



DISCIPLINARY POLICY AND PROCEDURE

2010-13

1. Introduction

The Disciplinary Policy and Procedure is designed to encourage and help all staff to achieve and maintain high standards of job performance and conduct and to ensure that all disciplinary matters are dealt with in a correct, fair, transparent and consistent manner. The application of a fair and effective disciplinary procedure will help to minimise disagreements about disciplinary matters.

The Disciplinary Policy and Procedure is for matters of misconduct or negligence. Where the issues relate to an individual's ongoing performance or capability to perform their role to an acceptable standard, the Policy and Guidelines for Dealing with Capability and Performance 2010-13 should be used. An employee's duties and responsibilities, targets and objectives should also be addressed during the annual PRDP (Performance Review Development Plan) process. For employees in their probationary period, they will be subject to the provisions outlined in the Probationary Scheme.

Managers have an obligation to fully investigate complaints, allegations or problems relating to performance or conduct promptly and thoroughly. No disciplinary action will be taken against a member of staff until the situation has been fully investigated to establish the facts. At every stage of the procedure the member of staff will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her own case before any decision is made.

2. Informal procedure

It is the responsibility of managers to ensure that employees are properly briefed on the level of conduct and performance required at work. An up-to-date and clear job profile outlining duties and responsibilities should be referred to where there are problems relating to fulfilling the job role. Along with the PRDP, regular one-to-one meetings should be scheduled to take place throughout the year.

Whenever an employee is failing to meet the requirements of their position, or is performing poorly, this should be addressed with the individual at the earliest opportunity, and the necessary advice and assistance given with a view to improving their performance or conduct.

An employee's line manager should ensure that the standards of work or behaviour expected are clearly understood. In the majority of cases an informal discussion will be the approach to solving performance and conduct issues. Full consideration will be given to reaching an agreement in terms of providing necessary support, including the agreement of a timescale for improvement and a review of progress, and/or the consideration of relevant training and development. A record of agreed outcomes, including improvements and timescales, should be maintained. Wherever possible, discussions should be held in private and without undue delay. Employees must be clear about the differences between this kind of informal approach and a Formal Oral Warning issued at Stage 1 of the formal procedure, and the employee should be left in no doubt about which sort of action has been taken.

After establishing the facts, the manager may consider that there is no need to resort to the formal disciplinary procedure and that it is sufficient to talk the matter over with the member of staff. At any stage of the process, mediation may be considered as an option to help resolve disciplinary issues and, although this is optional for both parties, the aim of effective mediation will be to gain an agreeable resolution before any further disciplinary action is taken. Further advice on mediation can be obtained from the Human Resources Department.

3. Key steps for a fair procedure

The Disciplinary Policy and Procedure is based on some general principals which will accord with most people's views of 'fairness' but which are also well established in statute or case law. The key steps and principles are:

- The Disciplinary Policy and Procedure will not be used where the issue appears to be one of incapability (for whatever reason) to perform the duties of the post – see Policy and Guidelines for Dealing with Capability and Performance 2010-13.
- All communication will be conducted directly with the employee and not their representative. (The representative will of course be sent copies of any correspondence).

- The employee will be advised of the nature of the complaint(s) or allegation(s) against her/him and will be given an opportunity to make a statement both verbally and in writing to the person conducting the investigation. Although at this stage all the facts regarding the complaint may not be completely clear, the individual should be given as much specific information regarding the complaint(s) as is possible.
- No disciplinary action will be taken against an employee until the facts surrounding any alleged incident have been properly and thoroughly established and investigated.
- The investigation must be reasonable and thorough rather than exhaustive.
- At all stages of the procedure, the employee will have the right to be accompanied by a work colleague or a representative of a recognised trade union.
- At all stages, the process must be conducted without prejudice to the final decision.
- The person conducting the disciplinary hearing must not have had any direct involvement with the specific allegations of the case or the detailed process of investigation. For the sake of clarity, 'direct involvement' does not include their being informed of the outline circumstances of the case nor involvement in normal administrative processes, which may be necessary (e.g. letters of suspension, initiation of investigation etc).
- An employee will have a right of appeal against any disciplinary penalty imposed.

4. Formal procedure

The formal procedure should be used in the following circumstances:

- Where information becomes available which seems sufficiently serious to warrant further investigation under the Disciplinary Policy and Procedure.
- Where an incident has occurred in terms of behaviour, which appears to warrant a disciplinary investigation rather than the Capability Policy and Procedure. In these instances, suspension may also be considered.
- Where standards of performance or conduct of an employee falls outside acceptable limits and, if either informal discussion has failed to result in the necessary improvement(s), or the matter in question is of a more serious nature.

