

# University Governance

## University Ordinances

### Ordinance XXXV

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#### Staff Disciplinary Policy and Procedure

*(Version effective from 2 July 2015 until 31 July 2018)*

This ordinance shall apply to all staff to whom paragraph 3 of Statute XXI refers<sup>[1]</sup>. Provisions for all other staff shall be found in the relevant Conditions of Service.

#### 1. POLICY

1.1 This Disciplinary Policy and Procedure is designed to help and encourage employees achieve and maintain required standards of conduct, attendance and job performance. It aims to provide consistent and fair treatment for all. It should be read in conjunction with the Guidance Notes for Managers on Dealing with Disciplinary Matters.

1.2 The rights of academic freedom as defined in Statute XXI, shall apply. No member of staff who is covered by the Statute shall be subject to disciplinary sanction as a result of appropriately exercising their right to academic freedom.

1.3 All written documentation in relation to any part of this procedure should be considered within the University's Code relating to Data Protection.

1.4 Information that is not current or relevant should not be held by a line manager or in a line manager's file.

1.5 Throughout this policy and procedure "days" refers to calendar days, unless specified otherwise.

1.6 Disciplinary action may be necessary, for example, where:-

- Rules, regulations and codes of practice/conduct have not been adhered to;
- An employee's conduct is detrimental to the interests of the University, its staff, partners or students, or the maintenance of discipline.
- An employee fails to maintain an acceptable standard of performance or behaviour, other than for medical reasons.
- An employee refuses to perform duties properly allotted by an appropriate person.

1.7 All employees will be referred to this document and its appendix "Authority to take Disciplinary Action" in their Statements of Terms and Conditions of Employment.

1.8 This policy should be read in conjunction with the University's 'Standards of Conduct for Employees'.

1.9 The employee will be advised of the nature of the complaint and will be given the opportunity to state their case before any disciplinary penalties are issued.

1.10 At all stages of the formal disciplinary procedure, an employee will have the right to be accompanied/represented by a trade union representative (as defined in the ACAS Code of Practice) (including a full time officer), or a University colleague of their choice. During investigations and investigatory interviews, the member of staff implicated in the allegation(s) may request a Trade Union representative to be present and wherever possible, this will be accommodated. Managers are reminded that the early involvement of a Trade Union

representative can help with the solution of the problems. The representative/companion should be allowed the opportunity to confer with the employee during any investigatory meeting, but may not answer questions on the employee's behalf.

1.11 No employee will be dismissed for a first breach of discipline, except in the case of gross misconduct, when the penalty may be dismissal without either notice or payment in lieu of notice (i.e. summary dismissal).

1.12 Disciplinary penalties will be issued dependant on the seriousness of employee's misconduct, but in all cases must be preceded by an investigation and a Disciplinary Hearing.

1.13 Any allegations against an employee should be reported to their line manager in the first instance. Any manager seeking to instigate a formal disciplinary process should consult with HR prior to doing so.

1.14 HR will provide advice and assistance on the use of the procedure.

1.15 All matters dealt with under this procedure will be kept strictly confidential.

1.16 Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently. Advice must always be sought from HR in such situations.

1.17 At all stages of this procedure, due consideration will be given to making adjustments to enable members of staff to participate fully in meetings and hearings, particularly if they have a disability. This may include ensuring rooms are accessible, arranging for an interpreter to be present for example.

1.18 Managers responsible for dealing with disciplinary matters should have received appropriate training.

#### 1.19 Action if Employee is a Trade Union Representative

If the employee concerned is a Trade Union Steward or Branch Official or, in the case of a breach of Health and Safety Rules, a Health and Safety Representative, there is a requirement, subject to the agreement of the employee, to inform the full time officer of the relevant Union that the formal disciplinary procedure is to be implemented,. This will normally be undertaken by the Director of Human Resources.

## **2. PROCEDURE**

### **2.1 Informal Action**

2.2 Minor faults should be dealt with informally by the relevant line manager.

2.3 This should involve a private discussion with the employee to advise them of the problem and what is needed to rectify it and may involve:

(a) Reminding staff of standards of conduct and performance expected of them.

(b) Advising an individual about any concerns about their performance, standards of behaviour and the potential consequences of failing to address those concerns satisfactorily.

(c) Providing informal advice or guidance.

### **3. Investigation**

3.1 Prior to formal disciplinary action being taken (e.g. a disciplinary hearing being convened), the facts of the case must be investigated. It is important to carry out necessary investigations of potential disciplinary matters, impartially and without unreasonable delay, in order to establish the facts of the case.

