

CONDITIONS OF EMPLOYMENT FOR SUPPORT STAFF

APPENDIX 5: DISCIPLINARY PROCEDURE

1. This document applies to all those appointed on contracts of employment which are subject to the University's conditions of employment for Support Staff. It is designed to ensure consistent and fair treatment when a matter of conduct or performance arises. The following procedure is consistent with the ACAS Discipline and Grievance Code of Practice.
2. This procedure does not apply to:
 - termination during or at the end of a probationary period of service, including any extended probationary period;
 - termination by mutual consent;
 - retirement, whether on reaching the contractual retirement age (including any extension to contractual retirement age agreed by the University) or on grounds of ill health;
 - redundancy, including the expiry of a fixed term contract.

Grounds for disciplinary action

3. Matters that the University views as amounting to disciplinary offences include:
 - Misconduct
 - Abusive behaviour, bullying, harassment or victimisation
 - Unsatisfactory work performance
 - Misuse of University facilities, including damage to University property
 - Failure to comply with the University's policy for the time being on general conditions of computer use
 - Poor time-keeping
 - Unauthorised absence or persistent absenteeism
 - Insubordination
 - Failure to comply with University policies, rules and regulations for the time being, including financial regulations, health and safety policy etc
 - Divulging confidential information
 - Negligence
 - Infringement of copyright
 - Smoking in non-designated areas or in University vehicles

It is emphasised that this list is not exhaustive but indicative of the circumstances under which disciplinary action might be contemplated.

Gross misconduct

4. Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the University. Misconduct representing such a serious breach of contractual terms, as judged by a disciplinary panel under paragraph 8 below,

may justify summary dismissal (ie dismissal without notice or salary in lieu of notice) of a member of staff. The classification of misconduct as “gross” is likely to depend as much on the context, quality and degree of misconduct as on the particular type of activity. For the purpose of providing guidance to members of staff, the following specific examples of gross misconduct are given. This is not in any way an exhaustive list, but merely indicative of the type of behaviour which may be classified as gross misconduct:

- Theft
- Fraud, deceit, deception or dishonesty
- Physical violence
- Wilful damage to property
- Serious insubordination
- Serious negligence
- Serious breach of trust and confidence
- Acts of discrimination or victimisation
- Serious bullying or harassment
- Serious breach of health and safety rules
- Conduct that brings the University’s name into disrepute
- Accessing or circulating indecent, obscene or offensive material, whether in hard copy or electronic format (other than where expressly authorised to do so)
- Possession or distribution of illegal substances on University premises
- Incapability to perform designated duties as a result of substance misuse, including alcohol, drugs etc
- Conviction of a criminal offence that is relevant to the employee’s employment in the University

Counselling and Mediation

5. It is expected that minor breaches of established standards of conduct and performance will be dealt with by the Head of School/Budget Centre (or nominee), who will counsel the member of staff concerned in an attempt to deal with the matter informally and give the member of staff the opportunity to improve. Counselling consists of advising the member of staff of appropriate standards of conduct or performance with a view to ensuring acceptable future conduct or performance. Counselling in itself does not constitute disciplinary action, although the Head of School/Budget Centre will keep a record of any counselling which may have been given. Where appropriate, in support of counselling, the Head of School/Budget Centre may seek to address issues of conduct or performance through a process of mediation using the University’s in-house mediation service.

Suspension

6. A member of staff may be suspended on full pay while the investigation referred to in paragraph 7 below is being carried out, where there is reasonable suspicion that an act of gross misconduct may have occurred, or where there are potential health and safety risks for the University and/or the individual in allowing him/her to remain on University premises, or where the individual’s presence on University premises may hinder the investigation. The University will prepare guidance on carrying out suspensions designed to ensure that suspension is carried out in a

dignified manner and to make clear that the suspension in itself does not constitute a disciplinary penalty.