Where formal disciplinary action is being considered, it is the responsibility of the manager to involve a representative from the Human Resources Department at the earliest opportunity, including the investigatory stage. No disciplinary action should be taken against any employee without the manager having first consulted a representative from the Human Resources Department who can advise on the proper application of the procedure.

Entry into the formal procedure may be at any stage if the employee's alleged misconduct is serious enough to warrant such action. In exceptional circumstances, for example where serious or gross misconduct is alleged, a final warning or dismissal may be given on the first occasion without recourse to previous stages.

Where informal procedures have been exhausted and it has been decided that formal disciplinary action is needed, there are four possible outcomes of formal disciplinary action:

- Stage 1: Formal oral warning
- Stage 2: First formal written warning
- Stage 3: Final formal written warning
- Stage 4: Dismissal

Further details on each stage of disciplinary action are outlined on page 8.

At every stage in the procedure the employee will be advised of the nature of the complaint against them and will be given the opportunity to state his or her own case before any decision is made.

5. Investigating disciplinary matters

Prior to any disciplinary action being taken, a prompt and thorough investigation must take place to establish the circumstances and a balanced view of the facts in order to decide whether further action is necessary.

The investigation must be completed as promptly as possible, before recollections fade. As a guide, this should be between 3 and 15 working days dependent upon the complexity of the case. In exceptional cases, the process of investigation may inevitably take longer.

Investigative interviews are solely for the purpose of fact finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held. Managers will decide how and by whom the investigation will be conducted, in consultation with Human Resources. The investigating manager appointed will normally have previous experience of carrying out investigations relating to disciplinary, grievance or capability issues. A Human Resources Officer will be assigned to work with the investigating manager to advise on process and to take relevant notes.

Save in exceptional circumstances, the investigation will always include an interview with the member of staff concerned as well as other relevant witnesses. The employee can be accompanied by a trade union representative or workplace colleague at any investigatory meeting. The representative or workplace colleague should be made known to the investigating manager prior to their attendance.

The facts should be summarised by the investigating manager in a brief written report, to which any relevant information should be attached. Should the employee be unable/unwilling to attend a meeting to ascertain the facts then they will be informed that the available facts at the time will be considered and appropriate action taken.

Following the investigation, the investigating manager will raise a report and will decide what to do. Three courses of action will be open:

- 1) To decide that there is no substance to the allegation and the matter may be closed.
- 2) To decide that there is substance to the allegation but that the matter should be handled by advice, counselling, mediation, or training and development.
- 3) To decide that there is substance to the allegation and that a disciplinary hearing must be convened.

When the investigating manager has completed the investigation and it is felt that further disciplinary action is needed, the outcomes should be discussed with the Director of Human Resources or a Senior Human Resources Officer who will arrange for a disciplinary hearing to take place.

6. Suspension from duty

In serious or exceptional circumstances, it may be appropriate for the employee to be removed from the workplace to enable an investigation to take place, to reduce possible tension, or where the alleged misconduct represents a potential risk to students or staff. Any suspension should take place as soon as possible after the alleged incident has occurred and must be agreed in advance by the Vice-Chancellor. The Vice-Chancellor may suspend from duty, with pay, any member of the staff other than a member of the Designated Staff for alleged misconduct or other good and urgent cause. Suspension will normally be necessary on the following grounds:

- Where a serious incident has occurred involving an actual physical assault or the verbal threat of assault
- Where the allegations may be of a criminal nature e.g. theft or fraud
- Where there are reasonable grounds that the continuing presence of the individual in the workplace may inhibit the effectiveness of an investigation
- Where the continuing presence of the individual in the workplace may be deemed to be detrimental to workplace relations in the short term
- On medical/health grounds as permitted under legislation
- For some other substantial and urgent reason

Suspension will not be undertaken precipitately or lightly and alternatives to suspension, such as temporary re-deployment, should be considered.

The Chair of the Board of Governors or, in the absence of the Chair, the Vice Chair, may suspend from duty, with pay, a member of the Designated Staff for alleged misconduct or other good and urgent cause. The Chair or Vice Chair shall report such suspension in writing to the Board of Governors within two working days or as soon thereafter as practicable.

