

# Disciplinary Procedure

## 1. Aims

- 1.1 These disciplinary procedures help to ensure that the University's standards of conduct are adhered to and that employees are to safeguard individuals in respect of whom this policy/procedure is being applied, ensuring consistency of treatment across the University.
- 1.2 The aim of this procedure is to apply common and equitable standards to all staff through a clearly understood and fair procedure.

## 2. Scope

- 2.1 These procedures are applicable to all staff employed by the University other than senior staff to whom a separate procedure applies.
- 2.2 If an employee's performance is sub-standard due to negligence or lack of application then normally the matter will be dealt with under these disciplinary procedures.
- 2.3 Other matters of incapability will be dealt with constructively and should involve support, supervision and monitoring of performance or attendance, including professional support, advice and training where appropriate. Matters relating to performance and absence will be dealt with under separate procedures (Management of Sickness Absence and Capability).

## 3. Disciplinary Rules

- 3.1 The University provides guidance on the standards of conduct it expects of its employees. This guidance is set out in the separate policy document Disciplinary Rules.
- 3.2 Breach of the expected standards of conduct will result in disciplinary sanctions. Disciplinary action will not be taken until there has been an investigation, unless an employee admits the allegations.

## 4. The Procedure

### 4.1 Investigation

- 4.1.1 Complaints alleging misconduct or gross misconduct or any incident apparently in breach of the disciplinary rules must be investigated before any disciplinary action is taken. The purpose of the investigation is to obtain all relevant information and evidence.
- 4.1.2 In certain cases the Vice-Chancellor, or Senior Manager with delegated authority, may consider it appropriate to direct the suspension of the employee concerned pending an investigation into the complaint or incident, or during certain stages of the disciplinary procedure where the likely penalty is summary dismissal.
- 4.1.3 The investigation will be carried out by the manager of the subject of the investigation. 'Manager' shall mean the employee's line manager or another appropriate staff member more senior to the employee. Any complaint or incident involving fraud, corruption, giving or receipt of bribes or other financial irregularity must be notified to the Director of Finance who will determine whether the matter should be investigated by Internal Audit. Cases of fraud, theft or assault will normally be reported to the police.

- 4.1.4 In carrying out the investigation the manager should obtain as much relevant information as possible on what happened, where and when; interview any complainant and any witnesses and/or obtain written statements. These statements should clearly indicate who has provided the statement and be dated. Any complainant should be informed that the details of the complaint and the name of the complainant will be sent to the individual employee<sup>1</sup>.
- 4.1.5 Normally an employee will be informed at an early stage that an investigation is taking place. The employee will be informed in writing of the alleged misconduct and provided with relevant details/documents so that they have an opportunity to respond to the allegations. The employee may be asked to respond in writing or to attend an interview. Employees should be advised of their rights to be represented by a trade union representative or friend.
- 4.1.6 Having investigated the matter the manager should decide upon the appropriate course of action as follows:
- a) No substance to the allegations found: If, following a full and proper investigation of the information and circumstances, no substance to the complaint is found, or the complaint is deemed to be unfounded, a letter stating this should be sent to all parties concerned. In circumstances where an employee has been suspended the suspension must end as soon as practicable.
  - b) Informal approach appropriate for first offences of minor nature: Minor cases of misconduct may best be dealt with by informal advice, coaching and counselling rather than through the disciplinary procedure. For this purpose managers should discuss the problem with the objective of encouraging and helping the employee to improve. If the employee agrees with the findings a note should be kept of the advice given and a copy provided to the employee. These discussions are not part of the formal disciplinary procedure and the individual should be informed of this. However, if there are subsequent breaches the note of advice given can be referred to.
  - c) Proceed to formal procedure where more serious misconduct is alleged, repeated offences or where the employee does not agree to an informal approach.

## **4.2 Formal disciplinary procedure**

- 4.2.1 A disciplinary hearing should be set up at the earliest convenient date. The hearing Panel will consist of two Senior Managers (HoD, Dean, Director, Head of Service, Deputy Vice Chancellor, Pro Vice Chancellor) one of whom must be senior to the Line Manager. In matters where dismissal may be a possible outcome a Deputy or Pro Vice-Chancellor must be a member of the Panel.
- 4.2.2 The employee must be given at least 10 working days notice of the meeting and advised of the entitlement to be represented by a trade union representative or a friend. The letter giving such notice will state the date, time and place of the hearing, set out the allegations in detail, give the names of those hearing the case, presenting the allegations, the names and role of any advisors and any witnesses to be called in person. It must state the consequences of being found blameworthy, including possible dismissal in cases of gross misconduct and must advise the employee of their right to be represented, to bring evidence and witnesses as necessary.
- 4.2.3 The manager or person who investigated the matter will prepare a report that details the allegation(s), the investigation undertaken including copies of witness statements and the conclusions of that investigation. The report should also include all relevant documentation. The report and any notification of any witnesses to be called will be provided to the employee at least 10 working days before the disciplinary hearing.

