



**WITH EFFECT FROM 12 September 2018**

## **THE DISCIPLINARY PROCEDURE**

### **1. INTRODUCTION**

- 1.1. All action taken, either informal or formal should aim to resolve issues and/or aid improvement.
- 1.2. The Disciplinary Procedure relates to matters of misconduct. Matters relating to incapability due to ill health or disability shall be dealt with using the Sickness Absence Management procedure. Matters relating to work performance shall be dealt with via the Capability procedure. In some circumstances Human Resources may need to determine the most appropriate procedure.

### **2. INFORMAL ACTION**

- 2.1. Managers should first seek to resolve minor issues informally and expediently whenever possible. If formal action might be considered as the next step, this should be made clear to the staff member.
- 2.2. Managers should make and retain notes of any issue raised and discussed informally, including any agreed outcomes and support, securely and confidentially in accordance with Data Protection principles.
- 2.3. Prior to commencing formal action, a manager should; liaise with HR to ensure all appropriate and reasonable informal resolution has been considered; and make the staff member aware that formal action is now being considered.

### **3. INVESTIGATION**

- 3.1. No formal disciplinary hearing will be arranged until the matter has been investigated. Investigations shall be undertaken in an open and transparent manner by appropriately skilled, and trained, independent investigators. A staff member should be made aware that an investigation will be undertaken, and should be provided with a brief summary of the reasons for this and the practical measures involved. Investigators will not be on the panel but may give evidence.
- 3.2. Investigations should be made as quickly as is practicable and without unreasonable delay in order to decide whether there is a case to answer.



Unavoidable delays shall be reported on and wherever possible shall be rectified as soon as possible by steps agreed with all parties.

- 3.3. The investigation process will depend on the nature of the alleged misconduct, the initial evidence against the member of staff, and whether the individual has admitted to the misconduct. In cases where the facts are very clear and not in dispute, the investigation will be very short and it may be appropriate for it to be undertaken by the manager who receives the allegation(s).
- 3.4. If following investigation there is found to be a case to answer, informal action may be taken, or where appropriate a formal disciplinary meeting will be arranged.
- 3.5. In some circumstances, the manager may need to suspend a staff member from work on full pay while matters are investigated. Suspension is a neutral act and not a disciplinary sanction. This would only be upon consultation with Human Resources and for as short a period as possible, with regular reviews. Suspension will only be applied in exceptional circumstances.

#### 4. NOTIFICATION OF FORMAL PROCEEDINGS

- 4.1. Where there is found to be a formal case to answer, the staff member will be invited, in writing, to attend a disciplinary hearing. The notice will usually be provided no later than 7 calendar days in advance of the hearing. For academic, teaching and research staff the notice provided will usually be 21 calendar days in advance of the hearing, unless agreed by all parties that a shorter period would be appropriate.
- 4.2. The staff member will be advised in the letter of the seriousness of the alleged misconduct and possible outcomes.
- 4.3. No less than 7 calendar days (usually 21 calendar days for academic, research and teaching staff) in advance of the meeting the staff member will be provided with all the evidence that will be referred to during proceedings. This may include written documents and witness statements, depending upon the details of the case. The exact material to be provided to the staff member shall vary according to details of the case.
- 4.4. Where further time is required to consider the evidence, there will be the ability to seek a reasonable adjournment where appropriate. If upon receipt of all the available documentation the staff member accepts the allegation(s) and does not plan to contest the findings, s/he should advise the secretary of the disciplinary hearing panel.



