HUMAN RIGHTS POLICY AND PROCEDURE

In accordance with the Human Rights Act 1998

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1 Statement

1.1 The Corporation has a number of policies and procedures which aim at justice, equality and the general principle of fairness.

1.2 It is our intention that our policies are open, available, consistent and fair.

1.3 Every attempt will be made to train staff in the principles of equality and the College procedures which bring to bear those principles.

1.4 It might be expected that staff and students' human rights would be protected adequately by the proper operation of the Corporation's internal Policies and Procedures, Rules and Regulations. However, at times it may be perceived that internal rules, however well applied, have not brought about a fair outcome. The Human Rights Act requires rules to be interpreted on the basis of broad principles of fairness and reason.

2 Objectives

2.1 The Corporation should develop a strategy for identifying Human Rights challenges. All staff dealing with student complaints should know how to identify a Human Rights challenge, i.e. look for key words such as “proportionality”, “democratic necessity” and “violation”.

3 Definitions

3.1 Human rights are described as being "inherent, inalienable and universal". They are:

- **Inherent** because they are acquired by individuals simply by reason of their birth.

- **Inalienable** because the rights cannot be taken away.

- **Universal** because they apply to all persons regardless of nationality, status, sex or race.

3.2 Some rights provided for by the Act are "absolute" whilst others are "qualified".

3.2.1 An **absolute** right exists without any limitations or exceptions unless those exceptions are expressly provided for in the Convention itself.

3.2.2 A **qualified** right is one that exists in certain "qualified circumstances" which in simple terms means that the limitations and restrictions imposed are justified as being "necessary" in a democratic society. The Act specifies a number of circumstances when such restrictions would be justified: "in the interest of
national security, territorial integrity, public safety or the economic well being of the country, for the prevention of disorder or crime, to protect health or morals or for the protection of rights and freedoms of others”.

3.3 We have 16 basic human rights under the law

- The Right to Life
- The Right to freedom from torture and inhuman or degrading treatment or punishment
- The Right to freedom from slavery or compulsory labour
- The Right to liberty and security
- The Right to a fair trial
- The Right not to be punished without law
- The Right to have one’s family life and private life respected
- The Right to freedom of thought, conscience and religion
- The Right to freedom of expression
- The Right of assembly and association
- The Right to education
- The Right not to be subjected to the death penalty
- The Right not to be discriminated against
- The Right to marry
- The Right to protection of property
- The Right to free elections

4 Responsibilities

4.1 The Act imposes a general obligation on Courts and Tribunals to interpret legislation so that it is compatible with Convention Rights.

4.1.1 It requires all new legislation to be compatible with the Convention.

4.1.2 It requires public authorities to act in compliance with the Convention.

4.1.3 Institutions such as local education authorities, courts, tribunals, DfES OFSTED, ALI and the funding councils are clearly public authorities, as are maintained schools and institutions of higher and further education where they are statutory corporations.

4.2 Claimants

4.2.1 The claimant must be a "victim" of an act (or failure to act) of a public authority but it is important to note "victim" does not simply mean an individual. It can mean a nongovernmental organisation, a group of individuals, a trades union which has authority to represent its members’ interests or even a company or minority shareholder. It is probably not possible for an educational organisation, which is itself a public body, to claim to be a victim under the Act.
4.2.2 In order to bring a claim the "victim" will need to show that it has been directly affected by the act complained of (or failure to act). This too is likely to be interpreted fairly broadly by the courts.

4.3 The Employment Law implications of the Act

4.3.1 Public authority employers will have to respect Convention rights in all their activities.

4.3.2 Certain Convention rights are likely to have greater significance than others.

4.3.3 Article 3 - the right not to suffer degrading, or inhuman treatment. This Article could be breached in instances of serious sex and race discrimination where humiliation and mental distress is caused to the individual.

4.3.4 Article 8 - the right to respect for private and family life, home and correspondence. This is the Article most likely to apply to employment law issues because "private life" could include sexual orientation, choice of clothes and medical information. Particular issues which may constitute a breach of the Article include:

- CCTV surveillance
- Monitoring e-mail communication
- Recording employees telephone calls
- Medical checks or compulsory or random drug testing.

4.3.5 Article 10 – Freedom of Expression. The Public Interest Disclosure Act 1998 may be subject to the challenge of compatibility because there are only a limited number of disclosures which provide the "whistleblower" with protection and these disclosures must be to designated persons. Because of these restrictions the right to freedom of expression may be compromised. Confidentiality clauses in contracts may also be a breach of the right, although the courts and tribunals will probably take into account the purpose of the clause and the employee’s motive for breaching it.

4.3.6 All the above could infringe an individual's right to privacy and the right to respect for correspondence. However the rights provided for by Article 8 are "qualified" rights and can be overridden where there is 'justification'. For example monitoring e-mails could be justified because the purpose of the monitoring is to ensure that offensive/abusive e-mails are not sent thereby protecting the "rights and freedoms of others".

5 Procedure

5.1 Students will be able to rely on the rights of privacy and family life, religion and free expression just as staff will be able to do. For example, the use of CCTV in areas used by students will need to be justified (e.g. as a security measure to prevent break-ins and assaults on students; they should be no more intrusive than necessary and should be authorised by the students being warned at enrolment that surveillance will occur).
5.2 Where the institution has significant numbers of students with religious faiths, reasonable attempts should be made to avoid holding exams on the dates of major festivals.

5.3 Students may wish to rely on the right to education in Article 1 of the First Protocol to the Convention, e.g. in trying to dispute a refusal of a place or to exclude the student after exam failure. However, it is unclear whether the right to education extends beyond compulsory school age. The Court of Human Rights has held that universities are entitled to insist that an applicant have the ability to pass the course. However, once a student is on a course they will have contractual rights against the institution which are likely to be civil rights. Where an institution makes a decision affecting these rights they will have to respect the right to a fair trial in Article 6.

5.4 Before a student is excluded they will need to have had a fair hearing by an impartial person not previously involved, in public in most situations (if they wish). Reasons for the decision should be given.

5.5 Proceedings must generally be brought within one year of the act (or failure to act) although the courts have the discretion to extend time. If a public authority has breached Convention rights then proceedings can be commenced directly against that public authority. In theory, claims can be still brought in Strasbourg but all "domestic" remedies must be exhausted first.

5.6 It is important to note that Convention rights can be relied on indirectly in other proceedings, for example in tribunal proceedings, taking again the example of the use of CCTV evidence in Clause 5.1 above.

5.7 The Corporation will require its staff to become familiar with the provisions of the Act, because of its direct and indirect affect.

5.8 HR policies and disciplinary procedures should be reviewed to ascertain whether they are "human rights compliant".

5.9 Very careful consideration will be given to the purpose of, and justification for random drug testing, e-mail monitoring, CCTV surveillance, the recording of telephone calls, staff dress codes/uniforms and not allowing intra-institutional relationships. Responsible staff will question whether such actions would breach Articles 8 and 10.

5.10 Where there is uncertainty as to the implications of the Act, reference should be made to the Corporate Secretary, whose responsibility it will be to keep up to date with case law developments.

5.11 The Corporate Board will monitor the College's compliance with its published procedures and keep those procedures under regular review.