



DISCIPLINARY PROCEDURE

1. INTRODUCTION

- 1.1 This Disciplinary Procedure for all employees of the Institute of Technology sector was developed and agreed following discussions in a partnership manner between Management representatives from Institutes of Technology Ireland (representing all Institutes other than Dublin Institute of Technology), Dublin Institute of Technology and the Trade Unions SIPTU, IMPACT, UNITE and TUI representing employees in the Institute sector. The procedure was prepared taking account of the Labour Relations Commission's Code of Practice on Disciplinary Procedures and was formally agreed between the parties at national level on 21 November 2008. This Disciplinary Procedure supersedes all existing local and national procedures.

2. SCOPE

- 2.1 This procedure shall apply to all employees of the Institute except as outlined in this section.
- 2.2 Employees on probation will be dealt with in accordance with an Institute's policy on probation. The procedures set out below shall not apply to dismissals due to some substantial reason which is not attributable to fault on part of the employee.
- 2.3 All members of Institute management, including supervisory personnel, will be made aware of and be made fully conversant with this Procedure and adhere to its terms.
- 2.4 Isolated issues or omissions of a minor nature will where possible be dealt with informally.

3. PROCEDURE FOR DEALING WITH PERFORMANCE AND CONDUCT ISSUES

- 3.1 The Institute is committed to encouraging appropriate behaviour and work performance from all staff. The purpose of the disciplinary procedure is to ensure that the Institute acts reasonably and fairly towards employees in investigating and dealing with alleged instances of unacceptable conduct or performance. Although disciplinary action will normally follow the progressive stages, the procedure may be implemented by the Institute at *any* stage of the process if the alleged misconduct warrants such action.

4. PRINCIPLES OF THE DISCIPLINARY PROCEDURE

- 4.1 Each employee is personally accountable for their own behaviour and work performance. Early intervention at the appropriate level to address perceived negative behaviour and/or underperformance is desirable for all parties so as to minimise the risk of the Institute having to escalate sanctions as provided for in these procedures.

- 4.2 Every effort will be made by the employee's immediate manager¹ in appropriate cases to address alleged or perceived shortcomings in work standards, conduct or attendance through informal means without invoking the formal disciplinary procedure.
- 4.3 The procedure is intended to comply with the general principles of natural justice, which are included in the following guidelines.
- 4.4 There will be a presumption of innocence. No decision regarding disciplinary action can be made until a formal disciplinary meeting has been convened and the employee has been afforded ~~an~~ the opportunity to respond to the allegations raised.
- 4.5 The employee will be advised in writing in advance of a disciplinary meeting of the precise nature of the matters concerned and will be given copies of any relevant documentation². In the case of a complaint, this detail will include the source and text of the complaint as received. A complaint should be in writing.
- 4.6 Anonymous complaints, of themselves, may not be used as the only evidence in a disciplinary procedure. Where an anonymous complaint(s) has been substantiated by further investigation, that complaint(s) may be introduced as supporting evidence in the disciplinary process.
- 4.7 The employee will be advised of his/her right to be accompanied by a work colleague or trade union representative(s)³ at any meeting under the formal disciplinary procedures.
- 4.8 The employee concerned will be given the opportunity, including reasonable time, to consider and to respond fully to any complaints, allegations or issues of concern. This includes the right and opportunity to avail of appropriate representation at all times during the procedure.
- 4.9 Employees will be entitled to examine all evidence available, to call any witnesses or persons providing such evidence for questioning, or to call such other persons as they deem appropriate in their support. The employee may challenge any evidence that may be relied upon when reaching a decision.
- 4.10 In the event of there being relevant information or records in the possession of the Institute then such information will be provided to the employee concerned in advance of any decision being taken in regard to the issue and in such time (having regard to the circumstances of the case) as to allow the employee to use it in his/her defence.
- 4.11 The right of an employee concerned to have access to and to view her/his personnel file (to include all records in relation to the employee, in hardcopy or electronic format, held by the Institute) will be fully respected.
- 4.12 If there are any mitigating circumstances that the employee wishes to be taken into account, the employee will be afforded an opportunity to make these known at the disciplinary meeting(s).