- 4.5. Where the staff member decides to rely upon any evidence, s/he should provide this in advance of the disciplinary hearing. This may include written documents and witness statements. The staff member will have a reasonable opportunity to call relevant witnesses. The purpose of calling a witness would normally be to contribute to establishing the facts of the case. Witnesses who are to testify to the character of an individual can do so in writing. The staff member will be advised in writing of the timescales (which will usually be a minimum of 7 calendar days unless agreed otherwise) and the process for providing such information. Where further time is required to consider the evidence, the panel have the ability to implement a reasonable adjournment.
- 4.6. During formal proceedings the staff member can be accompanied by a companion. This may be: either a fellow worker; a workplace Trade Union representative; or an official employed by a Trade Union. The individual will be notified of this right within the letter. For staff requiring certification to practice: Where the outcome of the case may have the potential to impact upon the individual's future professional certification to practice, the panel will determine in advance whether a companion may be a legally qualified professional.

## 5. THE DISCIPLINARY HEARING

- 5.1. At the hearing the management representatives will be invited to present the findings of their investigation to a disciplinary panel.
- 5.2. The staff member will then be given the opportunity to state the case, including if there are any special circumstances to be taken into account. The staff member will be invited to either accept or deny the allegation(s). If the staff member does not accept the allegation(s) the hearing shall proceed as though the staff member denied the allegation.
- 5.3. At appropriate points in the process, the staff member, management representatives and the panel will have the opportunity to challenge the evidence provided and question any witnesses. Management representatives and the staff member may each make a closing statement as to whether the allegation(s) should or should not be upheld.
- 5.4. The panel membership will vary depending upon the seriousness of the alleged misconduct and the seniority of the staff member involved, but will consist of a minimum of two members unless otherwise agreed. All members of the panel will be appropriately skilled University managers. It would be a normal expectation for the Chair of the panel to be of a more senior position than the investigating officers.



The panel membership shall be made known to the staff member in advance of the hearing, and s/he should raise any concerns with regards to the panel in advance.

- 5.5. In all cases where dismissal of a member of academic, research or teaching staff is an option, panel membership shall include at least one Officer of the University, or deputy, selected from the approved List of Potential Panel Members provided in accordance with the Statutes, Section 6, paragraph 7, and not being a person subject to or otherwise connected with the proceedings.
- 5.6. The disciplinary panel will hear the case and then decide whether it is upheld and what appropriate action should be.
- 5.7. The staff member will be informed of the outcome in writing within 7 calendar days after the panel. Where the usual timeframe is not practicable, this will be communicated to the staff member, with reasons and an alternative timeframe.
- 5.8. Formal action will be either:
  - A level 1 warning
  - A level 2 warning
  - A final warning
  - Dismissal or other sanction

Any formal action will reflect the seriousness of the staff member's misconduct.

## 6. LEVEL 1 WARNING

- 6.1. The staff member will receive written details of the nature of the misconduct, the change in behaviour required, any support which will be available, the timescale for the warning, and the right and arrangements for appeal.
- 6.2. The warning will also inform the staff member that further consequences will be considered if further misconduct occurs.
- 6.3. A copy of the warning, may if necessary, be kept on the individual's record but will be disregarded for disciplinary purposes after a specified period subject to achieving and sustaining satisfactory conduct. The warning period will ordinarily be for up to 6 months but this will be decided at the discretion of the Chair of the Disciplinary hearing.



## **7. LEVEL 2 WARNING**

- 7.1.** A panel may decide to issue a warning at level 2 with a longer warning period, depending upon on the seriousness of an incidence of misconduct.
- 7.2.** The staff member will receive written details of the nature of the misconduct, the change in behaviour required, any support which will be available, the timescale for the warning, and the right and arrangements for appeal.
- 7.3.** The warning will also inform the staff member that further consequences will be considered if further misconduct occurs.
- 7.4.** A copy of the warning, may if necessary, be kept on the individual's record but will be disregarded for disciplinary purposes after a specified period subject to achieving and sustaining satisfactory conduct. The warning period will ordinarily be for a minimum of 6 months and up to a maximum of 12 months but this will be decided at the discretion of the Chair of the Disciplinary Hearing.

