



University
of Exeter

UNIVERSITY OF EXETER DISCIPLINARY PROCEDURE

Disciplinary Policy and Procedure

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1 Policy, Purpose and Principles

- 1.1 The purpose of this procedure is to help and encourage employees to achieve and maintain required standards of conduct. Its aim is to ensure that when disciplinary action needs to be taken, it is applied consistently and fairly.
- 1.2 This procedure takes into account the provisions of the ACAS Code of Practice on Disciplinary and Grievance Procedures (as amended).
- 1.3 This procedure applies to all staff employed by the University (including those working in or managed by a third party organisation, including staff on secondment). For the avoidance of doubt this does not include those working on a claims basis or via the Temporary Staff Bank.
- 1.4 This procedure is intended to be used as a guide and does not form part of the contract of employment. The application of this procedure may be modified by the Director of Human Resources or their designate at their discretion if appropriate in specific cases (for example where a member of staff employed by the University works in, or is managed by employees of, a third party organisation, including in cases of secondment).
- 1.5 Where possible, minor disciplinary issues should be dealt with informally by the employee's line manager (see clause 3).
- 1.6 Before any formal disciplinary action is taken the employee will be advised of the allegations in writing and given an opportunity to state their case in response at a disciplinary hearing.
- 1.7 There may be occasions when, depending on the seriousness of the misconduct involved, it is appropriate to enter the procedure at the stage of a final warning or dismissal (which may include dismissal without notice).
- 1.8 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct.
- 1.9 If disciplinary action is considered against an employee who is a trade union representative, the normal disciplinary procedure will be followed. An appropriate trade union official will be informed before any disciplinary hearing.
- 1.10 The University will endeavour to deal with disciplinary matters promptly and without undue delay and expects the employee to cooperate to achieve that aim.
- 1.11 An employee has the right to be accompanied by a fellow worker or a trade union representative at any formal disciplinary or appeal hearing. This right does not apply to investigation meetings or any informal meeting (see paragraphs 3 and 6.2 below). It also does not apply to suspension meetings if applicable (see paragraph 5).
- 1.12 Time limits (other than those for prior notification of meetings/disclosure of documentation before meetings) are indicative – there may be circumstances, particularly in the case of complex cases, where these are not realistic. If it is not possible to respond or take action within the time limits referred to in this Procedure, the employee should be given an explanation for the delay and told when a response can be expected. The time limits may be varied by mutual agreement in individual cases.
- 1.13 The employee has the right to appeal against any formal disciplinary action taken.
- 1.14 Misconduct outside of work may need to be dealt with under the University's formal Disciplinary Procedure where it is considered that it has a direct bearing upon the employment relationship and/or the employee's role.
- 1.15 Allegations of misconduct in research will be dealt with in the first instance in line with the University's Good Practice in the Conduct of Research
- 1.16 Where there is an issue as to the meaning of 'Academic Freedom' in any proceedings, consideration will be given to the agreement with the University and College Union regarding the definition of academic freedom dated 31 July 2009.

- 1.17 Where the employee who is subject to the Disciplinary Procedure is a member of one of the academic job families then at least one member of the Disciplinary Panel will be an academic manager.

2 Relationship with other Policies and Procedures

- 2.1 This procedure applies where there has been a failure to achieve or maintain adequate standards of behaviour. There are separate procedures which apply where there are concerns over an employee's performance and/or absences due to ill health. However there may be occasions where it is appropriate to transfer to a different procedure. If at any stage after commencing this procedure, the commissioning manager in conjunction with Human Resources, considers that the matter should be dealt with under an alternative procedure the discipline case will be ceased (or in certain circumstances, suspended) and the issue will be transferred to the relevant procedure at the appropriate stage. The employee will be notified of this decision and the reason.
- 2.2 Investigations that have been undertaken in one procedure may be used as and where appropriate to inform another procedure.
- 2.3 This procedure does not apply to dismissals that arise as a result of redundancy or the non-renewal of a fixed term contract; neither does it apply to formal action or dismissals taken under the probationary procedure. There are separate University processes to manage these circumstances.
- 2.4 If an employee raises a grievance during the disciplinary process the disciplinary process may, if appropriate, be temporarily suspended in order to address the grievance; however if the disciplinary and grievance issues are related it may be appropriate to deal with both cases concurrently under a single investigation and hearing. Each case will be considered on an individual basis.
- 2.5 An employee who is the subject of any action under this Procedure may not raise a grievance about the decision to apply the Disciplinary Procedure, the conduct of an investigation or a disciplinary hearing or decisions taken under the Disciplinary Procedure.

