

<u>Policy Title</u>	NCG Disciplinary Policy	
<u>Policy Category</u>	Compliant	
<u>Owner</u>	Director of People and Development	
<u>Group Executive Lead</u>	Chief Executive Officer	
<u>Date Written</u>	April 2021	
<u>Considered By</u>	N/A	
<u>Approved By</u>	Executive Board	
<u>Date Approved</u>	May 2021	
<u>Equality Impact Assessment</u>	The implementation of this policy is not considered to have a negative impact on protected characteristics and an assessment was carried out on 9 April 2019. This policy is available in alternative formats, if required.	
<u>Freedom of Information</u>	This document will be publically available through the Groups Publication Scheme.	
<u>Review Date</u>	April 2023	
<u>Policy Summary</u>	The purpose of this policy is to provide a framework within which potential misconduct is managed fairly, consistently and promptly.	
<u>Applicability of Policy</u>	<u>Consultation Undertaken</u>	<u>Applicable To</u>
Carlisle College	Yes	Yes
Professional Services	Yes	Yes
Kidderminster College	Yes	Yes
Lewisham College	Yes	Yes
Newcastle College	Yes	Yes
Newcastle Sixth Form College	Yes	Yes
Southwark College	Yes	Yes
West Lancashire College	Yes	Yes

<u>Changes to Earlier Versions</u>	
<u>Previous Approval Date</u>	<u>Summarise Changes Made Here</u>
25 th April 2019	Misconduct (4) includes reference to code of conduct policy
	Invite to formal meeting (9) includes reference to meetings being held virtually
	Right of appeal (14) detail included re the purpose of the appeal

<u>Linked Documents</u>	
<u>Document Title</u>	<u>Relevance</u>
NCG Code of Conduct	Linked Policy
NCG Grievance Policy	Linked Policy
NCG Performance Management Policy	Linked Policy
NCG Probation Policy	Linked Policy
NCG Sickness Absence Policy	Linked Policy
NCG Safeguarding Policy	Linked Policy

1. Scope and Purpose of Policy

This policy does not form part of colleague's contract of employment and does not confer any contractual rights. It applies to all NCG colleagues, who are employed either on a permanent or temporary basis and who have successfully passed their probation period.

2. Introduction

The purpose of this policy is to provide a framework within which potential misconduct is managed fairly, consistently and promptly. Some issues may be managed informally in the first instance, where appropriate. The policy also applies to colleagues travelling for work purposes, attending conferences, social gatherings or any work related function. The policy also applies to the use of social media.

3. Referral to an alternative policy / procedure

Where misconduct concerns arise within a probation period, this will be managed in line with the NCG Probation Policy.

Where there are concerns with the standard of performance, this will be managed in line with the NCG Performance Management Policy.

Where there are concerns with the standard of attendance, this will be managed in line with the NCG Sickness Absence Policy.

4. Misconduct

The NCG Code of Conduct sets out the standards that are expected of all colleagues and expresses the behaviours and ways of working which reinforce NCG values that are crucial to our success.

Misconduct is a breach of NCG rules, values, regulations, policies or general standards of expected behaviour.

Gross misconduct is a serious breach of NCG rules, values, regulations, policies or general standards of expected behaviour, which could have a detrimental impact on the reputation of the NCG, or place colleagues, students, learners and customers at serious risk. Acts of gross misconduct may lead to summary dismissal i.e. dismissal without any notice, pay in lieu of notice or prior formal warnings.

Appendix A contains examples of actions that may constitute misconduct and gross misconduct.

5. Informal management of misconduct

Where actions or behaviours are viewed as potential misconduct, they may be managed informally in the first instance, through informal meetings. There is no automatic right to be accompanied to these meetings.

Informal outcomes should be documented but may vary depending on the nature of the issues and may result in the colleague receiving additional training, coaching or advice.

6. Investigation

Where any potential disciplinary concern has occurred and the matter cannot be dealt with through an informal meeting, it will be investigated by a manager in order to establish the facts. All investigations should be carried out as soon as possible after the allegation has been raised.

As part of the investigation, meetings may take place with all relevant individuals. As these meetings are informal there is no prior notice required and no right to be accompanied.

NCG reserves the right to determine whether a meeting is the best means of investigation. Investigations may involve referrals to external agencies where we are legally or contractually obliged to do so, such as awarding bodies, DBS, EWC, the Local Authority Designated Officer or the Police.

After the investigation has taken place, the manager leading on the investigation will compile an investigation report outlining the initial concern raised, steps taken to investigate the matter and an overview of the findings. The report will be passed to an independent manager to be considered under the NCG Disciplinary Policy.

7. Suspension

During the investigation, it may be appropriate to suspend a colleague on full pay and benefits, to conduct the investigation impartially and fairly. Suspension from work is not a disciplinary sanction and does not mean that any decision has been made about the allegations.