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<sup>1</sup> See section 9 witness statements

- 4.2.4 The employee must give the Panel written notice of any witnesses they want to call. The employee should contact their witnesses directly or via Human Resources requesting their attendance. Where possible written statements should be requested from any witnesses called and their statements presented as part of the employee's response. The employee may make a written response to the report prepared by the investigator of the alleged misconduct. This response and the witness notice must be provided at least five working days before the disciplinary hearing.
- 4.2.5 All relevant documents, including the manager's report and any response from the employee, if one has been provided, will be made available to the Panel in sufficient time to enable the Panel to read the evidence on both sides and prepare questions. Panel members must not discuss the case with anyone (apart from other Panel members) prior to the hearing.
- 4.2.6 A member of Human Resources staff will be present to advise the Panel on proceedings. Notes of the proceedings will be taken.
- 4.2.7 The procedure at disciplinary hearings will be as follows:
- a) The Panel, manager, employee and their representative, and any advisers to the Panel will be present at the start of the hearing.
  - b) The Chair of the Panel will introduce those present explaining roles (whether decision-making or advisory).
  - c) The Chair will explain the purpose of the hearing and the procedures which will be followed. The Chair will remind those present (and in turn the witnesses) that the proceedings are confidential.
  - d) The manager will present the allegations, call witnesses and introduce other documentary evidence to the Panel.
  - e) The Panel will have the opportunity to ask questions or clarify any issues raised during the presentation, or to re-examine witnesses.
  - f) The employee and/or representative will be invited to ask questions on the case presented or the evidence given by witnesses after examination.
  - g) Witnesses shall be present only whilst they are being examined and must be directed not to confer with each other or anyone else. Witnesses may be accompanied but not represented at the hearing.
  - h) The employee and/or representative will present evidence in defence of the allegations, including making a full statement, examining witnesses and presenting documentary evidence.
  - i) The Panel will have the opportunity to ask questions or clarify any issues raised during the presentation, or to re-examine witnesses.
  - j) The manager will be invited to ask questions on the case presented or the evidence given by witnesses after examination.
  - k) The manager and the employee and/or representative will be invited to make their closing statements.
  - l) All parties will withdraw excepting the Panel and any advisors.
  - m) The manager and the employee may be recalled to clarify points of uncertainty on evidence already given. If recall is necessary both parties will return irrespective of the point of clarification sought.
  - n) The Panel will consider on the balance of probability whether the allegations are proven.
  - o) Where the Panel concludes, or if the employee admits that there has been a breach of disciplinary rules, the employee/representative will be given the opportunity to make a plea of mitigation before a decision is made.
  - p) The Panel will determine the appropriate sanction taking account of mitigation offered, the seriousness of the case, the penalties applied in similar cases in the past, any previous warnings which are still in effect, the nature of the employee's job, the work record of the employee.

- q) The Panel's decision will be communicated in person to the employee within two working days and a letter setting out the decision and the reasons for the conclusion will be sent within five working days.
- r) The letter will also state that the employee has a right of appeal which must be exercised by writing to Human Resources within 10 working days of receiving written notice of the Panel's decision and setting out the grounds of appeal.
- s) The Panel hearing the case shall determine any question of procedure not explicitly covered by this document.

#### 4.2.8 Disciplinary sanctions that may be imposed by the Panel are:

- a) Oral warning - Appropriate for minor infringement of disciplinary rules.
- b) Written warning - A more serious offence or further minor offence. The written warning should provide details of the complaint and warn that further disciplinary action may be taken if there is no improvement of conduct.
- c) Final warning - Appropriate for continued offences or exceptionally for a very serious offence where one warning only could be made (first and final). The written warning should provide details of the complaint and warn that further offence may lead to dismissal.
- d) Dismissal - Appropriate for continued offences following previous disciplinary sanctions or offences of gross misconduct. In cases of gross misconduct, the usual penalty is summary dismissal – that is immediate termination of employment without notice or payment in lieu of notice. Where dismissal is for misconduct (rather than gross misconduct), termination of employment will be on notice or with a payment in lieu of notice.
- e) Disciplinary decisions are not based on an expired warnings but the fact that there is an expired warning may be used to explain why a lesser sanction is not applied.
- f) In cases where an employee's conduct is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter and there is evidence of a pattern or abuse, the employee's disciplinary record will be borne in mind in deciding how long any warning should last.