## **8. FINAL WARNING**

- 8.1.** If the misconduct is sufficiently serious, or if there is further misconduct during an existing warning period, a final warning may be issued.
- 8.2.** The staff member will receive written details of the nature of the misconduct, the change in behaviour required, any support which will be available, and the timescale for the warning. It will also warn that further related misconduct may lead to dismissal (or some other action short of dismissal) and will refer to the right of appeal.
- 8.3.** A copy of the warning, may if necessary, be kept on the individual's record but will be disregarded for disciplinary purposes after a specified period subject to achieving and sustaining satisfactory conduct or performance. This period will ordinarily be for a maximum of 12 months unless exceptionally decided by the Chair of the Disciplinary Hearing.

## **9. OTHER SANCTION SHORT OF DISMISSAL**

- 9.1.** Other action short of dismissal may be considered, including for example (although this is not intended to form an exhaustive list):
  - Demotion



- Unpaid suspension
- Restriction of duties/change to terms of employment
- Transfer
- Withholding/loss of incremental progression for a specified period.

- 9.2.** If some action short of dismissal is deemed appropriate the staff member will receive written details, including any support which will be available. The letter will warn the individual that further related misconduct may lead to dismissal, and it will refer to the right of appeal.
- 9.3.** In the case of action short of dismissal a copy of the written details will be kept on the individual's record but will be disregarded for disciplinary purposes after a specified period subject to achieving and sustaining satisfactory conduct. This period will ordinarily be for a maximum of 12 months unless exceptionally agreed by the Chair of the Disciplinary Hearing, with authority as delegated by the Director of Human Resources.

## **10. DISMISSAL**

**10.1.** In reaching a decision to dismiss, prior careful consideration of other options will be given. If, on balance, other sanctions are deemed inappropriate due to the seriousness of the case, and the staff member is to be dismissed, the staff member will be provided in writing with reasons for dismissal, the date on which the employment will terminate, and the right of appeal and arrangements.

**10.2.** The authority to dismiss rests with the Director of Human Resources or deputy.

## **11. MISCONDUCT**

**11.1.** The following are examples of misconduct although this is not intended to form an exhaustive list:

- Unauthorised absence.
- Failure to comply with reasonable and legitimate instructions.
- Unsatisfactory timekeeping.
- Verbal abuse.
- Misuse of the University's computer systems, including hardware, software, email, intranet and internet; and as covered in the codes published by CiCS.
- Conduct detrimentally affected due to alcohol, drug, or substance misuse.
- Academic misconduct (including research misconduct)
- A breach of Code of Ethics.



## 12. GROSS MISCONDUCT

**12.1.** Gross misconduct may be sufficiently serious to warrant summary dismissal, which is dismissal without notice or payment in lieu of notice, even in the absence of any prior disciplinary warnings, and which is sufficiently serious to destroy the University's trust and confidence in the employment relationship.

**12.2.** The following list provides some examples of offences which are usually regarded as gross misconduct although this is not intended to form an exhaustive list:

- Unauthorised possession of goods belonging to the University, its staff or students.
- Theft.
- Fraud.
- Deliberate falsification of records.
- Corruption or bribery.
- Serious academic misconduct [cross reference to Research Misconduct].
- Serious breaches of Code of Ethics.
- Physical violence.
- Serious disorderly conduct.
- Bullying where this is intentional and of a serious and/or prolonged nature.
- Victimisation where this is intentional and of a serious and/or prolonged nature.
- Unlawful and/or serious harassment of other members of the University community, including staff, students and visitors.
- Deliberate unlawful and/or serious discrimination.
- Gross and deliberate misuse of University property or name.
- Serious misuse of the University's IT resources such as deliberately accessing internet sites for personal use which contain pornographic, offensive or obscene material.
- Dereliction of duty.
- Unreasonable behaviour that causes serious damage to the reputation of the University, including both off duty and off campus incidents, and including through the improper use of social media.
- Conduct seriously and detrimentally affected due to alcohol, drug, or substance misuse.
- Deliberate and serious damage to property.
- Causing loss, damage or injury through gross negligence.
- A serious breach of health and safety regulations.
- A serious breach of confidentiality.
- All forms of sexual violence and sexual harassment.