¹ The appropriate manager will be defined by the reporting and supervisory structures of the individual Institute appropriate to the different categories of staff

² "any relevant documentation" means documentation which would have been made available following a request under the Freedom of Information Act

³ For the purposes of this procedure "representative" includes a colleague of the employee's choice or a recognised trade union which holds the negotiating rights for the grade of the employee but not any other person/body unconnected with the enterprise.

- 4.13 The employee concerned has the right to a fair and impartial examination of the issues being investigated, taking into account the allegations or complaints themselves, the response of the employee concerned to them, any representations made by or on behalf of the employee concerned and any other relevant or appropriate evidence, factors or circumstance.
- 4.14 In order to facilitate the disciplinary process, the manager and/or investigator where applicable, will not prejudge the outcome of the meeting and will take into account any mitigating circumstances before deciding on appropriate action.
- 4.15 Where circumstances warrant, an employee may be placed on administrative leave with full pay pending an investigation, or pending the outcome of an investigation, a disciplinary hearing/meeting or the outcome of a disciplinary hearing/meeting.
- 4.16 It will be considered a disciplinary offence for any person to intimidate or exert inappropriate pressure on any person who may be required to attend as a witness.
- 4.17 Where ill health may have affected the employee's performance or conduct, this matter should be referred to the Human Resources Manager where a confidential independent medical assessment may be organised and appropriate supports, e.g. Employee Assistance Programme, may be arranged.
- 4.18 Academic staff members shall have the freedom, within the law, in their teaching, research and any other activity, either in or outside the Institute, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions and shall not be disadvantaged, or subject to less favourable treatment by the Institute, for the exercise of that freedom.
- 4.19 All matters relating to the disciplinary procedure are strictly confidential to the parties and their representatives involved and breach of this confidentiality may in itself result in disciplinary action.
- 4.20 Where a decision is taken to impose a disciplinary sanction, the sanction imposed will be in proportion to the nature of the conduct/behaviour/performance that has resulted in the sanction being imposed.

5. INFORMAL DISCIPLINARY PROCEDURE

- 5.1 If an employees' standard of job performance, conduct, or attendance falls below an acceptable level they will in appropriate cases be made aware informally, by their manager, that this is unacceptable and informed of the required improvements. If the employee concerned continues to fail to achieve the required work/conduct standards, the disciplinary procedure outlined below may be invoked.
- 5.2 Issues of professional competence will be dealt with by the provision of appropriate support. Disciplinary action in cases of underperformance will be taken only when the employee has been advised of his/her shortcomings and given the opportunity to improve his or her performance. Reasonable and appropriate support, training and development measures will normally be provided. Where these have failed to result in specified improvement in performance of the employee or have no reasonable prospect of resulting in an improvement in performance, disciplinary action will normally follow.

6. FORMAL DISCIPLINARY PROCEDURE

- 6.1 Where an employee's job performance, conduct or attendance does not meet the required standards despite informal intervention as per section 5 above, the matter will be dealt with under the formal disciplinary procedure.
- 6.2 Disciplinary warnings should specify the standards required and/or the extent to which job performance or conduct falls short of the standards required. Where possible they should also detail the required remedies such as the changes in behaviour necessary (and/or training or counselling if appropriate) to rectify the situation and detail the likely consequences if the required improvement is not forthcoming.
- 6.3 Generally, the steps in the procedure will be progressive; however, as pointed out in Section 3.1, depending on the gravity of the situation, a verbal warning, a written warning or a final written warning may be issued at the first stage of the procedure. In the case of gross misconduct, dismissal without notice or dismissal with payment in lieu of notice may be decided upon.
- 6.4 Warnings will cease to have effect following the specified period of satisfactory conduct/performance and will be removed from the record. Where the record(s) of verbal and written warnings are removed from files Institutes will need to make arrangements for the preservation of these records for the purposes of the Freedom of Information Acts.
- 6.5 There may however be occasions where an employee's conduct/performance is satisfactory throughout the period the warning is in force only to lapse very soon thereafter. Where a pattern of such conduct/performance emerges and there is evidence of an undermining of the disciplinary process, the employee's previous conduct and pattern of behaviour may be considered as a whole in a future disciplinary procedure.