### 4.3 Appeal

- 4.3.1 An employee may appeal against any disciplinary penalty, including a decision to dismiss. Where an appeal against summary dismissal is successful the individual will be immediately reinstated and back pay made from the date of dismissal. Where an appeal against dismissal with notice is successful the notice will be immediately withdrawn. The employee must exercise the right to appeal within 10 working days of being notified of the outcome and must provide written grounds of appeal to Human Resources.
- 4.3.2 Generally, an appeal may be raised on a number of grounds. Where the appeal relates to the severity of the penalty, the appeal will consider the reasonableness of the sanction imposed. Where the appeal relates to perceived unfairness of the judgement, new evidence coming to light or procedural irregularities, the appeal will take the form of a re-hearing.
- 4.3.3 The Appeal Panel will consist of three Senior Managers (HoD, Dean, Director, Head of Service, Pro Vice Chancellor) one of whom must be senior to the Hearing Panel members. None of the members of the Appeal Panel should have had any previous involvement in the case and must be from outside the School/Service.
- 4.3.4 The employee must be given at least 10 working days notice of the appeal hearing and advised of the entitlement to be represented by a trade union representative or a friend. The

letter giving such notice should state the date, time and place of the appeal hearing, attach all relevant documentation, give the names of those hearing the appeal and any witnesses to be called in person.

- 4.3.5 The employee should inform Human Resources at least five working days before the hearing of any witnesses they want to call. The employee should contact their witnesses directly or via Human Resources requesting their attendance. Where possible written statements should be requested from any witnesses called and their statements presented as part of the employee's response.
- 4.3.6 All relevant documents, including the grounds of appeal and manager response, will be made available to the Appeal Panel in sufficient time to enable the Panel to read the evidence on both sides and prepare questions. Appeal Panel members must not discuss the case with anyone (apart from fellow Panel members) prior to the hearing.
- 4.3.7 A member of Human Resources staff will be present to advise the Panel on procedure. Notes of the proceedings will be taken.
- 4.3.8 The Panel should arrange for all persons present to introduce themselves and all witnesses as they are called. The purpose of the appeal hearing should be explained. The Chair will remind those present (and in turn the witnesses) that the proceedings are confidential.
- 4.3.9 In the event of a re-hearing, the procedure governing disciplinary hearings will be followed to ensure a complete re-hearing of the case. Where the appeal is restricted to issues of penalty, the appeal hearing will address these issues only. The employee and/or their representative/friend will be asked to outline their grounds for appeal and may call witness evidence.
- 4.3.10 Once all the evidence has been presented and all questions asked, the appeal hearing will be concluded, all parties except the Panel and any advisors will leave the room. The Appeal Panel must consider all the evidence presented to them and decide whether to confirm, modify or overturn the decision of the previous disciplinary hearing.
- 4.3.11 The outcome of the hearing must be confirmed in writing to the employee within five working days.
- 4.3.12 The decision of the Appeal Panel is final. This does not affect an individual's statutory rights.

## **5. Suspension**

- 5.1 If there is no acceptable alternative to suspension (e.g. removal from normal duties or restricted duties) then suspension from duty without loss of contractual pay may be considered in the following circumstances:
  - a) Where the employee's continued presence at work may put them, other people, University property or funds at risk.
  - b) Where the allegations constitute gross misconduct and if proven, it is likely that the employee will be dismissed. The concept of gross misconduct is such that it is usually advisable to suspend the individual while the information is being obtained, once facts have been established and for the duration of the disciplinary procedure.
- 5.2 Where it is decided to suspend an employee, a meeting should be arranged at a suitable time. Wherever possible, it is advisable for the employee to be accompanied at this meeting by a trade union representative or a friend. The employee should be notified at the outset that an allegation has been made and that suspension from duty, without detriment to contractual pay, is necessary during the investigation. The employee should be given as

much information as possible about the allegation and the suspension and be given a copy of the Disciplinary Procedures.

5.3 All matters of staff discipline are governed by strict confidentiality and this is especially important in the early stages of an investigation when it may not be clear that allegations made are well-founded. Suspension from duty is a precautionary measure – it is a neutral act and does not imply any indication of blame.