### 13. APPEALS

- 13.1. A staff member's written outcome letter will include details of the arrangements to follow should the staff member decide to appeal, e.g. to whom to appeal.
- 13.2. Staff intending to appeal against the decision of a disciplinary hearing, must do so promptly, usually within 7 calendar days of receipt of written notice of the formal action to be taken. Should the individual require additional time to submit an appeal, s/he may make a request to Human Resources, for a reasonable extension.
- 13.3. The request to appeal should be communicated in writing, stating the grounds upon which the appeal is based. Grounds for appeal might be: the process was not appropriately followed; there is new evidence relevant to the case which was not previously available; or the hearing outcome is deemed to be disproportionate.
- 13.4. The University will, as far as reasonably practical, seek to hear the appeal within 28 calendar days of receipt of the submitted appeal. The notice will usually be provided no later than 7 calendar days in advance. For academic, teaching and research staff the notice provided will usually be 21 calendar days in advance of the appeal hearing, unless agreed by all parties that a shorter period would be appropriate.
- 13.5. The appeal is not a rehearing of the original hearing, but rather a consideration of the specific area with which the staff member is dissatisfied in relation to the outcome of the original hearing. The appeal panel will therefore confine discussion to those specific areas rather than reconsider the whole matter afresh.
- 13.6. The appeal will be chaired by a Senior University Manager, and a member of Human Resources will support the meeting. Neither would usually have been previously involved in the case. Where the staff member exercising the right of appeal is a member of academic, research or teaching staff, panel membership shall include at least one Officer of the University, or deputy, selected from the approved List of Potential Panel Members provided in accordance with the Statutes, Section 6, Paragraph 7, and not being a person subject to or otherwise connected with the proceedings. The Chair will ensure that the number of people present at the appeal is kept to a minimum.
- 13.7. Where the appeal is against dismissal a senior member of Human Resources will set up and service the Appeal Panel comprising: (i) A Vice President [or nominee]; (ii) One member of the University's Human Resources Committee; (iii) One appropriate member of staff of the University, nominated by the Chair of Panel



(acting on behalf of the University) and agreed by the relevant Trade Union (where applicable).

- 13.8.** In the case of appeals against the dismissal of a member of academic, research or teaching staff the panel shall include : (i) One Officer of the University, or delegate; (ii) One independent professional or academic nominated by Council, who is not employed by the University (both shall be selected from the approved List of Potential Panel Members provided in accordance with the Statutes, Section 6, Paragraph 7); and (iii) One appropriate staff member of the University nominated by the Chair of Panel (acting on behalf of the University) and agreed by the relevant Trade Union (where applicable). Panel members will not have previous involvement or be otherwise connected with the proceedings.
- 13.9.** Witnesses may only be called with the permission of the Appeal Chair which shall usually only be given where there was good reason for the witnesses not being called to give this evidence at the disciplinary hearing. If the staff member requests a witness to be called, s/he should name the individual and explain the reasons for the request in the grounds for appeal.
- 13.10.** At the appeal meeting the documentary evidence made available at the original hearing will be made available for reference purposes. As the purpose of the appeal is not a reconsideration of all matters, it is the responsibility of the staff member to state their case and bring to the attention of the panel all relevant documentary evidence that should be considered. Based on the appeal case presented and the associated evidence, the appeal panel may either: uphold the grounds for appeal, reject the grounds for appeal, or require a rehearing of the whole or part of the case.
- 13.11.** Where a full or partial rehearing is required, the appeal panel may conduct such a rehearing should the panel deem it appropriate. The staff member can request that such a rehearing takes place at a later date.
- 13.12.** Where appropriate the staff member will have the opportunity to comment on any new evidence arising during an appeal. All new evidence will have been disclosed in advance according to timescales agreed for the case.
- 13.13.** The staff member will be informed in writing of the appeal outcome, usually within 7 calendar days of the appeal meeting. If the timescales are to be longer, this will be communicated.
- 13.14.** In the case of a rehearing, an appeal of the rehearing outcome would be permissible.