7. STAGE 1 OF THE DISCIPLINARY PROCEDURE

Formal Verbal Warning:

- 7.1 The first step in any formal process is to let the employee know in writing the issue that has given rise to the invoking of the disciplinary procedure. The employee will be advised of the precise nature of the complaint, the reasons why this is not acceptable, details of previous meetings, the standards not achieved, the improvements required and the timescale for improvement. The letter will also invite the employee to a formal disciplinary meeting at which the issue will be discussed and it will also inform them of their right to be accompanied at the meeting. An employee who fails to respond to earlier informal discipline or whose job performance/conduct/attendance does not meet the required standards will normally be invited to a formal disciplinary meeting by their manager.
- 7.2 Adequate notice of meetings under this stage will be given in writing to the employee.
- 7.3 At each disciplinary meeting all facts and details, and any investigation report will be presented to the employee by their Manager or relevant Management resposdee.
- 7.4 The employee will be afforded an opportunity and adequate time to respond and state his/her case fully and to challenge any evidence that is being relied upon for a decision.

- 7.5 Following the meeting(s), the Manager or relevant Management responsee must decide whether disciplinary action is justified or not. Where it is decided that no action is justified, the employee will be so informed as soon as possible and, thereafter, in writing.
- 7.6 Where it is decided that disciplinary action at this stage is justified the Manager or relevant Management responsee will inform the employee that he/she is giving a formal verbal warning. Disciplinary action may be taken notwithstanding an employee's failure to attend the disciplinary meeting, in the absence of good reason.
- 7.7 The employee will be advised that the warning is a formal sanction and constitutes the first stage of the formal disciplinary procedure and failure to improve will result in further action.
- 7.8 The employee will be advised of his/her right to appeal against the disciplinary action being taken and the appeal process.
- 7.9 A record of the verbal warning will be retained on the employees personnel file and a copy will be issued to the employee. Subject to satisfactory service, the verbal warning will cease to have effect following the expiry of six months.
- 7.10 If the timescale set out for improvement is not met, the matter may be progressed to the next stage of the process without the formal warning having expired.
- 7.11 Stage 1 is normally carried out by the immediate Manager of the staff member, as defined in paragraph 4.2 above. On occasion it may be necessary for the disciplinary process to be carried out by another member of management.

8. STAGE 2 OF THE DISCIPLINARY PROCEDURE

Written Warning.

- 8.1 If it is alleged that the employee fails to make the necessary improvements or if the poor performance/conduct/attendance continues or is more serious, he or she will be invited in writing to a formal disciplinary meeting by a Senior Line Manager or President/Director⁴'s nominee.
- 8.2 A letter will be sent to invite the employee to a formal disciplinary meeting at which the matters of concern will be discussed. The employee will be advised of the precise nature of the complaint, details of previous meetings and the standards not achieved or maintained. The employee will be informed of their right to be accompanied at the meeting.
- 8.2 Adequate notice of meetings under this stage will be given in writing to the employee.
- 8.3 At each disciplinary meeting all facts and details, and any investigation report will be presented to the employee by the Senior Line Manager or President/Director's nominee.
- 8.4 The employee will be afforded an opportunity and adequate time to respond and state his/her case fully and to challenge any evidence that is being relied upon for a decision.