Anyone who is suspended from duty under Articles 18.1 or 18.2 shall be entitled to receive from the Vice-Chancellor, or in the case of a member of the Designated Staff, from the Chair or Vice Chair of the Board of Governors, written notification of the suspension, setting out the grounds on which the decision to suspend has been taken.

The Vice-Chancellor may dismiss any member of staff other than a member of the Designated Staff and if the circumstances are such that he or she is entitled to do so by virtue of the conduct of that member of staff, that dismissal may take immediate effect without any need for prior notice.

Procedures for the suspension of staff under Articles 18.1 or 18.2 shall be specified in rules made by the Board of Governors after consultation with staff. The rules shall include provision that any person who has been under suspension for three weeks or more may appeal in writing to the Board of Governors against the suspension, save that no such right of appeal shall lie if the person is the subject of a reference to a Special Committee under Article 19.1 or of a notification from the Vice-Chancellor under Article 19.2.1.

It must be stressed both verbally and in writing that suspension is not a form of disciplinary action, but a neutral act with no presumption of guilt, which will be made to enable a fair investigation to take place. The reasons for the suspension and the duration must be confirmed in writing to the employee as soon as possible. The letter must include a copy of the Disciplinary Policy and Procedure. If the employee belongs to a trade union, they may wish to contact their trade union for support and advice.

During any period of suspension, a named manager will be allocated as the employee's University contact. The employee must make themselves available during this period for the University to make contact with them during working hours and to remain available to attend meetings. Depending on the circumstances involved, the employee may be advised not to make contact with their work colleagues during the period of suspension.

Suspension will be as brief as possible and will be reviewed on a regular basis during the period of the investigation. Pay and terms and conditions of employment will continue during a period of suspension.

7. Disciplinary Hearing arrangements

The manager conducting the meeting or 'hearing' will be different to the person who carried out the investigation. Prior to the hearing taking place, the details will be confirmed in writing outlining:

- The date, time and place of the hearing and the name(s) and job title(s) of those who will hear the case.
- The name of the Human Resources Officer who will attend to take a record of the meeting.
- The issues or allegations to be discussed. (A copy of the investigation report will normally be enclosed with the letter).
- Where possible details of the evidence and the names of any witnesses to be called to support the University's case.
- That he/she is entitled to be accompanied by a trade union representative or a workplace colleague.
- That the employee is entitled to call witnesses in support of their case, where appropriate.
- The possible outcomes of the hearing.

For an employee with a special requirement or who may need support, reasonable adaptations will be made which may include changing the venue or allowing access to an interpreter or learning support specialist.

The exchange of witness names and information must be submitted by an agreed time and parties must notify their names to the manager calling the hearing, together with any documentary evidence that is going to be used for the hearing. If the employee or their witness, union representative or work colleague cannot attend the hearing, they should contact Human Resources immediately and consideration will be given to making alternative arrangements where possible.

Where an employee is persistently unable or unwilling to attend a disciplinary hearing without good cause, the manager may make a decision on the evidence available and the employee will be informed that is to be the case.

8. The Hearing

The purpose of the disciplinary hearing is to enable the appropriate manager(s) to consider the matter and decide whether disciplinary action should be taken, taking account of the facts that are contained in the investigation report, the statement of any witnesses and the views of the member of staff concerned. A hearing will usually be chaired by a senior manager or a member of the Chief Executive's Team and will involve another senior manager. A Human Resources Officer will normally attend the hearing to take notes and to advise on process.

At the meeting the chair should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should be given the opportunity to raise any points about the information provided by witnesses.

The manager chairing the hearing will:

- Specify to the member of staff where their performance or conduct is alleged to be deficient, and allow the member of staff to state their case;
- After considering all of the relevant information (which may require the manager to adjourn the hearing), decide what, IF ANY, disciplinary action should be taken. The type of disciplinary action will depend on the circumstances of the case;
- Give consideration to the employee's circumstances with regard to length of service, past performance, health and any relevant domestic or social factors which have been offered in mitigation by the employee or their representative.
- Identify precisely what improvements must take place, warn the employee of the consequences of any failure to correct their actions, establish the period of time during which any recurrence of similar or related poor performance or conduct would result in further disciplinary action being taken; and
- Advise the member of staff of their right to appeal to an appropriate named manager against any disciplinary action taken.

Where a trade union representative or work colleague attends the hearing, they may sum up the employee's case to the panel and confer with the employee during the hearing (if necessary during an adjournment), but they do not have the right to answer questions on the employee's behalf, or to prevent the manager from explaining their case. All questions addressed to witnesses should be done through the chair of the panel.