**13.15.** The panel's decision is final.

#### **14. OTHER PROVISIONS**

- 14.1.** During formal proceedings, including appeals, the staff member can be accompanied by a companion. This may be: either a fellow worker; a workplace Trade Union representative; or an official employed by a Trade Union. The staff member should advise whether the secretary of the panel should copy the staff member's representative into all the relevant documentation.
- 14.2.** At any hearing or appeal meeting, the staff member's companion will be able to address the hearing/meeting in order to: put the staff member's case forward; sum up the case; respond on the staff member's behalf to any view expressed at the hearing; and confer with the individual. The representative should not usually answer questions on behalf of the staff member, but may do so with the agreement of the panel.
- 14.3.** Every effort should be made by all participants to attend hearings as arranged. Hearings will be made at date/times that are mutually acceptable, wherever possible. Where a staff member fails to attend on more than two occasions, the University may decide that a decision should be made in his/her absence on the evidence available at the third scheduled hearing.
- 14.4.** If a staff member is absent due to sickness prior to the hearing, s/he may be invited to visit the University's Occupational Health Service to assess his/her fitness to attend a hearing, and to give advice on any special requirements or adjustments for the hearing.
- 14.5.** Where a staff member seeks to activate a formal procedure, e.g. submits a grievance or an appeal within another procedure, during a disciplinary process which is related to the case the disciplinary panel may deem it appropriate to deal with the issues as part of, or concurrently with this procedure. Alternatively the disciplinary panel may deem it appropriate to temporarily suspend the disciplinary proceedings pending the outcome of the other procedural process in order to safeguard the fairness of the process.
- 14.6.** Where a staff member believes that disability (e.g. hearing difficulties, chronic fatigue etc) or language skills (e.g. English is not his/her first language) may impact on the ability to participate as appropriate in the procedure, it is the individual's responsibility to raise this with Human Resources as soon as possible. In such cases the University will consider providing appropriate reasonable



support/adjustments during formal proceedings. Panel members shall be advised of any reasonable adjustments to be made.

- 14.7.** No formal disciplinary action should be taken against accredited Trade Union representatives until there has been discussion with the appropriate official employed by the Trade Union, in order to ensure compliance with the provisions of employment legislation. Suspension during investigation will also be discussed in advance of its use.
- 14.8.** Where staff are charged with, or convicted of a criminal offence they are required to inform the University as soon as possible. This shall not be regarded as an automatic reason for disciplinary action. Consideration will be given to whether the staff member's conduct or conviction merits action because of its employment implications. Factors may include, for example: whether the offence or the type of conduct that it exemplifies makes the individual unsuitable in relation to the type of work s/he does, or unacceptable to other staff; and the likelihood and potential severity of damage to the University's reputation. The facts of the case will be established to determine whether the conduct may warrant formal disciplinary action. Any investigation and subsequent disciplinary action will be separate to any police investigation and judicial process. The University may take fair and reasonable action in relation to employment prior to the outcome of legal proceedings.
- 14.9.** Records of disciplinary action will be kept confidential and retained in accordance with the University's Information Security Policy. The handling of personal data is controlled by the General Data Protection Regulation (GDPR) and associated legislation.
- 14.10.** Time limits are indicated in calendar days and are included in the procedures in order to ensure that matters are dealt with promptly and without undue delay. Neither the University nor staff members should unreasonably delay meetings, decisions or confirmation of those decisions. However, in complex matters it may be appropriate to extend time limits provided in the Procedure.
- 14.11.** Human Resources shall regularly monitor equality statistics relating to disciplinary matters and these will be shared with the Human Resources Committee (HRC) and the Joint Union and Campus Committee (JUCC).
- 14.12.** The Procedure was formally approved by HRC on **X** and agreed by JUCC on 12 September 2018