⁴ References to "President/Director" throughout this document refer to the Director of the Institute as defined in Section 9 of the Regional Technical Colleges Act, 1992, as amended or the President of the Institute as defined in Section 9 of the Dublin Institute of Technology Act, 1992, as amended, as appropriate

- 8.5 Following the meeting(s), the Senior Line Manager or President/Director's nominee must decide whether disciplinary action is justified or not. Where it is decided that no action is justified, the employee will be so informed as soon as possible and, thereafter, in writing.
- 8.6 Where it is decided that disciplinary action at this stage is justified the Senior Line Manager or President/Director's nominee will inform the employee that he/she is giving a formal written warning. Disciplinary action may be taken notwithstanding an employee's failure to attend the disciplinary meeting in the absence of good reason.
- 8.7 The formal written warning will give details of the complaint, details of previous meetings, the standards not achieved, the improvements required, the timescale for improvement and details of the appeals procedure and the appeals process.
- 8.8 The employee will also be advised that the warning is a formal sanction and constitutes the second stage of the formal disciplinary procedure and failure to improve will result in further action.
- 8.9 The employee will also be advised of his/her right to appeal against the disciplinary action being taken and the appeal process.
- 8.10 A record of the written warning will be retained on the employees personnel file and a copy will be issued to the employee. Subject to satisfactory service, the written warning will cease to have effect following the expiry of 9 months.
- 8.11 If the timescale set out for improvement is not met, the matter may be progressed to the next stage of the process without the formal warning having expired.
- 8.12 Stage 2 is normally carried out at Senior Line Manager level (or President/Director's nominee). A representative from Human Resources will also be involved in an advisory capacity.

9. STAGE 3 OF THE DISCIPLINARY PROCEDURE

Final Written Warning

- 9.1 If it is alleged that the employee fails to make the necessary improvements or if the poor performance/conduct/attendance continues or is more serious, he or she will be invited in writing to a formal disciplinary meeting by a Senior Manager or President/Director's nominee to review the increasingly serious nature of the situation.
- 9.2 A letter will be sent to invite the employee to a formal disciplinary meeting at which the matters of concern will be discussed. The employee will be advised of the precise nature of the complaint, details of previous meetings and the standards not achieved or maintained. The employee will be informed of their right to be accompanied at the meeting.
- 9.3 Adequate notice of meetings under this stage will be given in writing to the employee.
- 9.4 At each disciplinary meeting all facts and details, and any investigation report will be presented to the employee by the Senior Manager or President/Director's nominee.
- 9.5 The employee will be afforded an opportunity and adequate time to respond and state his/her case fully and to challenge any evidence that is being relied upon for a decision.

- 9.6 Following the meeting(s), the Senior Manager or President/Director's nominee must decide whether disciplinary action is justified or not. Where it is decided that no action is justified, the employee will be so informed as soon as possible and, thereafter, in writing.
- 9.7 Where it is decided that disciplinary action at this stage is justified the Senior Manager or President/Director's nominee will inform the employee that he/she is giving a final written warning. Disciplinary action may be taken notwithstanding an employee's failure to attend the disciplinary meeting in the absence of good reason.
- 9.8 The final written warning will give details of the complaint, details of previous meetings, the standards not achieved, the improvements required, the timescale for improvement and details of the appeal procedure and the appeal process. The employee will be advised that failure to improve may lead to Stage 4 of the procedure.
- 9.9 The employee will be advised of his/her right to appeal against the disciplinary action being taken and the appeals process.
- 9.10 A record of the final written warning will be retained on the employees personnel file and a copy will be issued to the staff member. Subject to satisfactory service, the final written warning will cease to have effect following the expiry of 12 months.
- 9.11 If the timescale set out for improvement is not met, the matter may be progressed to the next stage of the process without the formal warning having expired.
- 9.12 Stage 3 is carried out by a senior member of management or President/Director's nominee. A representative from Human Resources will also be involved in an advisory capacity.

10. STAGE 4 OF THE DISCIPLINARY PROCEDURE

Disciplinary Sanction up to and including dismissal

- 10.1 Where it is alleged that
- the employee has failed to meet the necessary improvements or
 - the poor performance/conduct/attendance has continued following a final written warning, or
 - the performance/conduct/attendance issue is more serious,
- the Stage 4 disciplinary procedure which provides for disciplinary sanctions, up to and including dismissal, may be invoked.
- 10.2 A letter will be sent to invite the employee to a formal disciplinary meeting at which the matters of concern will be discussed with a Senior Manager or President/Director's nominee. The employee will be advised of the precise nature of the complaint, details of previous meetings and the standards not achieved or maintained. The employee will be informed of their right to be accompanied at the meeting.
- 10.3 Adequate notice of meetings under this stage will be given in writing to the employee.
- 10.4 At each disciplinary meeting all facts and details, and any investigation report will be presented to the employee by the Senior Manager or President/Director's nominee.
- 10.5 The employee will be afforded an opportunity and adequate time to respond and state his/her case fully and to challenge any evidence that is being relied upon for a decision.

