



Lincoln Christ's Hospital School

Staff Discipline Policy & Procedure

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POLICY STATEMENT

The aims of the policy are to:

- Provide the School with a fair and consistent approach to dealing with misconduct issues
- Help and encourage employees to achieve a high standard of conduct.

INTRODUCTION

This procedure is not intended to be punitive and, depending upon circumstances, will normally be of a progressive nature.

The policy seeks to ensure that the School has lawful, fair and effective arrangements in place for dealing with employees' conduct and disciplinary issues. The disciplinary procedure set out in Appendix 1 provides a framework for making employees aware of unacceptable conduct and for developing ways of correcting any such issues whenever possible.

The policy gives the major role in managing the disciplinary procedure to the Headteacher and will, in certain circumstances, include making decisions regarding formal disciplinary action up to and including dismissal. Governors, depending on the circumstances, could also be involved in this process and will always be involved in hearing any appeal. Clearly, a problem will arise if it is the Headteacher's conduct which is the cause of concern. In general terms, where this occurs the Chair of Governors will undertake the role defined for the Headteacher. However, this will not be appropriate in all cases and then Governors are advised to consult their named HR Adviser.

The Headteacher and Governors are strongly advised to seek advice and support from relevant professionals and should consult their HR Adviser regarding any procedural issues. HR Advisers can advise Headteachers on the conduct of investigations and support them at formal meetings.

PRINCIPLES

At all stages in this Disciplinary Procedure, employees will be:

- Informed of the nature of the issues of concern or case against them
- Given a chance to offer an explanation before any decision is taken

- Given the right to be represented by a work colleague or a recognised trade union representative or official at any formal meeting or hearing
- Given reasonable notice of any formal meeting or hearing
- Notified of the outcome of any formal meeting or hearing in writing
- Given the right to appeal against formal disciplinary action
- Confident that the School will comply with its obligations to disabled employees under the Equality Act in terms of reasonable adjustments
- Treated with dignity and respect at all times
- Recognised to be in a situation of potential stress/anxiety and be treated accordingly
- Confident they will not be judged 'guilty' in advance of the conclusion of the process
- Confident of confidentiality of communication
- Confident that the process will be carried out speedily and without undue delay.

STANDARDS OF CONDUCT

All School employees have a responsibility to be aware of and conform to the School's values, rules, policies and procedures and to cooperate with any investigations, attend any meetings, interviews, and hearings convened in accordance with this policy. School employees are expected to maintain standards of conduct both at work and outside of work.

MANAGING THE PROCESS

All staff with any supervisory responsibilities should ensure that employees understand the standards of conduct that are expected of them and the need to identify as soon as possible any potential problems. Employees should also be aware of the procedures adopted by the Governing Body.

With appropriate counselling and guidance most minor conduct issues can be dealt with in an informal way with the employee supported to improve or resolve the situation as soon as it becomes apparent. All discussions should be documented as they may be referred to in the future if there is a recurrence of the problem.

Trade Union Officials

Where formal disciplinary action is being considered against a trade union official (including health and safety representatives) the case will be discussed with a full-time trade union officer/official in accordance with the ACAS Code of Practice. Advice in these cases should be sought from the HR Adviser.

Investigations

Where an issue cannot be resolved informally the Headteacher should arrange to investigate the matter thoroughly. This can be done by the Headteacher or by someone from within or outside of the school. Advice should be sought from the HR Adviser.

The aim of any investigation is to establish the facts of the case and will include an interview with the individual concerned. The investigation could include talking with witnesses, with written statements being made.

Financial Issues

Where the matter is of a financial nature it might be appropriate for the matter to be partly investigated by an appropriately qualified person. In such cases it could be that the Headteacher (in consultation with the Chair of Governors) invites auditors to look into the matter and provide the school with a report. This would form part of the school's investigation into the issues. The report might also include wider recommendations as regards the financial management of the school.

Any such report will be used as evidence within any subsequent disciplinary hearing and Auditors might also be invited to attend any hearing to assist in the presentation of the case.

Alleged Criminal Offences

Where an employee might have committed a criminal offence, the advice of the HR Adviser should be sought.

A school should not carry out its own investigation before consulting the HR Adviser. However, an employment investigation may run in parallel to investigations by the Police, auditors and/or child protection or adult abuse professionals, unless considered prejudicial to the conduct of those investigations. It is not always necessary to await the outcome of any court hearing before deciding on disciplinary action.

