

## **EXCLUSION FOR MISCONDUCT: POLICY AND PROCEDURES**

### **1. Terminology**

Pupils may be excluded from the College for a number of reasons, including those which are educational, medical, financial or disciplinary (misconduct). The procedures below refer primarily to exclusion for misconduct.

- 1.1 Suspension means the exclusion of pupils usually as a precautionary measure, for a limited period, to allow for an investigation of a disciplinary matter to be carried out, or pending the outcome of a College Council Review. Suspension is not a disciplinary sanction.
- 1.2 Rustication means the exclusion of pupils as a punishment and for a finite period, after which they will be reinstated.
- 1.3 Removal means the requirement of parents/guardians that they remove pupils permanently from the College if the Headmaster is of the opinion that by reason of the pupil's conduct or progress, the pupil is unwilling or unable to benefit sufficiently from the educational opportunities and / or the community life offered by the College; or if a parent has treated the College or members of its staff or any member of the College community unreasonably.
- 1.4 Permanent Exclusion means the formal and permanent exclusion of pupils.

In this policy "working days" means Monday to Friday, when the College is fully staffed during term time. The dates of terms are published on the College's website.

### **2. Misconduct**

The main, but not exhaustive, categories of misconduct which may result in pupils being excluded, either permanently or otherwise, or removed from the College include:

- 2.1 Supply/possession/use of alcohol or tobacco, or illegal drugs or solvents, or their paraphernalia, or substances intended to resemble them.
- 2.2 Theft, blackmail, physical violence, intimidation or bullying.
- 2.3 Misconduct of a sexual nature, including the supply or possession of pornography.
- 2.4 Possession or unauthorised use of firearms, bladed items (knives) or other weapons.
- 2.5 Vandalism, including computer hacking.

- 2.6 Bullying, or conduct showing hostility towards others on grounds of race, nationality, gender, disability, sexual orientation, religion, faith or age.
- 2.7 Breaking bounds at night or leaving the College site without permission at other times.
- 2.8 Persistent disregard of the College rules, aims or ethos.
- 2.9 Other serious misbehaviour, either on or off the premises, which may affect the welfare of a member or members of the College Community or bring the College into disrepute.
- 2.10 Failure to behave reasonably in academic matters.

### **3. The Internal Disciplinary Procedure - general points**

- 3.1 Incidences of serious alleged misconduct will be investigated by a senior member of staff, usually by the Deputy Head: Pastoral or the Senior Deputy Head.
- 3.2 Other external agencies (for example, the police or social services) may be notified at any stage of the procedure by the appropriate person, as and when necessary.
- 3.3 In the absence of the Headmaster or Senior Deputy Head, the person deputising in that role will undertake actions identified in the procedure.

### **4. Investigation Procedure**

- 4.1 Conducting the Investigation: In the event of a report of misconduct (or suspicion thereof) occurring, an investigation will be conducted by a senior member of staff. This may include:
  - 4.1.1 Gathering evidence
  - 4.1.2 Interviews with pupils, members of staff and others
  - 4.1.3 Segregation of pupils pending a Disciplinary Hearing
  - 4.1.4 Liaison with parents/guardians and, where appropriate or where there is a legal requirement, other agencies (e.g. Police, Social Services)
- 4.2 Searches: In gathering evidence apart from interviews, searches of pupils' rooms and belongings will only be conducted with their permission and in their presence, unless a search without their consent is deemed necessary.
- 4.3 Segregation: It may be necessary to segregate pupils. For the purposes of reliable segregation, the School may confiscate a pupil's mobile telephone or other similar device for such a period as it reasonably deems necessary.
- 4.4 Suspension: The Senior Deputy Head will consider whether it is necessary to suspend a pupil while an investigation is being carried out. If suspension is considered to be necessary, the pupil and his/her parents/guardians will be informed of the nature and

basic facts of the allegation of misconduct and the reasons suspension is required while the investigation is undertaken.

4.5 Rustication: Following the initial investigation, if the senior staff member conducting the investigation considers that Rustication may be necessary, he/she will:

4.5.1 inform the Senior Deputy Head

4.5.2 if the Senior Deputy Head decides that Rustication not exceeding 11 school days is a possible appropriate sanction, he/she will conduct disciplinary and sanction meetings as appropriate with the pupil, in the presence of the Deputy Head: Pastoral the senior member of staff who has carried out the investigation (if it was not the DH:P) and Housemaster, Housemistress or tutor as appropriate.