- 10.6 Following the meeting(s), the Senior Manager or President/Director's nominee must decide whether a disciplinary sanction is justified or not. Where it is decided that no action is justified, the employee will be so informed as soon as possible and thereafter in writing.
- 10.7 Where it is decided that disciplinary sanction short of dismissal is justified, the Senior Manager or President/Director's nominee will inform the employee of the nature of the disciplinary sanction. Paragraphs 10.10, 10.11 and 10.12 set out details of these sanctions. Where it is decided that dismissal should be recommended, the procedures set out in paragraph 10.13 and 10.14 below will apply.
- 10.8 Disciplinary action may be taken notwithstanding an employee's failure to attend the disciplinary meeting(s) in the absence of good reason.
- 10.9 Stage 4 is carried out by a senior member of management or President/Director nominee not previously involved in the matter. A representative from Human Resources will also be involved in an advisory capacity. The Senior Manager or President/Director nominee concerned will act reasonably in all cases when deciding on appropriate disciplinary action.
- 10.10 In cases of less serious offences, or where the Institute is of the view that there is a realistic prospect of improvement in performance/conduct/attendance, the following disciplinary sanctions may be applied singly or in combination by the relevant Senior Manager or President/Director nominee, in consultation with the Human Resources Department. These sanctions include, in no particular order:
- Removal from certain duties or transfer
 - Suspension⁵ with pay
 - Deferral/Denial of Access to Progression
 - Deferral/Denial of Access to Promotion
 - Deferral of Increment(s)
 - Removal of Increment(s)
 - Demotion and Consequent Reduction in Pay
 - Suspension without Pay⁶
- 10.11 Depending on the nature of the offence, these sanctions can be limited in time or unlimited in time and/or linked to improvements in performance/conduct/attendance. A record of the disciplinary sanction(s) applied at this stage will be retained on the employee's personnel file and a copy will be issued to the employee.
- 10.12 A period of suspension without pay or demotion may arise at the end of an investigation that concludes that the employee has been guilty of a breach of his/her employment contract, amounting to misconduct but not gross misconduct. Similar action may be taken in cases of gross misconduct where there are mitigating circumstances. Any deduction of pay will be in accordance with the Payment of Wages Act, 1991
- 10.13 Failure to meet the required standard of performance, conduct or attendance following the issuing of a final written warning or suspension/demotion may result in a recommendation being made to dismiss the employee. In respect of such recommendations, dismissal with notice may be imposed as a disciplinary sanction in cases where the employee has been found to have committed a serious offence, or where there has not been an improvement in

⁵ Suspension, by its nature, means a sanction limited in time

⁶ Where relevant, Section 14 of the Institutes of Technology Act may apply

performance/conduct/attendance despite written warnings,. In cases of gross misconduct, dismissal without notice or dismissal with payment in lieu of notice may apply.

- 10.14 A decision to dismiss an employee is taken by the President/Director or his/her nominee as appropriate.

In the case of officers appointed to the Institute prior to 1 February 2007, the following procedure shall apply in relation to dismissal.

The President/Director may, having first considered any representations that may be made by the officer concerned and provided that the statutory grounds exist, decide to suspend the officer under section 7 of the Vocational Education (Amendment) Act, 1944 as extended to Institutes of Technology by the Institutes of Technology Acts 1992 to 2006 and thereafter report the suspension and the reasons therefor to the Minister for Education and Science. It will then be for the Minister for Education and Science to deal with the matter under the 1944 Act.