3.2 The investigation process will depend on the nature of the alleged misconduct and whether the employee has admitted to that misconduct. Where the facts are not in dispute, the investigation is likely to be short.

3.3 Where it is necessary to carry out a more detailed investigation, an Investigating officer will be appointed by the appropriate level of manager.

3.4 The Investigating officer will receive advice and guidance on the process from a member of HR.

3.5 In some cases this will require the holding of an investigatory meeting with the employee before considering the potential of proceeding to any disciplinary hearing. In others, for example, where there is no disputing the allegations, this will be a collation of evidence by the employer for use at a disciplinary hearing.

3.6 Any investigation should:

- (a) Identify the alleged breach of discipline, if any.
- (b) Establish if the standards of other employees are acceptable or whether this employee is being unfairly singled out.
- (c) Consider whether the alleged breach was deliberate or accidental.
- (d) If the alleged breach of discipline is a result of failure to follow published rules, policies or procedures, establish whether the employee has been made aware of them.
- (e) Obtain all available information about the allegation, including written statements etc, where appropriate. Any written statements or witness statements should be signed and dated by the witness.
- (f) Advise the employee concerned, at the earliest possible stage of what is happening and the reasons. Some investigations will be kept confidential, e.g. where the police are conducting a criminal investigation.
- (g) Wherever practicable, the employee implicated in the allegation(s) will be given reasonable notice (normally a minimum of 3 days) of the requirement to attend an Investigatory meeting);
- (h) Notes should be taken of the investigatory meeting and signed by the employee; any disagreement in respect of the notes should be reflected in the investigatory report.
- (i) At the end of the investigation, the investigating officer will produce a report outlining the findings of the investigation only.

#### **4. Informing Employee of Allegations and Date of Disciplinary Hearing**

4.1 If it is decided to proceed to a formal disciplinary hearing, the employee must be informed of the disciplinary allegations in writing, detailing the following as appropriate:

- a) Nature of allegations
- b) Date/time/place of alleged incident(s).
- c) Other staff, students or persons involved in the incident(s)
- d) Date, time and location of disciplinary hearing.
- e) Their right to be accompanied by a representative and to bring witnesses to the disciplinary hearing.
- f) Copies of witness statements.
- g) Copies of all documentation management intend to rely upon
- h) Copy of the Disciplinary Procedure.

4.2 The employee must be given a minimum of ten days' notice of the disciplinary hearing to allow time for consultation with any representative or witnesses.

4.3 The formal notice to the employee of disciplinary allegations will normally be issued by the responsible manager.

4.4 If the issue of documents would involve a potential breach of confidentiality, a copy of the relevant records, suitably amended if required, may be given to the individual, or a named representative, who would carry personal

responsibility for the maintenance of confidentiality. When the documents are issued the responsibilities involved will be made clear.

4.5 The employee, or their representative, (if applicable) should submit to the responsible manager, at least five days prior to the disciplinary hearing, any witness statements, together with the names of witnesses who they wish to be in attendance at the disciplinary hearing, and any other documentation it is intended to rely upon at the hearing or as evidence.

4.6 New information that is relevant to the allegation(s) being considered may be presented by either party at the hearing, for example, if it was unavailable and unknown in the period leading up to the hearing. However, this may necessitate an adjournment for an appropriate period which will be determined by the responsible manager, in consultation with the management and employee representatives. Such an adjournment should be for as little time as possible but long enough to enable both parties to understand the new information and its implication.

4.7 The amount of time between identification of the alleged breach of discipline, the preliminary investigation and notification of a disciplinary hearing to the employee, must be kept to a minimum. Timescales within his procedure should be adhered to and only altered in exceptional circumstances and wherever possible with agreement.

## **5. The Disciplinary Hearing**

5.1 The aim of the Disciplinary Hearing is to establish all the facts available regarding the alleged breach of discipline, giving every opportunity for the employee to state their case, including any mitigating circumstances, before any decision is taken.

5.2 The hearing will be convened as follows:

(i) For matters for which a sanction up to and including a formal oral warning may be appropriate, the Dean or equivalent will be the disciplining manager.

(ii) For matters which a sanction up to an including a formal written warning, the Dean or equivalent will be the disciplining manager.

(iii) For matters of gross misconduct for which a final written warning or dismissal may be appropriate the Pro Vice Chancellor/Deputy Vice Chancellor or member of staff at an equivalent or more senior level will be the disciplining manager.

5.3 An HR Adviser should be present to provide professional advice to the responsible manager and assist the proceedings, in accordance with 1.14, but the decision will be made by the responsible manager.