4.5.3 The Housemaster or Housemistress will make every effort to contact parents before the disciplinary and sanction meetings to inform them of the nature and basic facts of the allegation and why a rustication is being considered. The Housemaster/Housemistress will ensure that the pupil's parents/guardians are kept informed of the progress of the matter.

4.5.4 There is no right to a Review of a sanction of Rustication of less than 11 school days.

4.6 Removal or Permanent Exclusion: Following the initial investigation, if the senior staff member conducting the investigation considers that removal or permanent exclusion may be necessary, he/she will:

4.6.1 ensure that the pupil's Housemaster/Housemistress is informed of the allegation against the pupil and that Removal or Permanent Exclusion may be the outcome. The Housemaster/Housemistress will make every effort to contact parents/guardians before the disciplinary meeting to inform them of the nature and basic facts of the allegation which is to be considered by the Headmaster because Removal or Permanent Exclusion may be the ultimate outcome. The Housemaster/Housemistress will ensure that the pupil's parents/guardians are kept informed of the progress of the matter.

4.6.2 if the Senior Deputy Head has not concluded the investigation, ensure that the Senior Deputy Head is informed of the allegation against the pupil and the facts giving rise to the allegation.

4.6.3 ensure that the pupil is informed of the allegation against him/her, the circumstances giving rise to that allegation, that the Headmaster will consider the allegation and that he/she may have a member of staff with him/her during the Disciplinary Hearing before the Headmaster.

4.6.4 notify the Headmaster's Office that a Disciplinary Hearing is required, giving the pupil's name, the allegation against the pupil and the circumstances giving rise to the allegation.

4.7 When it is considered that the investigation has been completed, but prior to a Disciplinary Hearing before the Headmaster taking place, the Senior Deputy Head shall review the investigation, considering the following questions in particular:

4.7.1 Are further enquiries needed?

4.7.2 Would an objective bystander consider the manner of the investigation fair?

4.7.3 What is the pupil's disciplinary record in the School?

## **5. The Disciplinary Hearing**

5.1 The Headmaster will conduct the Disciplinary Hearing in a manner appropriate to the age, maturity and understanding of the individual pupil concerned. The pupil may have a member of staff of his / her choosing present to support the pupil and offer assistance during the Hearing. It is not considered appropriate for the parent to be present as this part of the proceeding is for the Headmaster to establish the facts of the situation.

5.2 The pupil should be present throughout the Disciplinary Hearing, which will usually involve:

5.2.1 The Senior Deputy Head setting out the allegation, the circumstances giving rise to the allegation and the investigation undertaken.

5.2.2 Questions from the Headmaster to the Senior Deputy Head about the investigation.

5.2.3 The pupil having the opportunity to respond to the allegation against him/her, including the opportunity to provide his/her account of events and, if appropriate, ask the Senior Deputy Head or Headmaster to speak with other pupils or witnesses.

5.2.4 Questions from the Headmaster to the pupil about allegations and/or the pupil's response/account of events.

5.3 The Headmaster may at any time suspend or postpone the Hearing for any reason, which will be explained to the pupil, and the pupil may similarly ask for a suspension of the Hearing to consult with the member of staff who is in support.

5.4 The Headmaster will decide whether the allegation against the pupil has been proved on the balance of probabilities (i.e. whether it is more likely or not).

5.5 If the Headmaster, having considered the evidence including any admission by the pupil, decides that the allegation against the pupil is proved, he will consider what sanction is to be imposed and inform the pupil in accordance with the following:

5.5.1 A sanction such as Rustication or a lesser sanction may be imposed immediately. In this event, he will hold a meeting with the pupil at which the Rustication or lesser sanction will be imposed and the reasons for its imposition given. He will inform the parents of this decision. There is no right of a Review of a Rustication of less than 11 days or lesser sanction.

5.5.2 If the Headmaster considers that the misconduct may warrant Removal or Permanent Exclusion, he will proceed in accordance with the provisions below.

5.6 A note will be taken of the Disciplinary Hearing and any subsequent Sanction Meeting.

## **6. The Outcome of the Disciplinary Hearing and the Preparations for the Sanction Meeting**

6.1 The parents/guardians will be informed of the outcome of the Disciplinary Hearing and either of the sanctions imposed (in the case of rustication or a lesser sanction) or that the Headmaster, in the light of the Disciplinary Hearing, is considering a more severe sanction. They will be informed that a Sanction Meeting will take place, of the availability of a copy of this Policy and of the date, time and place of the Sanction Meeting.