Alternatively, in accordance with relevant legislation, the President/Director may himself or herself having satisfied himself/herself that dismissal/removal from office is appropriate request the consent of the Minister for Education and Science so as to remove the person concerned from office. It will be a matter for the Minister for Education and Science to withhold or grant his/her consent.

In the case of all non officer employees regardless of when appointed, and officer grade employees appointed to the Institute after 1 February, 2007, the following procedure shall apply in relation to dismissal.

The President/Director, together with the Human Resources Manager, will meet with the staff member and their representative, and will inform them of the decision to dismiss, and the basis for this decision. The staff member will be informed of the appropriate notice arrangements, and his/her right to appeal.

- 10.15 The employee will be advised of the procedure for appealing and the appeals process.

11. MISCONDUCT AND GROSS MISCONDUCT

- 11.1 Offences connected with the disciplinary procedure as set out in paragraphs 4.16 or 4.19 can be considered as misconduct or gross misconduct depending on the circumstances.
- 11.2 Findings of bullying will be considered as either misconduct or gross misconduct depending on the seriousness of the offence.

Misconduct

- 11.3 The following definitions are designed to assist in the operation of these disciplinary procedures and in identifying the types of behaviour that are considered unacceptable. The definitions are examples only, and each case must be considered on its merits.
- 11.4 Misconduct occurs when an employee fails to adhere to either acceptable or appropriate levels of conduct or work performance. It will result in the earlier stages of the disciplinary procedures being followed. Examples include:
- Repeated poor performance
 - Unauthorised absence(s)
 - Regular or persistent lateness

- Unsatisfactory attendance
- Refusal to obey a legitimate instruction
- Disregard of safety and/or security regulations
- Deliberate minor damage to or misuse/abuse of Institute property
- Wilful neglect of duties including incapability due to abuse of alcohol or non-prescribed drugs
- Inappropriate workplace behaviour

The above examples are only intended as illustrative of misconduct which would not be considered as gross misconduct. They are not intended to define the full range of conduct, behaviour, performance or other issues which may give rise to the taking of disciplinary action.

Gross Misconduct

11.5 Gross misconduct is any act or omission which is so serious as to require the Institute to consider terminating the employee's contract of employment without having to go through all the steps in the disciplinary process. The following are some examples of offences which constitute gross misconduct where the progressive stages of the disciplinary procedure may not apply and which may result in dismissal without notice.

- Theft
- Serious act of dishonesty in relation to one's employment
- Deliberate and serious damage to Institute property
- Fraud or deliberate falsification of documents which includes unauthorised removal and destruction of document(s) and Institute record(s). This includes but is not limited to paper records, any information kept on computer disks/memory cards and any other form of record.
- Gross negligence or dereliction of duties
- Refusal to comply with a legitimate instruction(s) resulting in serious consequences
- Serious or persistent incapacity to perform duties brought on by alcohol, illegal drugs, by use of unprescribed drugs or by deliberate misuse of prescribed medication
- Having illegal drugs, substances or materials on one's person or in one's possession, custody, or control on Institute premises, except in cases where approval has been granted to hold such material for research and the said possession, custody and control is consistent with that approval
- Serious breach of health & safety regulations
- Serious abuse/misuse of the organisations property/equipment
- Serious and deliberate breaches of confidentiality
- Unlawful discrimination, sexual harassment or harassment of a serious nature against an employee or customer, including students.
- Physical violence
- Deliberately accessing and/or downloading pornographic or obscene material from the internet and/or email.
- Circulation, dissemination or display of offensive, obscene or indecent e-mails, text messages or other material, including material downloaded from the internet.
- Bringing the Institute's name into serious disrepute
- Serious and deliberate failure to comply with a legitimate instruction.
- Serious and significant non-compliance with the requirements of any formal Institute policy or procedure
- Conviction of any criminal offence which may render the employee unsuitable for employment or which will adversely affect the Institute's interests

Note: the above list is not exhaustive.

- 11.6 The employment of an employee might also terminate in cases of frustration of contract⁷ or job abandonment⁸.