An employee who provides information on criminal acts, breaches of legal obligations, health and safety dangers, environmental risks and related cover-ups will have the right not to be dismissed or victimised for speaking out.

Child Protection Issues

Where an allegation relates to the sexual, physical or other abuse of a child the matter should be discussed as soon as possible with the Local Authority Designated Officer (LADO). No action should be taken until the LADO has offered advice. At this stage the employee should not be told that an investigation is under way in order to preclude the employee from discussing the issue with the child before the child has been spoken to by the appropriate officers.

It is important that hasty decisions to suspend an individual are not made before any assessment has been made as to the substance of an allegation. This can be a traumatic experience for the employee concerned and potentially could have a detrimental effect on an individual's career.

The LADO will liaise with the School to determine the necessity for a strategy meeting. If a strategy meeting is deemed necessary it will be convened with the Headteacher/Manager present. The planning and coordination of enquiries will be agreed at this meeting. Where the allegations relate to the Headteacher, the Chair of Governors should be invited instead of the Headteacher

ROLES AND RESPONSIBILITIES

A member of the Hearing panel

Will hear all evidence presented about the issue raised and make a decision, based on the evidence available, of the appropriate sanction to take. This could lead to no further action, increased support and training, management action, a disciplinary sanction or ultimately lead to the dismissal of a staff member.

A member of an Appeal Panel

If the person about whom the issue is raised is dissatisfied with the outcome of the Hearing panel, then they have the right to appeal within the timescales as defined within this procedure. The member of the panel will be required to review the information and decision made, and determine if the decision made was correct or otherwise.

HR Adviser

HR advisers are responsible for advising and supporting managers in the application of this policy. HR advisers will advise managers on the type of investigation to be conducted and whether the employee should remain in the workplace or be suspended, and will have a role in a disciplinary hearing.

Investigator

The investigator will be responsible for conducting a thorough investigation and ensuring that the HR Adviser is updated with progress on a weekly basis.

Employee Representative

During each stage of the formal procedure an employee is entitled to be accompanied by a work colleague, recognised Trade Union Representative, or a recognised trade union officer.

If the employee's chosen companion is unavailable to attend the hearing at the time specified by the school, but proposes an alternative time and date, the hearing must be postponed until the later date provided that the latter is within 5 working days of the original. If this is not practical then the Governors should arrange a suitable alternative. Hearings will not normally be held during school closure periods.

The representative will support the person with whom the issue has been raised to put forward their case. During an investigation interview the role of the colleague is as 'silent support' and they should not take part in the interview or answer on behalf of the individual. During a formal hearing the colleague will be allowed to participate as fully as possible, but has no legal right to answer questions on the employee's behalf. He or she has the right to address the hearing and will be allowed to ask questions. The colleague will also be given reasonable time to confer privately with the employee.

Trade Union Representative

Trade Union Representatives will support, advise and where necessary represent their members at all stages of an investigation. Trade union members who are the subject of an investigation can talk to a representative in full confidence, and can expect confidentiality to be maintained. Any actions that arise from such conversations (for example, an enquiry of a HR Adviser or line manager) will happen by agreement. The main responsibilities of a representative during an investigation are:-

- To be a continuing point of contact for an employee, offering advice and support
- To accompany an employee at an investigatory interview, where the representative acts as a witness rather than speaks on the employee's behalf
- To represent an employee at a hearing, and normally to lead in presenting the employee's case
- If appropriate, to advise and represent at an appeal.

Employees who are interviewed as part of an investigation, but are not its main subject, can be accompanied at an interview; however it is not usually practical to provide a representative in these circumstances. If employees are trade union members they can discuss any concerns with their union.

Governors

Depending upon the circumstances, Governors may or may not be involved in the decision making process as regards formal disciplinary action but will always be involved in any appeal hearing. Where it is the Headteacher's conduct that is in question the Chair of Governors or other appropriate Governor assumes the role defined for the Headteacher.

Governors will ensure that they have a properly established disciplinary and appeal committee, the members of which are untainted by earlier proceedings and will not include staff Governors.