An alternative to suspension may be considered where appropriate e.g. temporary change to work location, adjusted duties or specific project work/duties for a period of time which may last for the length of the investigation. Where there is no appropriate alternative, there may be instances where suspension is necessary while investigations are conducted.

If the colleague is absent from work due to illness during suspension, occupational sick pay may not be paid. In addition, if the colleague fails to attend any meetings that form part of the process whilst suspended, without good reason, pay may be stopped.

8. Formal disciplinary procedure

If there are reasonable grounds to believe that an act of misconduct or gross misconduct has occurred, a formal disciplinary meeting will be held. The manager who has carried out the investigation will not hold the disciplinary meeting and an independent manager will be appointed. In cases of gross misconduct or where dismissal is a possible outcome, minimum levels of authority will apply (appendix B)

9. Invite to a formal disciplinary meeting

Reasonable notice of a disciplinary meeting will be given in order to prepare. Normally, this will be 7 calendar days, unless otherwise agreed.

Timeframes may be adjusted at the discretion of the disciplinary manager to allow sufficient time for the provision of alternative formats of documents to be made available.

The invite to the meeting will confirm that the formal procedure is being implemented, the date, time and venue of the meeting and confirm any entitlements (i.e. the right to be accompanied) and the possible outcome as a result of this procedure. Meetings may be held face to face or virtually through relevant business software, such as, Microsoft Teams. Colleagues will be given notice of how the meeting will be conducted. If the meeting is to be held virtually, the importance of privacy will be stated and confirmed before the meeting commences.

Colleagues will also be provided with any relevant documentation.

10. Right to be accompanied

At formal meetings, colleagues have the right to be accompanied by a trade union representative or an NCG colleague.

The chosen companion will be allowed to address the meeting, respond on the colleagues behalf to any view expressed and sum up the case on their behalf. However, the meeting is essentially between the colleague and the manager, and is the colleague's opportunity to provide further details, so any questions put directly to the colleague should be responded to by them and not their companion.

Colleagues should make every effort to attend. If the colleague or their companion cannot attend a meeting at the date or time arranged, they should let the manager know as soon as possible and within reason agree an alternative date and time. If a colleague fails to attend without explanation, or fails to attend a rescheduled meeting, the meeting may take place in their absence.

If a colleague has disclosed an underlying health condition, suffer from a chronic illness or disability, the manager will consider requests for a non-participating health care provider to be present during formal meetings.

11. Note taking & recording

Other colleagues attending the meeting will include a note taker and may involve a member of the HR team.

Recording equipment cannot be used at any time during meetings. Non-verbatim notes will be taken during the meeting and colleagues will be provided with a copy of the notes from their meeting. The colleague or their representative are welcome to take their own notes.

12. During the formal meeting

At the meeting the manager will outline the concerns, give the colleague the opportunity to respond and to provide any background information or mitigation they

would like taken into consideration. The manager will summarise what has been discussed and adjourn the meeting before making a decision regarding the outcome.

If the colleague wants to call witnesses, and those witnesses agree to attend, the colleague must notify the manager at least 48 hours prior to the disciplinary meeting. The colleague is responsible for making arrangements for witnesses to attend.

13. Outcomes following the formal disciplinary meeting

The disciplinary manager will take due consideration of occupational health advice or arrangements before determining any disciplinary outcome. Therefore, it is imperative that colleagues disclose any underlying health conditions, chronic illnesses or disabilities early on in any process.

Following the formal disciplinary meeting the outcome may be:

- No formal sanction is issued.
- A formal sanction is issued which may include:
 - A first written warning to be kept on file for 12 months.
 - A final written warning to be kept on file for 12 months.
 - An alternative outcome short of dismissal (i.e. redeployment and/or formal sanction).
 - Dismissal with or without notice, depending on whether the issue is categorised as misconduct or gross misconduct.

For the above outcomes, additional support may also be applicable i.e. training, coaching, temporary or permanent adjustments to duties and/or working hours.

The outcome will be confirmed in writing outlining any next steps, where appropriate. Where a formal sanction has been issued or the outcome is dismissal, the colleague will be notified of their legal right to appeal.

14. Right of appeal

Colleagues have the right to appeal against the outcome of a formal sanction. They should appeal in writing to the person identified in the outcome letter, stating the full grounds of their appeal, within one calendar week of receipt of the outcome letter. If an appeal is not made within 7 calendar days, it will be assumed that the colleague accepts the decision.

Any appeal should be exercised under the relevant policy rather than raising a grievance under the NCG Grievance Policy.

A manager will be appointed and a further meeting will be held to discuss the appeal. The colleague will have the right to bring a companion in line with other formal meetings. As the appeal meeting is formal, the same principles will apply to that of other formal meetings with regards to the meeting invitation, rights, attendees, responsibilities and expectations.