6.2 The parents/guardians and/or the pupil may either write to the Headmaster or discuss with him, telephonically or in person, factors they wish to have considered before the Sanction Meeting. Any correspondence should be sent to arrive at the Headmaster's Office at least the working day before the Sanction Meeting.

6.3 The parents/guardians will be informed that the pupil and parents/guardians may be accompanied by a friend or member of staff at the Sanction Meeting, and the Headmaster (or his nominee) may similarly be accompanied. If either the pupil, the parents/guardians or the Headmaster wish to be accompanied, he/she/they should notify the others of who will be accompanying them at least 24 hours before the meeting. No legal representation on either side is considered appropriate.

## **7. The Sanction Meeting**

7.1 The Sanction Meeting will usually be held within three working days of the conclusion of the Disciplinary Hearing.

7.2 Given the seriousness of the misconduct, in most cases where a Sanction Meeting is to be held it will be appropriate, where possible, for the pupil's guardians/parents to attend the Sanction Meeting and for the pupil to be temporarily suspended until the Sanction Meeting.

7.3 A member of staff will attend the meeting to note the events and to prepare a record of the main points discussed.

7.4 The Sanction Meeting will be conducted by the Headmaster and will usually follow the following format:

7.4.1 An explanation of how the meeting will be conducted and the role of those present;

7.4.2 A description of the offence and the disciplinary sanction(s) that could be imposed;

7.4.3 A summary of the evidence which may include an account of the version of events given by the pupil;

7.4.4 Consideration of any previous conduct of the pupil and the opportunity for his/her parents/guardians to address the Headmaster on the issue of the sanction to be imposed.

In the light of the above, the Headmaster may adjourn the meeting for a short period before notifying the pupil and parents/guardians of the decision.

7.5 Should the decision require the Removal of the pupil or his/her Permanent Exclusion, there will be an explanation of the Review Procedure.

7.6 The decision will be confirmed in writing, normally within three working days of the Sanction Meeting. The letter will state the decision in relation to the allegation (or each of them), the sanction, when it takes effect, the reasons and (where appropriate) to whom the pupil and/or the parents/guardians may request a Review of the decision, together with the deadline to do so. The letter may also offer support, if appropriate.

7.7 The Headmaster will notify the Chairman of the Council of the decision to exclude permanently or require the removal of a pupil, at an appropriate time.

## Appendix: A

### Review of an Exclusion

- 1.1 Where a pupil has been permanently excluded or where a parent/guardian has been required to remove a pupil or for a rustication of 11 days or more, the parent/guardian may request a Review of the decision by the College Council. Pending the outcome of such a Review, the pupil shall remain suspended from the College. The College will usually provide school work for the pupil during the period of this suspension.
- 1.2 The Review will be conducted by a panel of three College Council members who have not been directly involved in the investigation or sanction procedure. The parents may ask for the appointment of an independent member nominated by the College and approved by the parents (approval not to be unreasonably withheld).
- 1.3 The grounds for Review are:
  - 1.3.1 Whether the relevant facts of the case were sufficiently established, the standard of proof being the balance of probabilities;
  - 1.3.2 Whether relevant procedures were followed; and
  - 1.3.3 Whether the sanction was wholly disproportionate to the offence or other events that were found to have occurred, having regard to the College rules.
- 1.4 The role of the Review Panel is to consider any documentation provided by the parties, representations made to the Panel at a Review Hearing and to decide whether to uphold the Headmaster's decision or refer the decision back to him with recommendations so that he may consider the matter further.
- 1.5 It is important for all those concerned to understand that, save in the most exceptional of circumstances, the Panel will not hear any new evidence: it will only consider the evidence that was before the Headmaster at the Disciplinary Hearing. On receipt of new information not previously available to the Headmaster before his decision was made, the Clerk should contact the Chairman of the Panel who will decide whether:
  - 1.5.1 to include the new information in the bundle of documents to be circulated to the parties prior to the Review Hearing; or
  - 1.5.2 to omit the information if not relevant to the grounds for Review; or
  - 1.5.3 to make further enquiries of the parents or the pupil about the information; or
  - 1.5.4 to refer the information to the Headmaster for his consideration as to whether the decision should be revisited.