Investigation

7. In the event of the process in paragraph 5 above not succeeding in effecting improvement, or in the case of a serious breach of established standards of conduct or work performance, the procedures set out below shall apply:
 - i. Where the Head of School/Budget Centre or nominee wishes to make a formal complaint about a member of staff, he or she shall do so in writing to the Office of the Director of Human Resources, and an investigation of the complaint will be carried out.
 - ii. The person(s) appointed to carry out the investigation will advise the member of staff of clear details of the complaint and send him or her a copy of this procedure.
 - iii. The member of staff will be invited to submit evidence in person and/or in writing to the person(s) conducting the investigation, and to suggest witnesses from whom those conducting the investigation should take evidence. In a case in which those conducting the investigation have determined that it is not necessary to take evidence from certain witnesses suggested by the member of staff, the investigators will – without delay - inform the member of staff of the reasons, which will also be set out in the investigation report.
 - iv. The investigation will be concluded as expeditiously as possible: : in a case where the investigation is not completed after six weeks of its commencement, an Assistant Director of HR (or equivalent) will review progress, establish the reasons why the investigation is not completed, and take appropriate steps to bring the investigation to a close as quickly as possible. The outcome of such a review will be communicated to the member of staff.
 - v. The purpose of the investigation is to establish, so far as is possible, the specific facts of the case and to assemble evidence – but not to determine the outcome of the process. The investigation may however make broader recommendations to management where a shortfall in process, policy, system or conduct of other parties has been identified.
 - vi. The findings of the investigation will be communicated to the member of staff within 5 working days of the investigation report being submitted to the Head of School/Budget Centre (or nominee) for consideration. The Head of School/Budget Centre (or nominee) may decide one of the following:
 - a) That no further action be taken. The member of staff will be so informed in writing and any suspension lifted immediately.
 - b) That the member of staff be counselled in accordance with paragraph 5 above.
 - c) That disciplinary proceedings be instigated in accordance with paragraph 8 below.

Disciplinary Hearing

8.
 - i. If the investigation concludes that the complaint should be considered and determined under this disciplinary procedure, a disciplinary panel shall be appointed to consider the allegation and to conduct a hearing. This panel will consist of a senior manager nominated by the Head

of School/Budget Centre and a representative of the Director of Human Resources. No members of the disciplinary panel shall have had any previous involvement in the case.

- ii. The member of staff shall be given at least 5 working days notice of the hearing, which may be extended by agreement up to 10 working days. With the notice of the hearing, the member of staff will normally be provided with a copy of the evidence which is to be considered by the disciplinary panel.
- iii. The disciplinary panel shall conduct the disciplinary hearing, at which the member of staff shall have the opportunity of making representations in writing, and/or in person. The member of staff may be accompanied or represented at the hearing by a trade union representative or by a colleague employed by the University. A management representative shall attend the hearing to make an oral presentation of the case and to respond to questions. Subject to the consent of the panel, which may exceptionally be withheld, the member of staff may question witnesses either directly or through the representative or colleague and may call witnesses, who will be liable to be questioned.
- iv. In the case of the trade union officials elected by the University branch of a recognised Union, while normal disciplinary standards apply to their conduct and performance as employees, no disciplinary action should be taken until the circumstances of the case have been discussed with a full-time official of the relevant recognised trade union.

Disciplinary Penalties

- v. If, at a disciplinary hearing, the complaint is upheld, the following penalties, as appropriate, are available. The penalties are not necessarily sequential – this will depend on the seriousness of the complaint made:
 - oral warning (to be confirmed in writing);
 - first written warning;
 - final written warning;
 - dismissal with notice, or pay in lieu of notice;
 - dismissal without notice or pay in lieu of notice;
 - such other penalty as may be appropriate in the circumstances, including the withholding of an increment or increments in combination with a warning.
- vi. Dismissal without notice or pay in lieu of notice (“summary dismissal”) shall be used only for offences which may be regarded as gross misconduct, as defined in paragraph 4 above.
- vii. A warning will tell the member of staff the reason for the warning; the nature and extent of any improvement required; the possibility of further disciplinary action if there is no, or insufficient, improvement in conduct or work performance; the period that the warning will be held on file or be able to be referred to in any future disciplinary hearing; and the right of appeal.
- viii. An oral warning will be disregarded after six months and a written warning after one year, subject in each case to satisfactory conduct and work performance. Unless otherwise specified, spent warnings will be removed from file and sent back to the member of staff. Such warnings will not be brought up at any future disciplinary hearings.