5.4 Notes of the hearing will be taken by a member of HR and will be circulated to all parties. Alternatively, with agreement of both parties, the hearing may be recorded. Copies of the recording will be made available to both parties.

5.5 Every effort should be made to ensure witnesses are available at the interview. Any witnesses will normally be required to make written statements, prior to the disciplinary hearing. Statements may be submitted by a witness unable to attend the Disciplinary Hearing, but it must be accepted that these are documents which have not been subject to challenge.

5.6 An alternative date may be arranged where an employee requests that the hearing is postponed due to circumstances outside his/her control and not foreseeable at the time the details of the hearing were communicated to the employee. Where a postponement is agreed, this should be confirmed in writing with the new date for the hearing. Any further request for postponement may be refused unless there are exceptional circumstances.

5.7 If the employee is absent due to sickness prior to the hearing, the individual may be required to see the University's Occupational Health Adviser to assess his/her fitness to attend a hearing, and to give advice on any special requirements or adjustments for the hearing. Human Resources will make the necessary arrangements.

5.8 If the employee and/or their representative does not attend the disciplinary hearing, the reason must be ascertained, if possible. If the circumstances were beyond the employee's control and not foreseeable, e.g. illness,

another meeting should be arranged. If the meeting is rearranged and the employee fails to attend a second time, a decision may be made in the employee's absence. If a decision is taken to proceed in the absence of the employee and/or their representative, the employee will be given the opportunity to submit written representations if they so wish.

## **6. Procedure at Hearing**

6.1 It is the expectation that this procedure will be followed in all Disciplinary Hearings. Exceptionally, variations to this procedure may be agreed by all parties at the commencement of the hearing with advice from HR.

6.2 At the commencement of the Disciplinary Hearing, the manager hearing the case will explain the purpose of the hearing, how the hearing will be conducted, the roles of those attending and the possible outcomes.

6.3 A representative of management will present the management case and be asked to detail the allegations and present the evidence, including the calling of witnesses. The employee and/or their representative and the manager hearing the case will have the opportunity to question the witnesses and the management representative.

6.4 The employee and/or his/her representative will be given an opportunity to present their case and call relevant witnesses. The management representative, and the manager hearing the case, will have opportunity to question the employee and the witnesses.

6.5 At any point during the hearing, either side may request an adjournment to confer or to seek further information which the disciplinary manager will not unreasonably refuse.

6.6 The management representative should summarise the management case.

6.7 The employee, or his/her representative, should summarise their case.

6.8 The hearing will be adjourned to consider all the information presented before a decision is reached. If there is need to check certain facts, an adjournment may be called and both parties will be advised accordingly.

## **7. Disciplinary Action**

7.1 The manager hearing the case should decide if a disciplinary action, e.g. the issuing of a disciplinary penalty, as detailed below, is appropriate, taking the following into consideration:

(i) whether the Disciplinary Procedure and Standards of Conduct indicate what action will result from the particular misconduct;

(ii) the action taken in similar cases in the past;

(iii) any special circumstances/mitigation which might make it appropriate to lessen the severity of action which should be taken;

(iv) whether the behaviour was deliberate or accidental;

(v) the employee's current disciplinary record, general employment record, position and length of service;

(vi) whether the action proposed is reasonable, in view of all the circumstances.

7.2 Normally a decision will be reached concerning the disciplinary action to be taken on the day of the hearing and the employee will be recalled to have the decision relayed to them in person. If it is not possible to make a decision on the day it will be made and confirmed within 4 days of the hearing date and in any event it will be confirmed in writing within 7 days (unless the hearing is adjourned for further information/evidence). The confirmation will also provide details of the right to appeal.

## **8. Disciplinary Penalties**

### **8.1 Stage 1 - Formal Verbal Warning**

8.2 If conduct or performance does not meet acceptable standards, a **FORMAL VERBAL WARNING** may be given. A note of the formal Verbal warning will be kept on the employee's personal file, but will be disregarded after six months, subject to satisfactory conduct and performance.

8.3 The employee will be informed, in writing, of the standards expected and action to be taken by the employee and employer to achieve and monitor the improvement required. Failure to achieve the standard required will result in further Disciplinary action.

#### 8.4 Stage 2 - Formal Written Warning

8.5 In the case of a serious breach of discipline, or if a further offence occurs similar to that for which disciplinary action is still current, a **FORMAL WRITTEN WARNING** may be given. The warning will be confirmed in writing and kept on the employee's personal file, but will be disregarded after twelve months, subject to satisfactory conduct and performance.

8.6 The employee will be informed, in writing, of the standards expected and action to be taken by the employee and employer to achieve and monitor the improvement required. Failure to achieve the standard required will result in further disciplinary action.