## **2 The Review Procedure**

- 2.1 Parents should advise the Headmaster of their intention to request a Review within 48 hours of receiving a formal letter of permanent exclusion or removal.
- 2.2 Within seven days of receiving the Headmaster's decision letter parents must make a formal written request for a Review to the Clerk of the College at the following address: The Clerk to the Council, Malvern College, College Road, Malvern WR14 3DF.

In their written request to the Clerk, parents/guardians must state the grounds upon which they are requesting the Review (see paragraph 1.3 above). For the avoidance of doubt, a mere disagreement or dissatisfaction with the decision of the Headmaster will not of itself be sufficient grounds for a Review. The Clerk reserves the right to reject the request in such circumstances.

- 2.3 The Clerk shall acknowledge receipt of the request for a Review within three working days and will immediately inform the Chairman of Council and the Headmaster that a request for a Review has been received.
- 2.4 The Clerk shall, in consultation with the Chairman of Council, arrange for a Review Panel to carry out the Review as soon as practicable and normally no later than 20 working days from receipt of the letter requesting a Review or as soon as possible thereafter. The parents will be given not less than 10 working days' notice of the date, place and timing of the Review Hearing.
- 2.5 The parents/guardians and the Headmaster are responsible for ensuring that they provide the Clerk with copies of any material upon which they intend to rely at least 7 working days before the Hearing.
- 2.6 The Clerk to the Council will ensure that at least three calendar days before the Hearing a copy of any documentation provided by the parties is provided to all present at the Hearing. (See paragraph 1.5 above in relation to information received which was not available to the Headmaster at the time of the decision.)

## **3. The Review Hearing**

- 3.1 The Review Hearing will be chaired by one member of the Panel (chosen by themselves).
- 3.2 Attendance at the Hearing:
  - 3.1.1 The Hearing is a private Hearing before the Panel, and its proceedings are to be regarded by all parties as confidential, subject to law.



3.1.2 The parents may be accompanied by a friend. The Headmaster may also ask a further member of staff to attend. No legal representation on either side is considered appropriate. If the parents wish to be accompanied by someone who is legally qualified, they must notify the Clerk to the Council of this at least five working days prior to the Hearing and should note that the Panel will wish to speak to the parents directly and this person will not be permitted to address the Hearing unless invited to do so by the Chair of the Panel.

3.1.3 The Hearing may be attended by such other individuals as the Panel may direct in order to enable them to establish the facts.

The hearing is not a legal proceeding and the Panel shall be under no obligation to hear oral evidence from witnesses.

- 3.3 The proceedings will be conducted in an informal manner and as determined by the Chairman of the Panel who will explain the procedure to all present at the beginning of the Hearing. All statements made at the Hearing will be unsworn. All present will be entitled to write their own notes. The main points of the proceedings will be recorded by the Clerk or a secretary.
- 3.4 The requirements of natural justice will apply. If for any reason the parents are dissatisfied with any aspect of the Hearing, they must inform the Chairman of the Panel at the time and ask the Clerk to note their dissatisfaction and the reasons for it.
- 3.5 All those attending the Hearing are expected to show courtesy, restraint and good manners. The Chairman may, at his discretion, adjourn or terminate the Hearing if these expectations are not met. If the Hearing is terminated, the original decision will stand. Any person who is dissatisfied with any aspect of the way the Hearing is conducted must say so before the proceedings go any further and his / her comments will be minuted.
- 3.6 When the Chairman considers that all the issues have been sufficiently discussed, he will adjourn the Hearing whilst a decision is made. The Chairman and Panel will have regard to the matters contained in 1.3 above and determine whether the original decision should stand or, if not, whether to refer the matter back to the Headmaster with recommendations so that he may consider the matter further.
- 3.7 The Panel's decision and any recommendations will be notified to the Headmaster and to the parents/guardians by the Chairman of the Panel by letter, with reasons, as soon as practicable and normally no later than ten working days of the Hearing being concluded. The Headmaster will provide his response to those recommendations, if appropriate, in writing within 48 hours. In the absence of a significant procedural irregularity, the Headmaster's decision will then be final.
- 3.8 Failure of the parents to attend a Hearing without good cause or due notice shall not invalidate the proceedings or any decision that the Panel may reach.