SUSPENSION

The Headteacher or Governing Body can suspend an employee at any time during the course of the investigation. Advice should also be sought from the HR Adviser before any decision to suspend is taken. Suspension does not constitute disciplinary action and does not itself imply any presumption of guilt on the part of the employee.

The decision to suspend

Suspension should only be instigated in very serious situations, for example:

- Alleged gross misconduct such as:
 - Abuse or harassment
 - Fighting or serious physical violence at work
 - Fraud or serious theft
 - Malicious damage to the property of colleagues, pupils, the school or members of the public
 - Serious personal harassment or bullying
 - Corrupt practice
- Where the employee is being charged with a serious criminal offence that is potentially inconsistent with their position
- Where there is a clear concern that the employee or others may be placed at risk if they remain in the work place
- Where it is considered possible that the employee may influence witnesses or interfere with relevant evidence.

This list is neither exclusive nor exhaustive.

Practical arrangements

When considering the option of suspension the Governors should discuss with the Headteacher and HR Adviser how the suspension should be carried out. Where practicable this should be done face to face, but it might not be possible in every case.

A suspension letter will be written by the HR Adviser and signed by the Headteacher / Chair of Governors. The letter will usually include:

- A statement confirming that suspension is not a disciplinary action
- The reason for suspension
- Actions that will be taken during the suspension
- Impact on pay
- Contacts within the school and fellow employees during suspension
- Support mechanisms available.

During the suspension interview, the Headteacher / Chair of Governors should allow the employee the opportunity to comment on the alleged misconduct and the decision to suspend, and any comments made by the employee will be noted for the record.

At the conclusion of the suspension interview, the Headteacher / Chair of Governors must give the original copy of the suspension letter to the employee and inform them of their right to representation at any further meetings that might occur as a result of the investigation into the alleged offences.

In some cases it might not be possible to hold a suspension meeting and in such cases the employee will be notified of the suspension in writing only.

Lifting the suspension

The suspension may be lifted following the investigation or might remain in place until after any other stage within the procedure.

Impact on pay

Suspension will be on contractual pay. Additional allowances are not paid for the purposes of the employment contract. However the school reaffirms that suspension is not a disciplinary action and therefore wishes that employees suffer no short-term, unexpected, financial loss as a result. Where an employee is normally in receipt of such allowances, he/she will continue to receive these at the average level paid during the 12 weeks preceding suspension, for a maximum period of 2 months following the effective date of suspension. If, however, the suspension continues

beyond 2 months, consideration will be given to the continuation, based on the reasons for suspension and/or the reasons for the delay in finalising the investigation.

Sick pay and holiday during suspension

If the employee becomes ill during the suspension the normal contractual sick pay entitlements will come into force for the period of the illness; however the suspension rules remain unchanged. Holidays will continue to be taken or accrued throughout the suspension and, where applicable, the employee may request annual leave in the normal way.

Support during Suspension

The employee might wish to contact a work colleague or their trade union representative for support.

Although suspension should not lead to social isolation it might be necessary in some circumstances for a suspended employee to be prohibited from contact with colleagues at the school.

The Headteacher will also make the employee aware of the availability of the School's Employee Support and Counselling Service.

The school will ensure that all employment matters relating to an individual employee remain confidential. Should there be a press enquiry or other request for a statement regarding the position of any employee, the school should inform the individual employee of this enquiry immediately via their Headteacher / Chair of Governors.

EMPLOYEE ABSENCE DURING THE PROCEDURE

Absence which is triggered by the disciplinary procedure - and that the Headteacher believes is likely to be long term - should be referred immediately to the Occupational Health Advisor for an assessment of the individual's fitness for work and/or fitness to undergo an investigative interview or attend a disciplinary hearing. The process will be the same as for any other medical referral.

Short absences should not delay any part of the formal stages of the procedure.

If the employee is unable to attend a Disciplinary Hearing within a reasonable time, they should be offered the opportunity of appointing a recognised Trade Union Representative to speak on their behalf and/or make their own written submission.

Appendix 1
DISCIPLINARY PROCEDURE

Informal Stage (including Preliminary Investigations)

On becoming aware of an employee's alleged misconduct, the Head Teacher/ Manager will undertake, where practicable, immediate preliminary investigations about the issues of concern or allegations made. This will normally involve a private discussion with the employee to establish if there is an acceptable explanation for the alleged misconduct. It is not usual for employees to be accompanied at this meeting. However, they may be if both the Headteacher/Manager and the employee consider it appropriate.

