- The timescales for improvement.
- When this will be reviewed, if applicable; and,
- Where appropriate, warned that failure to improve or repetition may result in formal disciplinary action.

The employee will be advised that a copy of any such management guidelines/warning will be placed on the employee's personnel file.

If during informal discussions it becomes clear that the matter is more serious, the discussion will be adjourned and the matter will be pursued under the formal disciplinary procedure.

## SUSPENSION FROM WORK

If the matter/issue to be investigated is thought at any stage of the investigation to involve gross misconduct or it is in the interests of the College, a pupil, another employee or the employee in question, the Headmaster will consider whether to take precautionary action and **suspend the employee from work immediately**. This will only happen after all possible alternatives have been considered, e.g. temporary redeployment, and will only be used if deemed absolutely necessary and where there are no suitable alternatives. In such cases the employee will be advised of the allegations, have an opportunity to give an initial explanation/comment on the allegations, will be told the reasons for the suspension, the start date of the suspension, the length of an initial period of suspension, details of when the suspension will be first reviewed and a named contact to provide the employee with support. Any period of suspension will be on full pay and benefits. This will all be confirmed by letter.

During the period of suspension, the suspended employee will be asked not to enter College premises, nor should they contact any member of staff, pupil, parent or supplier whilst they are on suspension (apart from the person named in their suspension letter). If appropriate they may also have access to clearly identified College systems, e.g. IT system (including email), financial systems etc., suspended.

The period of suspension will be on full pay and benefits. Any suspension will be reviewed regularly to ensure it lasts for no longer than is necessary. On every occasion that the suspension is reviewed the employee will be advised of the outcome in writing, with a new deadline for review if the suspension is continued. Please be aware that suspension will be extended where the employee's chosen representative is unable to attend any meeting connected to the disciplinary investigation and where applicable any disciplinary meetings.

The College recognises that suspension is a serious and worrying action and so, the College offers the following assurances that:-

- Any period of suspension will not automatically be followed by a disciplinary meeting; this depends purely on the outcome of the internal investigation.
- Any period of suspension, in order to allow an unimpeded investigation, will not be treated as a sanction against the worker prior to any disciplinary meeting and all workers involved in a disciplinary inquiry will be fully heard.
- There will be no pre-judgement of the issues raised. Suspension itself does not prejudice the result of the investigation.
- They will have every opportunity to be heard; and
- They have access to the on-site College Counsellor in total confidence.

Should the employee subsequently be dismissed by reasons of gross misconduct, the effective date of the dismissal will be the date upon which they were actually dismissed, and not the date they were suspended.

## **STAGE 1 – THE INVESTIGATION STAGE**

### **Investigation**

Any disciplinary issue will be thoroughly investigated by the Head of Department, Business Manager, the Headmaster or designated representative (“the Investigating Officer”). There will be clear separation of roles to maintain impartiality and fairness throughout the process. If after investigating the issue, it appears that there are no reasonable grounds for concern, the employee will be informed of this in writing, no further action will be taken and if relevant, the employee will be allowed to return to work.

As part of the investigation, if appropriate, the employee may be asked to attend a preliminary interview. The employee will be advised of the nature of the complaint and then given the opportunity to state their case and submit any relevant documents. Other people deemed relevant may also be interviewed as part of the investigation process. If this results in formal disciplinary action being taken, any relevant notes or witness statements will be disclosed to the employee.

Scarborough College recognises that this is a worrying and difficult time and will take all reasonable steps to keep the employee informed regarding the process, to expedite the investigation and to provide the employee with a named contact during any period of suspension or investigation. The employee may also wish to seek the advice of their trade union representative if applicable. If the employee is unsure or in doubt at any stage, regarding the disciplinary process or timing they should contact the Headmaster or a member of SMT immediately.

On completion of the investigation the employee will either be advised that there is no further action to be taken or that it is deemed necessary to take formal action in respect of the issue/matter. If so, the employee will be invited to attend a Disciplinary Hearing and will be given ten working days advance notice of the date, time and location of the Hearing. The employee will be informed in writing of the purpose of the Hearing and the allegations against them as well as their right to be accompanied by a work colleague or trade union representative. This letter will also advise the employee if dismissal is a possible outcome of the Hearing. If the employee has been suspended during the investigation stage, this letter will also advise them if they are to remain suspended until the Hearing.

As it is acknowledged that this is a worrying time and appreciating that the investigation stage can take time, it may be possible to arrange a hearing sooner, if the employee wishes, provided that all parties involved feel that they will have adequate preparation time for the hearing, including meaningful document exchange and can arrange to be accompanied if this is their choice.