5.4 An employee who is suspended should:

- a) Be allowed to collect personal possessions (accompanied whilst they do this)
- b) Hand over keys and other essential University property
- c) Be told not to enter the University premises without permission from their manager or other agreed named person(s).
- d) Be told that they may be called back for interview as part of the investigation and must be available to be called in at any time during working hours. Any calls for meetings should be made in writing to the employee and provide adequate notice to arrange representation.
- e) Be advised that contact with staff, e.g. in relation to preparing responses to allegations, must be arranged via their trade union representative, manager or other agreed named person. Outside of this contact, the individual should not discuss the investigation or the circumstances surrounding it with members of staff or students.
- f) Agree (where possible) with the manager what colleagues and students will be told about their absence from work.
- g) Be advised of their right to representation and advised to contact their trade union representative if this is not already done.
- h) Be advised of the support available through the Counselling Service.
- i) Be told that the suspension will be confirmed in writing within three working days.

5.5 The suspension must be confirmed in writing within three working days of the employee being informed of that decision. The letter will state that there is no loss of contractual pay during the period of suspension and remind the employee of the other terms of the suspension, especially the obligation to keep matters confidential so far as possible. A copy of the disciplinary procedures must be sent to the employee with the letter of suspension.

5.6 The period of suspension should be as brief as possible and investigations must be commenced as soon as practicable.

5.7 Where a suspension continues for three weeks or more the individual may appeal in writing to the Vice Chancellor. Notices of appeal should be addressed to Human Resources and set out the grounds of the appeal. The Vice Chancellor (or nominee) will review the suspension.

5.8 The suspension will continue to operate pending determination of the appeal. The review of the suspension will be by consideration of written submissions from the employee and/or their representative/friend and the manager. A member of Human Resources staff will advise on procedure.

5.9 There shall be no right of appeal against that suspension where there has been a disciplinary hearing and the employee has been notified of the proposal to dismiss subject to any appeal.

## **6. Rights to representation**

6.1 By statute all workers have the right to be accompanied by a fellow worker or trade union official. Under these procedures this right is extended to give each employee the right to be accompanied and represented by a trade union official or a friend chosen by the employee.

- 6.2 The right to representation applies at all stages of the disciplinary procedure – investigatory interview, disciplinary hearing, appeal hearing. Wherever possible the University will allow representation of an employee at any meeting to explain a suspension decision where this would not unreasonably delay the suspension.
- 6.3 There is no duty on a fellow employee or a trade union official to accept a request to accompany or represent an employee and no pressure will be brought to bear on any colleague who does not wish to act in this role. Any University employee fulfilling this role will be entitled to a reasonable amount of paid time off to fulfil this responsibility.
- 6.4 In establishing dates, representatives will be consulted in seeking to find a mutually convenient date and time. Where the representative is unable to attend on the proposed date they can offer an alternative time and date so long as it is reasonable having regard to the availability of the relevant manager and members of the Panel.

## **7. Trade Union Officials**

- 7.1 Disciplinary standards apply to the conduct of trade union officials as to other employees. The University recognises that disciplinary action against a trade union official may be perceived as action against the union rather than an individual. With this in mind, if disciplinary action is contemplated then the case will be discussed with a senior trade union representative within the University or a full-time official of that union, subject to the agreement of the individual employee. Where disciplinary action against a trade union official is contemplated the Director of Human Resources must be informed.

## **8. Criminal Convictions Outside Work**

- 8.1 Criminal charges or convictions will not be treated as automatic reasons for dismissal but will be considered to assess whether the offence makes an employee suitable for their continued employment at the University. Any disciplinary action will be subject to investigation and process as detailed in this disciplinary procedure.

## **9. Witness Statements**

- 9.1 In taking and considering witness statements the following guidelines should be followed:
- a) Statements should be in writing
  - b) The following should be recorded: the date, time and place of each observation or incident; the witness's opportunity to observe clearly and accurately; circumstantial evidence such as knowledge of a system, the reason for the witness's presence or any memorable small details; and whether the witness had any reason to fabricate evidence.
  - c) Further investigation should take place, corroboration being clearly desirable.
- 9.2 Generally the University would expect its employees to attend hearings/appeals as witnesses as far as is practicable when they have evidence to present relevant to a disciplinary case. However there are times when it is not reasonable for a witness to attend such as:
- a) When the allegations are concerned with forms of harassment and the victim cannot face the prospect of contact with the alleged harasser.
  - b) Where the witness may feel vulnerable, e.g. student.
  - c) Where the witness is a member of the public or employed by another organisation.
- 9.3 In the event of someone not being able/prepared to attend a hearing or appeal it may be appropriate to accept a statement from the witness as evidence. In considering a written

statement made by someone who has not attended the hearing, the Panel must consider carefully what weight to attach to that evidence bearing in mind the fact that they have not had the opportunity to directly hear the evidence or to directly question the witness.