The Headteacher/Manager should:

- Present the apparent facts of the alleged misconduct to the employee
- Give the employee a full opportunity to respond to and explain any factors affecting his/her conduct (If any underlying medical issues are suggested, it might be appropriate to refer the employee to Occupational Health for advice.)
- Give thorough consideration to all the employee's responses and decide what action is required. It might become apparent during the discussion that the problem is not a disciplinary matter and that other procedures, e.g. those relating to capability or reasonable adjustment, could be more appropriate.

NB: In certain cases (e.g. where current and ongoing fraud is suspected) it may be appropriate not to inform the employee at this stage in order to allow necessary observations and collection of evidence to take place. HR Advice should be sought in relation to any fraud investigation and/or possible covert surveillance. Under statutory provisions, covert surveillance may be conducted, although this will require the approval of the Chair of Governors.

A Headteacher will need to determine if an issue can be resolved informally. This will depend upon factors such as the seriousness of the complaint/allegation and the impact on others, e.g. children, parents, other employees and the public. The Headteacher should consider whether informal action could be quickly and easily taken to resolve the matter and should make every effort to do so in this way, immediately, wherever possible.

NB: Any case concerning an employee's conduct in respect of a child or vulnerable adult, where the Safeguarding process is applied, and any case of fraud or theft, will be deemed a major issue and dealt with by formal investigation.

Notes will be taken of the Headteacher's/Manager's conversation with the employee and, except in the most minor cases, the outcome of the meeting, including any remedial action, will be recorded.

Notes of discussions on minor conduct issues will normally include:

- A clear statement of what was discussed with regard to the employee's conduct and an explanation of why this is unsatisfactory
- The required level of improvement discussed and (wherever practicable) agreed with the employee
- How the Headteacher/Manager will assist the employee (if applicable) to meet required standards.

This record is not a formal warning, which will be made clear, and should be phrased in a constructive and helpful manner.

A copy of the note of discussion will be given to the employee and a copy placed on the employee's supervision file. If supervision files are not used, it will be placed in a confidential and secure location within the School. It will not be placed on the employee's personal file. Employees, who disagree with the content of the note in discussion, have the right to ask for their written comments to be added.

Where an employee admits to an allegation at an informal stage and the Headteacher feels that the allegation is serious enough to warrant disciplinary consideration, the Headteacher and employee will make and sign a written record of this. The Headteacher will ensure that the employee appreciates the implications of the admission, i.e. that the matter will be fully investigated and may be considered at a formal Disciplinary Hearing.

Major Conduct Issues – Formal Stage

If the Headteacher determines that the matter cannot be dealt with by informal action, they will, with advice from their HR provider, determine how the investigation should progress.

The Headteacher will need to decide whether the employee remains in the workplace and who will undertake the investigation. A risk assessment should also be completed where this is considered necessary.

A Strategy Meeting will need to be held, normally involving the Headteacher/Manager and a HR provider. Dependent upon the nature of the allegation(s) there might be a need for other professionals to attend, especially if there are other investigations taking place into the allegation(s). Where the allegation is against the Headteacher, the Chair of Governors will need to attend.

In normal circumstance a Strategy Meeting will take place before any decision is made regarding the alleged concerns. However, in certain circumstances, decisions

(for example regarding suspension) need to be taken quickly and the employee(s) concerned may already be suspended from work, before the Strategy Meeting is held. Suspension Notification and the Strategy Meeting should be arranged at the first available opportunity; normally no later than 5 working days after the suspension.

The purpose of the Strategy Meeting is to:

- decide on who is to conduct the investigation
- clarify the allegations/objectives of the investigation and draft an Investigation Brief
- consider whether suspension is necessary (or should be continued if already suspended)
- complete a risk assessment (where necessary)
- agree on a communication plan
- determine any support arrangements (for the employee(s) concerned, and possibly the complainant(s) and witnesses)
- set dates for any Strategy Review Meetings or preferred update mechanism
- agree sharing of investigation interviews where multiple investigations are taking place.

A Strategy Meeting Checklist can be used to assist with the above.

