

DISCIPLINARY PROCEDURE (Regulation 31)

A. GUIDANCE NOTES

Introduction

The University is committed to supporting its staff in carrying out their responsibilities to the highest possible standard within a culture which encourages productive and cooperative working practices. Where disciplinary action is required, it will be carried out by means of a fair and supportive structure focused upon the principles of natural justice.

1. General

- 1.1 This procedure has been developed in accordance with the ACAS Code of Practice "Disciplinary and grievance procedures", 2009, and the relevant legislation¹. The procedure is designed to encourage staff to achieve and maintain acceptable standards of conduct, to ensure the safety and well-being of all staff, and to provide a

3. Responsibilities and rights

3.1 Members of staff

Members of staff are responsible for:

- (i) conducting themselves with dignity, honesty, and integrity to promote an atmosphere of mutual respect, in accordance with the University's equality and diversity and harassment policies;
- (ii) familiarising themselves with and adhering to acceptable standards of conduct, relevant policies, procedures and practices, and rules;
- (iii) seeking clarification from their manager if there are aspects of (ii) above which

3.3 Human Resources

Human Resources is responsible for:

- (i) training and advising managers on all aspects of the Disciplinary Procedure;
- (ii) advising members of staff on the Disciplinary Procedure;
- (iii) keeping a formal record of any meetings held under the Disciplinary Procedure. This is not a verbatim record but a detailed and accurate summary of the proceedings;
- (iv) monitoring the use of the Disciplinary Procedure across the University;
- (v) ensuring that the Disciplinary Procedure is applied consistently throughout the University.

4. Right to be accompanied

- 4.1 At all hearings held in accordance with the Disciplinary Procedure, a member of staff

6. Grievances raised during disciplinary proceedings

- 6.1 The staff grievance procedure cannot be used to challenge or complain about:
- (i) any decision to invoke the formal or informal stages of this procedure;
 - (ii) any decision or action taken or proposed under this procedure;
 - (iii) the operation of this procedure.

- 6.2 In the event that a member of staff raises a complaint about such matters his/her complaint will be investigated and dealt with under this procedure (i.e. the staff Disciplinary Procedure) at the same time as any allegations of misconduct are being discussed or considered. The application of this procedure may be modified as deemed appropriate by the Director of Human Resources to facilitate this. If the member of staff is dissatisfied with the outcome of this process, he/she may appeal under the appeal stage of the staff grievance procedure. The purpose of this paragraph is to assist all parties by allowing both the substantive issues and any related complaint or grievance from the member of staff to be considered speedily.

7. Disciplinary action against a trade union representative or safety

9. Allegations of fraud

- 9.1 Any allegations of fraud should be reported in accordance with the University's Fraud Response Plan, in addition to following this procedure.

10. Exclusions

- 10.1 The procedure does not apply to:

- (i) cases of incapacity due to ill health which are dealt with under the University's Sickness Absence and Medical Incapacity Procedure and/or Disability Policy;
- (ii) cases of incapability or professional incompetence which are dealt with under the University's Capability Procedure;
- (iii) issues of misconduct during the probationary period, which are dealt with under the University's process for managing probation and induction;
- (iv) cases where the alleged misconduct may be solely or partly due to a disability, in which case advice should be sought from Human Resources, and reference made to the University's Disability Policy and/or Sickness Absence and Medical Incapacity Procedure.

11. Statutory changes

- 11.1 Any changes to statutory provisions that affect this collective agreement will automatically be incorporated.

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B. DISCIPLINARY PROCEDURE

14. Informal action

- 14.1 Cases of minor misconduct are usually best dealt with by a manager informally, and without delay. The manager should speak to the member of staff in private, and advise him/her of the problem and what is required of the member of staff to rectify it. Although there is no statutory right to be accompanied at this informal stage, a request to be accompanied by a fellow worker or trade union representative will not be unreasonably refused. The Disciplinary Procedure should only be used where informal action has failed or the misconduct is considered sufficiently serious to warrant formal action.

15. Allegations

- 15.1 Allegations will be referred to the relevant manager (hereafter referred to as the hearing manager) for initial consideration. This would normally be a Head of School, Divisional Director, Head of Department, Section Head, Strategy & Operations Manager, or equivalent. Where the hearing manager considers the allegations to have substance,

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- 17.2 The investigating officer will be appointed by the hearing manager, in liaison with the Human Resources representative, and should normally be someone who does not work closely with either the individual under investigation, the individual(s) making the complaint (if appropriate), or the manager, and should not have had any previous

he/she wishes to call to the Human Resources representative at least two working days before the hearing. It shall however be for the hearing manager to determine whether any witness evidence shall be heard, whether the proposed witness is to be called by the member of staff or the investigating officer/other management representative.