In good time, the employee will be provided with a copy of any documents which may be referred to at the Disciplinary Hearing this may include notes of meetings and interviews, statements, reports, letters, emails, pertinent investigation outcomes, relevant policies, training records, examples of work, pupils' books/feedback, etc. The employee will be invited to submit any relevant documents they wish to present, no later than three working days before the Hearing. The employee will be given a reasonable opportunity to consider their response to the information, to enable meaningful document exchange. In certain circumstances, it may be necessary to preserve the anonymity of a witness or complainant and in large investigations, particularly those involving pupils, not all of the information gathered will be presented.

The employee may be accompanied to the Disciplinary Hearing by either a work colleague or a trade union representative. Furthermore, they should confirm to the College no later than 48 hours prior to the Hearing if and by whom they will be accompanied, to enable any necessary arrangements to be made.

### **Formal Action outside the Procedure**

Scarborough College acknowledges that during or as a result of a disciplinary investigation, the employee may admit that misconduct has occurred. If the allegation does not involve gross misconduct and there are no other live warnings held on the employee's Personnel File both parties may agree to issue and accept a First Written Warning without a Disciplinary Hearing. In such cases, a meeting will be held to go through a letter stating the allegations, the findings of the investigation, advice regarding the level of sanction, length of time on record and to explain the right of appeal. The letter will then be given to the employee for signature and return, no later than ten working days after the meeting. If the letter is not signed and returned an invitation to a Disciplinary Hearing will be sent.

## **STAGE 2 – THE DISCIPLINARY HEARING**

### **The Disciplinary Panel**

The College may appoint a Disciplinary panel to conduct the Hearing. The panel may comprise the Headmaster, the Deputy Head, the Business Manager or designated representative. In appropriate circumstances the Headmaster or another person may hear the matter on his/her own. The Investigating Officer shall not be a member of the Disciplinary Panel. A Notetaker will also be present. Where disciplinary action is taken against the Headmaster, the Panel will consist of three Governors (including the Chair of Governors) and may also include an independent member.

### **Witnesses**

In addition to the written information/documentation that may be presented at the Disciplinary Hearing the Investigating Officer may decide to present witnesses. This may not be every witness or person interviewed as part of the investigation. The employee will be advised which witnesses will attend and will have received their 'evidence' as part of the document exchange. The employee may also ask **relevant** witnesses to attend the Disciplinary Hearing provided it is reasonable to do so and they give the College sufficient advance notice to arrange their attendance (no less than 48 hours before the Hearing). As part of the exchange of information before the hearing, the employee should also provide the College with any additional statements, interviews, testimonies of any witnesses they wish to call or refer to at the hearing.

In the interests of a fair hearing, the employee will be entitled to question any witnesses in attendance.

Scarborough College recognises that it has a duty of care to anyone acting as a witness and will ensure that they are kept apprised of the process and supported. As previously stated, in exceptional circumstances and with the prior approval of the Headmaster, a witness may be granted anonymity during the process.

## **The Disciplinary Hearing**

The Hearing will be conducted by the Disciplinary Panel. The Investigating Officer will be asked to report on his/her investigation. This may include presenting witnesses as well as Witness Statements. The employee, or the person accompanying them, and the Disciplinary Panel may question the Investigating Officer and any witnesses.

The employee is entitled and expected to give their explanation of the matter and to answer the allegations. The employee may be questioned by the Investigating Officer as well as the Disciplinary Panel, as will any witnesses the employee may call. The person accompanying the employee to the Hearing does not have the right and, will not be permitted to respond directly to questions that are addressed to the employee but may give their advice on how the employee should respond.

The employee, the person accompanying them and the Investigating Officer will be given the opportunity to address the Panel.

The Disciplinary Panel may adjourn the proceedings at any time if this appears necessary or desirable. The employee may request a short adjournment if they need to consult the person accompanying them. If the Panel adjourns in order to enable further information to be obtained it will specify the nature of that information and specify a period of time for the adjournment.

On completion of the Hearing, the panel will retire to consider the decision. Neither the employee, the person accompanying them, nor the Investigating Officer will be allowed to take part in nor be present during the Disciplinary Panel's deliberations. However, the Notetaker will remain present to provide information from the notes.

Having made its decision, the Panel will return and whenever reasonably practicable the employee will be verbally informed of its decision on the day. Regardless of this, the decision will be communicated to the employee in writing within ten working days. If the complaint is upheld the employee will be informed of the action to be taken, given an explanation of any sanction imposed and of their right to appeal against the decision.