9. After the Hearing

In consultation with Human Resources, the chair of the panel will write to the member of staff concerned as soon as possible (normally within five working days of the hearing) to confirm the action taken and the right of appeal. A copy of this letter will be sent to the employee's representative if requested. A copy will be held on the individual's personnel file and will be reviewed at a period of warning, to be specified by the chair of the panel in the letter. During the period of warning the employee's performance will be monitored. At the review date, if a marked improvement has occurred, a note to this effect will be sent to the employee confirming that the period of warning has been completed successfully. If there is further misconduct during the period of warning, further disciplinary action may be considered under this procedure.

Once the full period of a written warning has lapsed, the letter and all correspondence and notes relating to the warning will be removed from the personal file held within the Human Resources Department. The Human Resources Department will maintain such non-attributable statistical records regarding disciplinary warnings as are appropriate for equality monitoring.

10. Appeal against disciplinary action or dismissal

Any employee against whom formal disciplinary action has been taken has the right of appeal at each stage of the formal disciplinary procedure. The purpose of any appeal is to consider whether the disciplinary action taken by management was fair and reasonable under the circumstances. A Human Resources Officer will normally be present at all hearings and appeals to advise on procedure and to take notes. The manager who hears the appeal will not normally have been involved in the disciplinary investigation or the hearing i.e. a person who has heard a case at one level will not be involved at subsequent levels, except to give evidence where required.

An employee who wishes to lodge an appeal against disciplinary action should write to the manager named in the confirmation letter within five working days of the date of the letter informing them of the outcomes of the disciplinary hearing. The notification of appeal must include the full grounds for the appeal.

The employee will be given written notice of the date, time and place of the appeal hearing. Appeals against disciplinary action will normally be heard without unreasonable delay by a manager not previously involved and as soon as possible after the initial hearing. The employee may be accompanied at the appeal hearing by a trade union representative or a work colleague of their choice.

The employee will be notified of the outcome of the appeal hearing in writing as soon as possible (usually within five working days of the appeal hearing taking place, unless another timescale is agreed).

11. Appeal against dismissal

In all cases where dismissal occurs, the individual will be entitled to appeal against the decision. The purpose of any appeal is to consider whether the termination of employment was fair and reasonable under the circumstances. A final appeal against dismissal should be made in writing to the University Secretary/Clerk to the Governors, within five working days of the date of the formal written notice of dismissal. The written notice of appeal must set out the grounds on which they wish to appeal against the decision to dismiss.

A hearing will be convened by the University Secretary/Clerk to the Governors before a panel of three drawn from the Chief Executive's Team and the Board of Governors, details of which will be confirmed in writing to the employee by the Secretary/Clerk to the Governors not less than five working day prior to the date of the hearing.

The manager(s) involved in the decision to dismiss the employee will be asked to attend the hearing to provide the reasons for recommending dismissal.

The employee may be accompanied at the appeal by a trade union representative or a workplace colleague of their choice.

The employee will be notified of the outcome of the appeal hearing by the Secretary/Clerk to the Governors in writing, as soon as possible after the hearing (normally within five working days unless another timescale has been agreed).

The decision of the Appeal Panel will be final and binding. Where the decision to dismiss is upheld, appropriate notice and outstanding holiday entitlement will be paid. Where the decision to dismiss is not upheld, the employee may be reinstated to his/her post or to an agreed alternative post.

Special arrangements are required in any suspension, disciplinary or dismissal matters related to any member of the Designated Staff. If the Chair of Governors, or, in his or her absence, the Vice Chair of Governors considered there was a 'case to answer' in respect of a member of the Designated Staff, the matter would be referred to a special committee of the Board of Governors.

12. Guidelines on the Stages of Disciplinary Action

Written warnings

It is not possible to set out disciplinary rules which will cover every eventuality likely to be treated as a minor or serious act of misconduct constituting a serious breach of contract. The following acts as a guide only. Written warnings can be appropriate in the following circumstances:

- Persistent lateness
- Unauthorised absence
- Damage to property or equipment resulting from careless use or negligence
- Unacceptable behaviour, rudeness, swearing, abuse directed personally at colleagues, students, clients or visitors or in public areas/meetings.
- Inappropriate use of facilities including unauthorised use of equipment
- Failure to follow University Policies and Procedures

Stage 1 - Formal Oral Warning

If conduct or performance does not meet acceptable standards the employee will normally be given a formal ORAL WARNING in writing. The letter will contain:

- Notification that this is the first stage of the formal disciplinary procedure;
- The nature of the complaint;
- A summary of the improvements required;
- The targets and timescales over which these are expected to be achieved;
- The arrangements for monitoring and review;
- An indication of the possible consequences/outcomes if improvement is not made within the review period (e.g. action under Stage 2);
- His/her right to appeal.