- 9.4 On occasion a witness may wish to remain anonymous. In such circumstances the University will maintain a balance between the desirability of protecting a witness who is genuinely in fear and providing a fair hearing of issues for an employee accused of misconduct. It should be noted that in the event of a case being pursued in the Courts or Tribunals anonymity cannot be guaranteed.
- 9.5 The principles of natural justice should be applied and therefore agreement to accept anonymous witness statements should be rare and must be based on an informed judgement that the witness(es)' fear is real and pertinent.
- 9.6 In considering whether to allow anonymous witness evidence the investigating manager must interview the witness(es) to determine how central the evidence is and to form a judgement as to the reasonableness of the witness(es)' request. Where the manager wishes to proceed with this witness they should take their case to a review panel.
- 9.7 The Review Panel<sup>2</sup> will consist of two managers (more senior to the investigating manager) supported by a Human Resources Manager. If the Review Panel consider that the witness(es)' fear is genuine they must decide whether or not to continue with the disciplinary process/investigation.
- 9.8 If the Panel decides that the disciplinary process/investigation should continue, then the investigating manager should take the statement from the witness as normal and then anonymise it.
- 9.9 If following the investigation the disciplinary process continues, the employee on receipt of the management case will have the opportunity to raise questions through the investigating manager to the anonymous witness and receive a written response to those questions. Timescales will be extended to allow for this questioning before the employee is required to submit their case.
- 9.10 During any hearing the Panel should interview the anonymous witness and satisfy themselves what weight should be given to this evidence. The employee and their representative should not be present during this interview, but may pass questions to be asked via the Panel before interview and receive a written response to those questions. If the employee and their representative raise any particular issues relating to the interview, then the Panel may adjourn the hearing to put those issues to the anonymous witness. Again a written response will be provided.
- 9.11 In considering anonymous witness statements the following advice should be considered:
  - a) Statements should be reduced to writing (although they might need to be redacted later to preserve anonymity)
  - b) In taking statements it is important to note the date, time and place of each observation or incident; the informant's opportunity to observe clearly and accurately; circumstantial evidence, such as knowledge of a system, the reason for the informant's presence or any memorable small details; and whether the informant had any reason to fabricate evidence.
  - c) Further investigation should then take place, corroboration being clearly desirable
  - d) Tactful enquiries into the character and background of the informant would be advisable
  - e) A decision must then be taken whether to hold a disciplinary hearing, particularly when the employer is satisfied that the informant's is genuine

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<sup>2</sup> The Review Panel will comprise, wherever possible, of different members to any future hearing panel.



- f) If the disciplinary process is to continue, the responsible member of management at each stage of the procedure should personally interview the informant and decide what weight is to be given to their evidence
- g) The informant's written statement – if necessary with omissions to avoid identification – should be made available to the employee and their representative
- h) If the employee or their representative raise an issue that should be put to the informant, it may be desirable to adjourn the disciplinary proceedings so that the chair can question the informant
- i) It is particularly important that full and careful notes should be taken at disciplinary hearings when informants are involved
- j) If evidence from an investigating officer is to be taken at the hearing it should where possible be prepared in writing<sup>3</sup>

## **10. Failure to attend disciplinary hearings through sickness**

- 10.1 Employees subject to disciplinary hearings may sometimes be unable to attend by reason of ill health. In such circumstances the employee will be required to submit a medical certificate from their GP. The matter will be referred to the Occupational Health Service who with the employee's consent will discuss the matter with the individual employee's GP to assess the likely duration of the inability to attend hearings. In the light of such information the Chair of the Panel may determine whether to proceed with the hearing or defer for a period of time. If the employee refuses to consent to an approach to the GP then the Chair of the Panel will have no option but to base any decisions on the information available.
- 10.2 It is not the intention to penalise employees whose illness genuinely precludes them from attending disciplinary hearings. Delays to the hearing are not to the advantage of either the employee or the University. Each individual case will be evaluated on its own merits but the prime objective will be to eliminate or minimise any delay in holding hearings.

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<sup>3</sup> EAT Linfood Cash and Carry Ltd v Thomson and anor 1989 IRLR 235, cited in IDS Handbook Unfair Dismissal