If the decision has been taken to dismiss, the employee will be informed within ten working days or as soon as is reasonably practicable of the reasons for the dismissal, the date on which the contract between the employee and the College will terminate, if relevant the appropriate period of notice, or pay in lieu of notice as well as information regarding their right to appeal.

In cases where gross misconduct is proven and the decision is to dismiss, the Disciplinary Panel **will** impose dismissal without notice. Examples of what the College considers to be gross misconduct are set out in Appendix 1 of this Policy and Procedure. However, this is not an exhaustive list and any serious failure to meet the College's generally accepted and published guidance re conduct, standards and performance and if applicable the Code of Professional Conduct for Teachers may be regarded as gross misconduct.

## **Disciplinary Action**

Depending on the nature of any misconduct found to have been committed and taking account of any mitigation, the Disciplinary Panel may impose any of the following sanctions:-

- **First Written Warning** which will stay on the employee's record for a minimum period of 6 months to a maximum of 18 months.
- **Final Written Warning** which will stay on the employee's record for a minimum period of 12 months to a maximum of 24 months.
- **Dismissal with or without notice.**

## Appeal

The employee has the right to appeal against any sanction imposed by a Disciplinary Panel. Information regarding the appeals process can be found within any warning letters issued and in the Scarborough College Appeals Policy and Procedure.

### Appeal Against Termination of Employment

An employee has a right of Appeal against the decision of the Disciplinary Panel to terminate their employment on disciplinary grounds.

Where an appeal is made against a dismissal decision, that decision will have immediate effect in that, if the dismissal is by notice, the notice period begins on the date given in the dismissal decision. In cases of Summary Dismissal, i.e. without notice, the employee will not be paid after the dismissal decision, unless the employee is re-instated on appeal, when their continuity of employment will be unaffected.

In all cases the Appeal Panel will arrange a review hearing or a re-hearing to take place as soon as is reasonably practicable.

The employee will be informed in writing of the arrangements for the appeal hearing in advance.

Further information regarding the appeals process can be found within the Appeals Policy and Procedure.

### Written Records

Scarborough College will keep a written record of all disciplinary issues. These records may include:-

- Details of the complaint.
- The employee's defence.
- Findings made and action taken.
- The reason for the action taken.
- Whether or not an appeal was lodged.
- The outcome of the appeal.
- Any grievances raised throughout the disciplinary procedure.
- Subsequent developments.
- Notes/minutes of any formal meetings.

This is not an exhaustive list. All records will be treated in confidence and stored in accordance with Data Protection legislation and the College's Data Protection Policies. Employees will be supplied with copies of minutes of meetings, on request.

*Policy Prepared by:*

**Guy Emmett**  
Headmaster

Person Responsible for Updates	Date Last Reviewed	Next Review Due
Guy Emmett	July 2019	July 2021

### EXAMPLES OF GROSS MISCONDUCT

In cases of proven gross misconduct the usual penalty is dismissal without notice. Consequently, it is applied in cases where conduct seriously fails to meet generally accepted standards, as detailed in the Staff Handbook and the Code of Professional Conduct for Teachers. Below are some examples of what Scarborough College considers to be gross misconduct. This list is not meant to be comprehensive nor exhaustive:-

- a) Indecent, violent or offensive behavior whether committed at or outside work.
- b) Wilful neglect or refusal of duty.
- c) Disregarding health and safety rules/regulations and endangering yourself or others.
- d) Conduct (whether committed at or outside work), which is likely to damage the College's reputation.
- e) Misuse of confidential information.
- f) Theft, deliberate damage, gross negligence or misuse that leads to College property being lost, damaged or destroyed. This includes inappropriate use of the College's computer systems including the internet and e-mails.
- g) Being on duty whilst unfit for work due to the influence of alcohol and/or drugs.
- h) Bullying.
- i) Discrimination (including harassment or victimisation) on the grounds of sex, pregnancy and maternity, marital or civil partnership status, race, disability, age, sexual orientation or religious belief.
- j) Offences related to drug abuse, sexual misconduct, abuse of children.
- k) Theft, fraud or dishonesty.
- l) Failure to comply with the College's IT Usage Policy
- m) Failure to comply with the College's Child Protection/Safeguarding policy and/or procedures.
- n) Inappropriate conduct with a pupil of the College, or a pupil of another school.
- o) Giving false information as to qualifications or entitlement to work (including immigration status).