12. PROCEDURE IN CASES OF ALLEGED GROSS MISCONDUCT

Investigation

- 12.1 In all cases of alleged gross misconduct, a full investigation will immediately be carried out to establish the facts in accordance with the following principles
- This investigation will be carried out by the President/Director or his/her nominee(s) as appropriate.
 - The investigation will be conducted thoroughly and objectively and with due respect for the rights of the employee to natural justice.
 - The Investigation will be governed by clear terms of reference.
 - The Investigator(s) will be (a) senior manager(s) not previously involved in the case or in some instances a suitable third party.
 - Every effort will be made to carry out the investigation without undue delay and to adhere to the agreed timescales. However, the timescales may be extended in exceptional circumstances.
 - The employee will be advised of the right to be accompanied by a union representative(s) or work colleague throughout the investigation.
 - The provisions of paragraphs 4.16, 4.19 and 11.1 will apply to this investigative process
- 12.2 The employee may be placed on administrative leave pending the processing or outcome of an investigation. This is a protection for all involved and not a disciplinary sanction.
- 12.3 On completion of the investigation, the investigator(s) will submit a written report of their findings to senior management and to the employee. If the outcome of the investigation is that disciplinary action is warranted in respect of the alleged misconduct, a disciplinary meeting will be convened by the President/Director nominee and invoked at the appropriate stage of the disciplinary process.
- ## **13. APPEAL**
- 13.1 An employee on whom a disciplinary sanction (including warnings) has been imposed at any stage of the procedure has the right of appeal. The employee should inform Human Resources in writing of his/her intention to appeal and the initial grounds for the appeal. The notice of appeal should be submitted by close of business on the tenth working day following the employee being notified of the disciplinary sanction.

⁷ Frustration of contract does not include appropriate use of an Institute's sick leave policy or policies in respect of other approved leave

⁸ Job abandonment might include a failure to return to employment on completion of career break or other leave having been communicated with and having failed to respond to the Institute within a reasonable period of time

- 13.2 The appeal will be conducted as soon as possible thereafter. The employee will be given an opportunity to state his/her case and will be entitled to be accompanied/represented by a fellow employee, of his/her choice or by his/her Union representative(s) being the Union holding recognition rights for that grade but not any other person/body unconnected with the enterprise.
- 13.3 At Stages 1, 2 and 3 the appeal will be heard by another Manager at or above the level of the Manager taking the action and who had no other previous involvement with the case. The person/persons hearing the appeal will not have been involved in the original disciplinary meetings or any investigative process.
- 13.4 At Stage 4 or in cases of gross misconduct the appeal will be heard by a Disciplinary Panel comprising of up to two Institute senior managers (not previously involved in the process) nominated by the President/Director and an external third party Chair agreed between the Institute and the employee or Union acting on behalf of the employee concerned.
- 13.5 Where the grounds of the appeal relate to
- an overly severe sanction, or
 - correct procedures not having been applied, or
 - mitigating circumstances,
- it is accepted that a *de novo* appeal is not appropriate. A decision on whether an appeal on any other ground will proceed by way of a *de novo* hearing will be made by the person hearing the appeal (under Stages 1 to 3) or by the Chairman of the Panel (under Stage 4).
- 13.6 The person/Panel hearing the appeal is entitled to overturn, modify or uphold the decision.
- 13.7 The person/Panel may withdraw, reduce, vary or increase the sanction appealed against.
- 13.8 The decision on appeal is the final stage of the Institute procedure and is binding subject to any external appeal that may be brought.
- 13.9 In the case only of dismissal of staff at officer grade, only appointed to the Institute prior to 1 February 2007, the case, where appropriate, will be dealt with under section 7 and section 8 of the Vocational Education (Amendment) Act, 1944 as extended to Institutes of Technology by the Institutes of Technology Acts 1992 to 2006

14. REVIEW

- 14.1 This Procedure will be open to review at the request of either IOT management nationally or of one or more of the unions, including with a view to periodic up-dating so that it complies with developments in employment legislation, case law, guidelines issued by the LRC or other appropriate body and with good practice generally.

March, 2009