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proceedings.

21.2 It is not the University's normal practice to tape record disciplinary hearings.

22. Outcome of a disciplinary hearing

22.1 Where the alleged misconduct is *not* a potentially dismissible act, the options available to the Chair are:

- (i) to determine from the evidence presented that the member of staff has not committed an act of misconduct, and that disciplinary action is not appropriate. This will be confirmed in the letter with the outcome of the hearing, and a copy held on the individual's personal file;
- (ii) to determine that misconduct has occurred, but that the situation can be rectified by an alternative to issuing a disciplinary warning, for example, by staff development;
- (iii) to issue a formal warning the level of which will be dependent on the severity of the misconduct, the member of staff's disciplinary record, and any mitigating circumstances raised. It will be recorded and a copy placed on the individual's personal file.

N. B: It may be appropriate for the Chair to decide on more than one of the above outcomes.

22.2 The disciplinary sanctions available are detailed in Appendix 2.

22.3 In cases where the alleged misconduct *is* a potentially dismissible act, the option to dismiss the member of staff may be considered in addition to options (i) to (iii) above.

22.4 Where a member of staff has committed an act of gross misconduct, the University reserves the right to dismiss without notice (summary dismissal). Examples of actions which could constitute gross misconduct are given at Appendix 3.

23. Confirmation of the outcome

23.1 The Chair is responsible for confirming the outcome to the member of staff in writing within 5 working days of the hearing.

23.2 For action short of dismissal, the letter should state the nature of the misconduct, the level of any disciplinary warning issued and how long it will last, any action required of the member of staff, and the consequences of any further misconduct. The letter will also contain details of the appeals process.

23.3 Where the decision has been made to dismiss the member of staff, the letter will give details of:

- (i) the reason(s) for dismissal;
- (ii) the right of appeal against the decision - any appeal should be submitted to the Director of Human Resources within ten working days of receipt of the dismissal letter. Receipt will be deemed to be 48 hours from the date of the letter. The appeal would normally be heard within 15 working days of the date the appeal was received;
- (iii) The period of notice (if appropriate) and the arrangements for the completion of such notice;
- (iv) details of final payments due.

23.4 A copy of the notes of the hearing should be attached to the letter, or forwarded to the individual as soon as they are available.

C. APPEALS

24. General

24.1 A member of staff who is disciplined or dismissed will be informed of his/her right of appeal, and the right to be accompanied. This information should be included in the letter confirming the outcome of the disciplinary hearing.

24.2 When submitting an appeal, the member of staff must state the grounds of appeal which could be:

- s/he thinks that the decision is flawed because the evidence did not support the decision reached;
- s/he thinks a finding or penalty is disproportionate to the disciplinary breach; and /or
- significant new evidence has emerged since the original hearing; and/or
- s/he thinks the Disciplinary Procedure was not followed properly.

The above list is not exhaustive.

26. Appeals against dismissal

- 26.1 Appeals against dismissal are heard by a Disciplinary Appeals Panel appointed by the Vice-Chancellor (or nominee), and consisting of two independent senior managers (one of whom shall be the Chair), and an independent employment solicitor appointed by the University (who shall not be employed by the University nor act for the University other than in their capacity as a member of a panel for appeals against dismissal). In the case of the independent peer (from the staff), independent shall have the meaning of not having had prior involvement in the case. In the case of the independent person external to the University, independent shall have the meaning of having no involvement with the University which might be prejudicial to impartial judgement (and for the avoidance of doubt, any payment by the University to such external person in respect of their time incurred in respect of the appeal shall not be deemed to prejudice their impartial judgement). In the case of an appeal of an academic member of staff, one of the two senior managers shall be a Head of School from another School or other academic peer. The panel will be supported by a Human Resources representative.
- 26.2 Appeals must be submitted in writing to the Director of Human Resources within ten working days of receipt⁶ of the letter confirming the dismissal, specifying the grounds for appeal (see 24.2 above). The appeal will normally be held within fifteen working days of receipt of the paperwork, and the member of staff will be given at least five days' notice in writing of the arrangements for the appeal hearing.