Completed documents should be sent to all attendees following the Strategy Meeting and attendees should raise any matters of accuracy as soon as possible. The Headteacher/Manager may also finalise the Investigation Brief following the Strategy Meeting and before the investigation begins.

Where the Strategy Meeting relates to the conduct of the Headteacher and has been chaired by an Assistant Director (AD) of Children's Services, the responsibility for administering the meeting falls to the AD.

The decision to suspend need not be made at this meeting. However, a deadline for making such a decision should be set and the decision communicated to attendees as soon as possible.

Safeguarding Concerns

Where the matter concerns a safeguarding issue, i.e. there is a concern regarding the conduct of an employee in respect of a child, the Headteacher/Manager must ensure that the Local Authority Designated Officer (LADO) is aware.

In circumstances involving Child Safeguarding issues a Strategy Meeting must be arranged. It will normally be arranged and chaired by the Local Authority Designated Officer (LADO) in line with the Lincolnshire SCB Procedures.

Employment investigations need not wait until after the resolution of any safeguarding concerns, unless there are on-going police enquiries in which case the HR provider will advise when the investigation should commence.

Any proposed actions relating to the employee (i.e. suspension and notification of investigation) will be dependent upon the actions of the Safeguarding Team. Safeguarding actions must take priority until risks are satisfactorily managed.

Investigation Procedure

The purpose of the employment investigation is to determine all the relevant facts associated with the allegations and establish whether or not there is a case to answer. Dependent on the case, the Headteacher will determine who will undertake the investigation. This could be decided at the Strategy Meeting or by the Headteacher in consultation with the HR provider.

Normally, within 24 hours of the Strategy Meeting (or decision to investigate), the employee concerned will be notified of the way forward (via a face to face meeting or a letter as appropriate) and the investigation will be formally commissioned. The Headteacher/Manager will draft an Investigation Notification to notify the employee of the employment investigation unless the employee has already been notified at the time of his/her suspension from work.

Disciplinary Procedures and Absence

Employees, subject to the disciplinary procedure, who are absent due to sickness, may be referred to Occupational Health for advice on assisting their return to work and/or their participation in the investigation process. Although an employee might feel “stressed” and anxious under such circumstances, issues will not be put on hold indefinitely awaiting an employee’s return to work.

If sickness or other absence prevents an employee from attending a Disciplinary Hearing it may be postponed and re-arranged within 5 days or as soon as practicable. Employees will be advised that if they fail to attend the re-arranged hearing, then their case could be considered in their absence, based on written submissions and/or the attendance of a representative.

Employment Investigation Outcomes

The investigation report is sent to the Headteacher. The Headteacher might wish to discuss the contents with the investigator and/or the HR provider, to help clarify any points of fact or evidence. It is for the Headteacher to decide, in consultation with the HR provider, what the next steps will be.

The employee is notified, in writing, of the investigation outcome. The following outcomes can result from a formal employment investigation:

1. No Further Action

If it is decided that the allegations do not justify further action, or there is no evidence to substantiate the allegations, the effect on the employee(s) involved, along with other factors, will nevertheless be considered. This might particularly be the case where an employee has been suspended during the investigation. In such instances, arrangements will need to be made for the employee's return to their place of work. It might be necessary to carefully plan and manage the reintegration of the employee who might have been away from his/her normal workplace for some time. Any such considerations should be discussed with the employee concerned as a possibility at this time.

2. Informal Action

It may be decided the allegations warrant informal action. Examples of circumstances where informal action might be appropriate are:

- Employee is advised of the need to improve a particular skill, e.g. communication style, and an action plan can be put in place to support this
- Employee's conduct needs addressing but a formal sanction is considered too severe, e.g. an issue that could be resolved through improved self-awareness.

A record of any informal management action taken will be made and held on the employee's supervision file (or other confidential and secure place within the school if supervision files are not held), noting that this is not a disciplinary sanction.

Where it is considered that a formal Disciplinary Hearing is not necessary, the Headteacher will provide verbal feedback to the employee concerned. In certain circumstances (for example to protect a witness) some information from the investigation might be withheld and the reason for withholding information should be explained and recorded.

3. Formal Disciplinary Hearing

Where a formal Disciplinary Hearing is considered appropriate, arrangements for the hearing will be made as soon as is reasonably possible. The Headteacher will only hear the matter if they have not previously been involved. Otherwise, a Disciplinary Panel consisting of Governors, with no prior involvement in the case, will hear all the evidence and decide the outcome.