A note of the formal oral warning will be kept on the employee's file for a time period to be agreed by the panel. No further action will be taken unless issues relating to the employee's performance or conduct arise again.

Stage 2 - First Formal Written Warning

If the offence is a sufficiently serious one, or if a further offence occurs where there is already an active Formal Oral Warning, a formal FIRST WRITTEN WARNING will be given to the employee. This will contain the same details as under Stage 1 above. It will warn that action under Stage 3 will be considered if there is no satisfactory improvement within agreed timescales. A copy of this written warning will be kept on the employee's file for a time period to be agreed by the Panel. No further action will be taken unless further issues relating to the employee's performance or conduct arise again.

Stage 3 - Final Formal Written Warning

If there is still a failure to improve conduct or performance is still unsatisfactory whilst there is already an active First Formal Written Warning, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal, a FINAL WRITTEN WARNING will normally be given to the employee. This will give the same details as under Stage 1 above, and will warn the employee that dismissal will result if there is no satisfactory improvement or any further offences committed. A copy of this final written warning will be kept on the person's file for a time period to be agreed by the Panel. No further action will be taken unless issues relating to the employee's performance or conduct arise again.

There may be exceptional circumstances where management deems that an extended final written warning should be issued. In such cases, the warning letter will spell out how long it will last and the reason for the extension.

Stage 4 - Dismissal

Dismissal should only be considered:

- a) where either the required improvement in performance or conduct has not been made within the period specified following the issue of a Formal Written Warning; or
- b) where there has been a reoccurrence of similar or related poor performance or conduct within the period specified following the issue of a Final Written Warning; or
- c) where an employee is found to have committed an act of gross misconduct which might cover the following examples (this list is not exhaustive):

- Theft, fraud, deliberate falsification of records
- Physical violence i.e. fighting, assault on another person or threatening behaviour and language
- Deliberately accessing internet sites containing pornography, offensive or obscene material
- Deliberate damage to University property
- Bringing the University's reputation into disrepute including serious misuse of the University's property or name i.e. on internet sites such as 'Facebook'
- Incapacity at work through the use of alcohol or being under the influence of illegal drugs
- Negligence which causes unacceptable loss, damage or injury
- A serious act of insubordination
- Any serious breach of health and safety regulations or rules i.e. any reckless actions which endanger the perpetrator's own or the safety of other people at work (including students, staff, visitors to the University, contractors)
- Harassment or bullying, which is defined in the University's Policy for addressing Harassment as unwanted behaviour which others find intimidating, embarrassing, humiliating or offensive and which fails to respect the individual's right to be treated with dignity
- Any serious breach of trust or confidence or abuse of position in return for favours
- Behaviour which may make continued employment untenable or which brings the University into actual or potential disrepute
- Serious breach of any of the University's policies and procedures

Gross misconduct is defined by ACAS as 'conduct serious enough to destroy the employment contract between employer and employee and make any future working relationship and trust impossible. It is normally restricted to very serious offences, but may be determined by the nature of the business or other circumstances'. In cases of gross misconduct, the contract of employment is regarded as having been breached so there is no obligation on the part of the employer to adhere to the notice periods which otherwise might apply in a contract – hence summary dismissal.

The omission of any other category of behaviour will not preclude it from being considered as gross misconduct. Similarly, it will be for the Chief Executive's Team to decide whether there are exceptional mitigating circumstances which might allow the examples mentioned above to be treated less seriously than gross misconduct. If an employee is to be dismissed, the Chief Executive's Team will give consideration as to whether the employee's appointment should be terminated with due notice, whether pay should be given in lieu of notice, or summarily dismissed in serious cases of gross misconduct. The employee will be invited to a meeting with the Vice-Chancellor to confirm the terms of the dismissal. The employee is under no obligation to attend such a meeting, but if he/she wishes to exercise this right he/she may be accompanied at the meeting by a trade union representative or workplace colleague. Failure to attend the meeting will not affect the person's right to appeal under this procedure.