Appendix 1

Format of the disciplinary hearing

1. The Chair introduces those present and their roles. Where the member of staff is accompanied, the Chair may seek clarification as to the role of the colleague, for example, will s/he be presenting the case (i.e. representing the member of staff) or is s/he present in a supporting capacity? In either case both parties should be encouraged to contribute to the hearing.
2. As an introduction to the hearing, the Chair will:
 - (i) confirm that the hearing represents a formal disciplinary hearing in line with the university's Disciplinary Procedure and check that those present are familiar with this document;
 - (ii)

Appendix 2

Types of disciplinary action and time limits on personal file

The following types of disciplinary action may be taken by the chair of a disciplinary hearing where the allegations are upheld:

1. Formal **oral warning** - for a first act of minor misconduct. The manager should ensure that the member of staff understands the standards of conduct expected. An oral warning will be disregarded for disciplinary purposes and removed from the individual's personal file after 6 months, subject to satisfactory conduct.
2. Formal **written warning** - for further acts of minor misconduct, not necessarily of the same nature, or for a first act of more serious misconduct. A written warning will be

Appendix 3

Disciplinary rules, gross misconduct and misconduct⁹

1. The University's disciplinary rules set standards of conduct at work, and indicate the likely consequences of a breach of the rules. **The rules are not exhaustive.** They apply generally to all University staff and will be reviewed periodically. Due to the variance in the nature of work at the University, there may be additional rules that are specific to an individual's area of work. Although the rules apply to standards at work, there may be circumstances where conduct outside work could make impact on a member of staff's employment. In such cases, the rules will apply to conduct outside work.
2. **Gross misconduct** is defined as acts "resulting in a serious breach of contractual terms"¹⁰ for which dismissal is justified without previous warnings. By breaching any of the examples of gross misconduct given below, a member of staff will be at risk of immediate dismissal. It is recognised that there may be situations where action short of dismissal is appropriate, and equally, there will be acts that are not specified below which may be considered as gross misconduct.
3. **Examples of action which could constitute gross misconduct**
 - 3.1 Theft or misappropriation of property of the University, any member of the University, or any visitor to the University.
 - 3.2 Threatening or using violence¹¹ on any member of the University or any visitor to the University.
 - 3.3 Deliberate damage to, or neglect of, the University's property, assets, cash, investments etc.
 - 3.4 Harassment or bullying on any of the grounds stated in the University's Harassment or Equality and Diversity policies, and other acts of unlawful discrimination.
 - 3.5 Fraud, for example falsification of qualifications, timesheets, overtime claims.
 - 3.6 Serious breaches of safety regulations or the University's safety policy.
 - 3.7 Engaging in unauthorised employment during contracted hours with the University or periods of sick leave.

- 3.13 Gross insubordination.
- 3.14 Being unfit for work due to alcohol or drug misuse.
- 3.15

Appendix 4

Format of the appeal hearing

1. The Chair introduces those present and their roles. Where the member of staff is accompanied, the Chair may seek clarification as to the role of the colleague, for example, will s/he be presenting the case (i.e. representing the member of staff) or is s/he present in a supporting capacity? In either case both parties should be encouraged to contribute to the hearing.
2. As an introduction to the hearing, the Chair will:
 - (i) offer the member of staff the opportunity to request reasonable time to confer with his/her representative at any time during the hearing;
 - (ii) confirm that the hearing represents an appeal hearing in line with the university's Disciplinary Procedure and check that those present are familiar with this document;
 - (iii) note that it is his/her aim is to conduct the hearing in a fair and systematic manner, and to ensure that the issues are explored thoroughly and with dignity to reach a fair outcome;
 - (iv) confirm the role of the Human Resources representative;
 - (v) confirm that the details of the discussion will remain confidential between those present until a decision is reached;
 - (vi) note the documents that will be considered. All parties should have a copy of these documents;
 - (vii) explain that any witnesses will be called into the hearing as required. Each witness shall leave the hearing upon completion of their evidence and questioning.

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closing statement.

11. The member of staff is invited to make a closing statement.
12. All parties except the Chair (or Disciplinary Appeals Panel if applicable) and the Human Resources representative leave the room to allow the chair to decide on the appropriate outcome. If there are any points of uncertainty that need resolving, both parties will be asked to return and informed of the proposed course of action.
13. The Chair (or Disciplinary Appeals Panel if applicable) may confirm, amend or reject the disciplinary action which is the subject of appeal. The Chair will reconvene the hearing in order to give the decision, which will be confirmed in writing. If the decision is to amend the disciplinary penalty, the Chair will inform the member of staff and the manager who issued the penalty of its amendment, and any associated action required to reduce the likelihood of any further misconduct.