The purpose of the appeal is to consider any of the following raised by the colleague:

- Any new evidence provided.
- Specific appeal reasons.
- Procedural matters.
- Whether the sanction issued was appropriate.

Following the formal appeal meeting, the outcome may be:

- The original decision is upheld.
- The original decision is overturned.
- The colleague's position is reinstated where redeployment or dismissal was deemed too severe.

The outcome will be confirmed in writing outlining any next steps, where appropriate. The appeal manager's decision is final and there is no further right of appeal.

15. Senior post holders and senior executive

Senior Post Holders (SPH) are defined in the Article of Government and have been agreed within NCG as the members of Group Executive and the Principals of each of the Colleges. Whilst all of these roles are classified as SPH reporting lines do vary with the following having been agreed:

Reporting to the Chair of Corporation:

- Chief Executive Officer.
- Executive Director and Secretary to the Board.

Reporting to the Chief Executive Officer:

- All other Senior Post Holders

Any allegations of misconduct will be investigated by an appropriate person. This will normally be as per the table below however with agreement from the CEO and Chair of Corporation this can be delegated to another appropriate manager.

Post Holder	Investigation	Appeal
Chair of Corporation	Vice Chair of Corporation	Chair of Appraisal and Remuneration
CEO	Chair of Corporation	Vice Chair of Corporation
Executive Director & Secretary to the Board	Chair of Corporation	Vice Chair of Corporation
All other Senior Post Holders	CEO	Chair of Corporation

Where there is a recommendation to progress to a formal disciplinary, the colleague will be invited to a formal disciplinary meeting as per the process outlined in this policy



and an appropriate outcome issued. They will receive a response in writing in line with the above process. Should they wish to appeal the decision the appeal should be in writing to the members of the corporations, via the clerk of the corporation.

16. Variations to this policy / procedure

This procedure is intended as an overview of how misconduct issues are managed, however, it may need to be adapted to suit the needs of each situation. On occasions, it may not be appropriate to follow each of the stages in turn or in the timescales suggested. Regardless of the stage at which this procedure is started, support will be offered and implemented to assist colleagues throughout the process.

APPENDIX A – Actions that may warrant misconduct and gross misconduct

Please note this list is not exhaustive.

Misconduct

- Failure to follow or comply with NCG policies, processes and procedures, values and behaviours and the NCG Code of Conduct.
- 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.
- Behaviour not in line with the NCG Values & Behaviours.
- Damage, loss or misuse of NCG property or systems.
- Abusive or unacceptable behaviour such as behaviour not in line with the NCG Values or expected standards of behaviour.
- Behaviour which impacts negatively on client relationships, other colleagues or the reputation of NCG including the use of social media.
- Refusal to follow a reasonable request from a manager.
- Breach of confidentiality.
- Failure to disclose a conflict of interest.
- Failure to disclose an existing close personal relationship with a customer or a line report.

Gross Misconduct

- Serious breach of NCG policies, processes and procedures, values and behaviours and the NCG Code of Conduct.
- Theft, fraud, deliberate falsification of records, corruption relating to gifts or hospitality.
- Bribery or corruption.
- Deliberate falsification of registers, reports, accounts, expense claims or self-certification forms.
- Fighting or assault on another person.
- Threatening behaviour and/or physical violence at work.
- Unauthorised possession of or deliberate damage to property belonging to another colleague or NCG.
- 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 the colleague's employment.
- Gross or serious negligence/incompetence.
- Serious harassment or discrimination against others.
- Making public allegations against colleagues, NCG or any of its subsidiary companies or related companies outside the approach provided by the Disclosure Policy and Procedure.
- Serious criminal offences committed against NCG.
- Criminal offences (whether committed during or outside the hours of employment with NCG) which may adversely affect the reputation of NCG, the colleagues suitability for the type of work they are employed to perform or their acceptability to other colleagues or learners.
- Serious disregard of safety rules that endangers the individual or others.
- Unauthorised disclosure of confidential or sensitive NCG information.
- Serious misuse of NCG computers/systems/equipment.

APPENDIX B: Minimum levels of authority for NCG Disciplinary Policy Stages

The Chief Executive of NCG has overall responsibility for all dismissals across the group, other than senior post-holders and senior executives. They have delegated authority as follows:

- The authority to approve suspension has been delegated to line managers following discussion with their Head of Service/School / Departmental Director and with their HR representative.
- The authority to lead on an investigation has been delegated to a line manager (or in cases of alleged malpractice this could be a subject expert).
- The authority to dismiss has been delegated to the disciplinary manager (any NCG manager can be appointed as disciplinary manager).
- The authority to hear an appeal against dismissal has been delegated to Head of Service/School / Departmental Director, who may devolve responsibility to a senior manager (the lowest level to hear an appeal is the disciplinary manager's manager).