An HR provider may also attend, together with the Headteacher, the employee, his/her representative and, normally, the Investigator. Both the Headteacher and the employee can submit documentation and call and question witnesses.

The Head Teacher will confirm the arrangements to all parties giving at least 10 working days' notice.

Any documentation that either the Headteacher or the employee wishes to be considered at the hearing must be made available to the panel and the other party no later than 7 working days prior to the hearing. This will enable (where practicable) distribution of full documentation packs to all parties by 5 working days prior to the hearing. If there is a late submission of evidence it will be for the Chair of the Disciplinary Panel to decide whether or not this will be accepted.

As part of the disciplinary hearing pack the employee under investigation will be given a copy of the investigation report. In certain circumstances (for example to protect a witness) some information might be withheld.

Disciplinary Hearing Outcomes

The School's Disciplinary Policy and Procedure allows for the following hearing outcomes:

No Further Action

Where it is considered there is no case to answer.

Informal Action

Where the alleged offence is proven but a reprimand is considered an appropriate outcome due to mitigating circumstances or to the nature of the offence, e.g. a relatively minor issue.

First Written Warning

Where the employee's conduct has fallen below acceptable standards or,

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Where the offence is sufficiently serious to justify an immediate formal sanction.

Note: The warning will be regarded as live for disciplinary purposes for between 6 to 12 months, as determined at the Disciplinary Hearing.

Final Written Warning

Where the employee's conduct continues to be significantly below acceptable standards and previous written warning(s) have not resulted in sufficient improvement, or,

Where the offence is so serious that a final warning is appropriate as a first formal warning, or,

Where dismissal would normally be appropriate but significant mitigation is accepted.

Note: The warning will be regarded as live for disciplinary purposes for between 12 to 24 months, as determined at the Disciplinary Hearing.

All warnings will be confirmed in writing and will include:

- A clear statement of the unsatisfactory conduct or behaviour
- The level of the warning
- The length of time it will remain live for disciplinary purposes
- The required level of improvement (in measurable terms)
- The consequences of no improvement in conduct or behaviour
- The right to appeal.

Note: The HR provider who attended the Disciplinary Hearing will prepare, on behalf of and in the name of the Chair of the Disciplinary Panel, the written confirmation of the hearing outcome. A copy of the outcome warning letter will be placed on the employee's personal file where it will remain. However, it will not normally be regarded for disciplinary purposes beyond the live period determined at the Disciplinary Hearing.

Other Formal Action

The Disciplinary Panel might decide that the circumstances of a particular case are such that, in addition to a warning, some other formal action is also appropriate, e.g. the Panel could identify a need for the employee to undertake refresher training or work under supervision for a period of time.

Withholding of incremental salary progression

For support staff only - in cases in which it is decided that a formal written warning (or dismissal with notice) is the appropriate sanction, any pay increment(s) due to the employee concerned (during the live period of the warning or notice period) might be withheld. Any such increments withheld during the period of a written warning will become payable to the employee immediately following the expiry of the identified live period, subject to the improved conduct of the employee, but these will not be backdated.

Dismissal

Dismissal will occur where there has been gross misconduct or where the employee has a final written warning and further misconduct or unsatisfactory conduct has taken place.

Dismissal with contractual notice - Unless an employee is dismissed for gross misconduct, he/she will receive the appropriate period of notice.

Summary dismissal - Actions of gross misconduct will, except in the most exceptional circumstances, justify dismissal without notice.

Note: All dismissal notices will be in writing and will identify the reason(s) for the dismissal, the date on which the employment will terminate and the employee's right of appeal.

Referrals to DBS and other Organisations

The School has a legal duty to refer information to the Disclosure and Barring Service (DBS) where it has removed an individual from working or volunteering or has concerns in respect of an individual's contact with children.

There might also be a need to refer the circumstances of a particular case to other professional bodies, e.g. The Teaching Agency or Health Professions Council.

Appeals

An employee has the right to appeal against any formal disciplinary action taken against him/her under this procedure. If an employee wishes to appeal they should do so in writing to the Chair of Governors who will arrange for an Appeal Committee to hear the matter. Any appeal must be lodged in writing, within 10 working days of receipt of the written notification of any sanction.