Notification of Decision

- ix. After a disciplinary hearing, there will be an adjournment during which the panel will consider the evidence and determine a suitable course of action including, where the complaint is upheld, an appropriate disciplinary penalty. The panel will normally inform the member of staff of the outcome orally and in any event in writing within 5 working days of the hearing, with a copy to the trade union representative or colleague. The letter confirming the decision will also set out the procedures for appeal.

Appeal

9. Where a member of staff wishes to exercise his/her right of appeal against a disciplinary penalty, s/he shall give notice, stating the grounds of the appeal, to the Director of Human Resources within 10 working days of receiving the letter confirming the decision which is the subject of the appeal. The appeal may be on grounds that:
 - i. new evidence has come to light which could not reasonably have been presented at the disciplinary hearing;
 - ii. the conduct of the disciplinary hearing was unfair;
 - iii. the disciplinary penalty determined at the disciplinary hearing was unreasonable in the light of the findings of fact;
 - iv. the disciplinary panel did not give sufficient weight to the evidence which was presented at the disciplinary hearing.

This is not an exhaustive list.

10. The appeal will be heard by a senior member of staff of the University (eg a Head of School or Senior Officer) in the Chair, and the Director of Human Resources or nominee. (A nominee of the Director of Human Resources on the appeal panel shall be senior to, or of the same standing as, the HR representative on the original disciplinary panel.) Both persons hearing the appeal will have previously been unconnected with the case. The purpose of the appeal is to give the member of staff the opportunity to present the grounds of the appeal orally and/or in writing. The member of staff may be accompanied at an appeal hearing by a trade union representative or a colleague employed by the University, who may present the appeal on his or her behalf. A member of the original disciplinary panel or a person who conducted the investigation or a representative of the appellant's School/Budget Centre will also be present to advise the appeal hearing of the reasons for the original decision but he or she shall otherwise take no part in determining the appeal.

The appeal may be:

- i. allowed and the penalty removed; or
- ii. dismissed but with a reduced penalty; or
- iii. dismissed with the original penalty retained (but not increased).

In a case where the appeal panel decides to overturn a dismissal and to substitute a lesser penalty (or no penalty at all), the member of staff will be re-instated with no break in service.

The decision following the appeal hearing represents the University's final decision on the matter and will be confirmed in writing to all the parties within 5 working days of the appeal hearing.

The appeal will normally be concluded within four weeks of its commencement. The member of staff will be informed in good time of any delay and the reason for the delay.

Grievances

11. If a member of staff who is subject to the procedures set out in this document raises a grievance which is relevant to the disciplinary complaint which has been raised under paragraph 7i) above, the Director of HR (or nominee) shall determine whether:
- i. the disciplinary procedure should be suspended pending the attempted resolution of the grievance; or
 - ii. the disciplinary procedure should proceed, taking account of the substance of the grievance; or
 - iii. the disciplinary procedure and the attempted resolution of the grievance should proceed separately but concurrently.

If the Director of HR (or nominee) determines that the disciplinary procedure should be suspended pending the attempted resolution of the grievance, or that the disciplinary procedure and the attempted resolution of the grievance should proceed separately but concurrently, the persons appointed to investigate the grievance and, where appropriate to conduct a grievance hearing, shall not have, or have had, any involvement with the investigation or hearing of the disciplinary complaint.

If the Director of HR (or nominee) determines that the disciplinary procedure should proceed taking account of the substance of the grievance, the persons appointed to investigate the disciplinary complaint, and where appropriate to conduct a disciplinary hearing, shall carry out their duties taking into account any additional matters which may be raised in the grievance which would not otherwise have been taken into account in the disciplinary investigation/hearing. In reaching its conclusion, the disciplinary panel will determine both the disciplinary allegation and the grievance.

Review of this Procedure

12. This procedure will be periodically reviewed by the University and the Joint Union Committee to ensure compliance with current employment legislation and statutory codes of practice and in any event after five years from introduction.

Agreed by Joint Union Committee 17 December 2010
Approved by the University Council April 2011