#### 8.7 Stage 3 – Final Written Warning

8.8 A **FINAL WRITTEN WARNING** may be imposed in the following circumstances:

- (i) where an employee has received a previous written warning for a similar offence, which is still current;
- (ii) where misconduct is considered not to be serious enough to justify dismissal, but serious enough to warrant only one written warning which will be both the first and final.

8.9 The warning will be confirmed in writing and kept on the employee's personal file, but will be disregarded after twenty four months, subject to satisfactory conduct and performance.

8.10 The employee will be informed of the standards expected and action to be taken by the employee and employer to achieve and monitor the improvement required. Failure to achieve the standard required will normally result in dismissal.

#### 8.11 Stage 4 - Dismissal with Notice

8.12 This may occur when:

- (a) conduct or performance is still unsatisfactory, following warnings and the standard required has not been achieved.
- (b) the nature of the offence, although not described as gross misconduct, affects the relationship between the employee and his/her manager, or colleagues, to such an extent that he/she cannot reasonably remain in the employment of the University in any capacity. This assumes that consideration has been given to possible alternative employment.
- (c) The employee will be given written reasons for dismissal and the date on which employment terminates. The employee may be given pay in lieu of notice, at the discretion of the University.

#### 8.13 Time Limits

8.14 The above disciplinary penalties specify time limits where appropriate.

8.15 When an employee's conduct is satisfactory throughout the period the warning is in force, only to lapse very soon after, and a pattern may emerge that there is evidence of abuse of the process. In such cases, the University may consider further disciplinary action that takes account of this pattern of behaviour; such action could potentially result in a more severe sanction than previously.

#### 8.16 Action taken at end of Time Limit

8.17 Records of disciplinary action taken will be disregarded after the specified period.

8.18 Summary Dismissal (i.e. Dismissal without Notice)

8.19 Gross misconduct is misconduct serious enough to destroy the employment contract/relationship between the University and the employee and make any further working relationship and trust impossible. Examples of gross misconduct include:

- Theft or fraud
- Physical violence or bullying
- Deliberate and serious damage to property
- Serious misuse of the University's resources
- Accessing internet sites containing pornographic, offensive or obscene material.
- Unlawful discrimination or harassment
- Bringing the University into serious disrepute
- Serious incapability at work due to alcohol or misuse of drugs
- Causing loss, damage or injury through serious negligence
- Serious breach of health & safety rules
- Serious breach of trust and confidence.

(NB this list is not exhaustive)

8.20 Gross misconduct will normally result in summary dismissal, i.e. without notice or pay in lieu of notice, following an investigation and Disciplinary hearing.

8.21 Downgrading/Transfer to Alternative Employment

8.22 In appropriate circumstances, as an alternative to dismissal, the manager hearing the disciplinary case may determine that the employee should be downgraded (without salary protection) and/or transferred to another suitable post within the University. When this is considered as an alternative to dismissal the manager should discuss the application of such a move with the Director of HR or nominee.

## 9. Criminal Charges

9.1 If an employee is charged with, or convicted of a criminal offence, this is not normally a reason in itself for disciplinary action. Consideration will be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with the University, work colleagues, students and external partners (as appropriate). Any decisions concerning criminal charges or convictions should be discussed with a senior member of management and the Director of HR or nominee.

## 10. Precautionary Suspension with Pay

10.1 Precautionary suspension is not disciplinary action and should only be used where necessary and where alternative options, e.g. exclusion from specific duties/locations/other staff etc, is not feasible. It may be appropriate in the following circumstances, for example:

- (a) Alleged serious misconduct requires investigation and the suspension is required for the period of investigation if it is felt that the employee's continued presence at work would interfere with the investigation process.
- (b) The action complained of, if substantiated, would constitute gross misconduct and it is considered inappropriate for the employee to remain on the University's premises pending a Disciplinary Hearing.
- (c) If the employee's continued presence is not conducive to the smooth operation of the section.

10.2 The employee should be suspended on full pay by the Director of HR (or nominee) and another senior manager, for the shortest period possible. The employee should be told the reason for suspension. Written

confirmation of suspension must be sent to the employee, with a copy to the Director of Human Resources, within 48 hours.

10.3 Where suspension lasts for more than two weeks, the employee may request the Chief Operating Officer (non-academic staff) or the Deputy Vice Chancellor (academic staff) to review its continuation.

10.4 Suspension should not preclude an employee from contact with their trade union officer/representative.

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[1] Staff where a substantial proportion of their duties involve the provision of teaching, learning or research.

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