3. Informal Procedure

- 3.1 Minor instances of misconduct can often be resolved informally rather than immediate application of the discipline procedure. The employee's line-manager should promptly discuss any concerns they have with the employee. Appropriate action may include:
- support and training
 - advice and guidance, which may be confirmed in writing
 - coaching and counselling
- 3.2 The purpose of this discussion is to ensure that the employee:
- is aware of the concerns;
 - knows what is required to meet expected standards of conduct, with targets set if appropriate;
 - is made aware of the timescale over which an improvement is required;
 - Is made aware that further misconduct and/or a failure to meet the expected standards of conduct will result in the application of the Formal Disciplinary procedure.
- 3.3 The discussion and outcome, including any targets, should be confirmed in writing by the line-manager, and this may be by email where appropriate.
- 3.4 This does not form part of the formal Disciplinary Procedure.

4 Formal Disciplinary Procedure

4.1 If informal action does not bring about the required improvement, or where the misconduct is considered to be more serious than the formal disciplinary procedure will be followed.

5 Precautionary Suspension

5.1 If it is considered that the alleged misconduct may constitute serious or gross misconduct (where the alleged misconduct is such that the outcome may be dismissal) there may be circumstances where it may be appropriate to remove the employee from the work place and suspend them on normal pay during an investigation and disciplinary procedure. This would normally be where the presence of the employee could prejudice an investigation, causes a disruption or where their presence at work may be intimidating to potential witnesses. Each case will be considered individually. Wherever possible the employee will be informed of suspension in a meeting.

5.2 Consideration will be given to alternatives to suspension, e.g. changing work location if appropriate, with suspension being the last resort in most cases.

5.3 Suspension can only be taken (and lifted) by a manager authorised to take disciplinary action, following consultation with the Director of Human Resources (or their designate).

5.4 In circumstances where it is necessary to immediately protect the University's interests (for example, where there are serious safety concerns) and where an authorised manager is not available to suspend an employee, a manager may instruct the employee to leave the place of work, and stay away until further notice. This must be reported to an authorised manager and the Director of Human Resources or their designate as soon as possible so that they can determine whether the employee is to be formally suspended in accordance with paragraph 5.1.

5.5 The following principles apply to any period of suspension:

- suspension from duty is not a pre-judgement of guilt and is not a disciplinary sanction;
- suspension will normally take place in a face to face meeting but if this is not possible suspension will not be delayed but will be notified in writing;
- the reasons for the suspension must be stated clearly to the employee in writing;
- The period of suspension will generally be for an initial period of 4 weeks at which point consideration will be given to whether to lift or extend the suspension.

5.6 Where an employee has two roles at the University then it may be appropriate to suspend the individual from both roles. However, each case will be considered on an individual basis.

5.7 Whilst suspended, the employee must not discuss the case with, and must not contact, fellow workers or students or visit University property or access University facilities including email and databases without first obtaining authority (a letter will notify the employee who to contact in such circumstances). Authority will be granted (subject to any conditions considered appropriate) to enable the employee to prepare their response. Staff retain the right to contact their Trade Union representative. Whilst suspended, the employee should be mindful of their duty not to act in a way that may be prejudicial to the University's interests or reputation e.g. through their use of social media.

5.8 Whilst suspended, the employee is expected to remain contactable during normal working hours and to be available for any meeting which may be arranged as part of the investigation (which might include a meeting or meetings with the Investigating Officer) or subsequent disciplinary hearing (if applicable).

6 Undertaking an Investigation

6.1 Where there are grounds for considering formal disciplinary action against an employee the Director of Human Resources, the HR Casework Manager or their designate may commission an appropriate person or person(s) to investigate the circumstances. The purpose of the investigation is to gather evidence and to enable a decision to be taken on whether the matter should proceed to a formal hearing under this procedure.

6.2 The following principles apply:

- If there are witnesses to an incident, or a person makes an allegation against someone else, written statements from such persons will be obtained and/or where appropriate these persons will be interviewed and a note or statement from each interview will be prepared.
- If appropriate, as part of the investigation, the employee may be interviewed. This will not be a disciplinary hearing, but will be for the purpose of investigating the matter before a decision is taken as to whether or not a disciplinary hearing is warranted.
- Only in exceptional circumstances will statements be permitted to be anonymised, for example if there is a genuine concern for personal safety. This should be agreed with the HR Casework Manager.

6.3 When the investigation is concluded, a decision will be taken on:

- whether no action is necessary; or
- whether the matter should be dealt with outside the formal Disciplinary Procedure; or
- whether it is necessary to consider the matter at a formal disciplinary hearing.

7 The Disciplinary Hearing

7.1 If, following the investigation, it is found that there is a disciplinary case to answer, the employee will be advised in writing at least five working days before the date of the disciplinary hearing:

- confirmation that there will be a disciplinary hearing under the disciplinary procedure
- the date, time and venue of the disciplinary hearing
- details of the allegations and copies of all relevant evidence, including witness statements
- the names of the panel members
- the names of any witnesses being called in support of the University's case against the employee.
- the possible disciplinary action that may be taken
- their right to be accompanied by a fellow worker or trade union representative

This letter should also advise the employee of their opportunity at the hearing to:

- call witnesses and how to do so (giving adequate notice of their intention to do so)
- ask questions
- present their case and supporting evidence
- present mitigating circumstances they may wish to be taken into account

7.2 The purpose of the disciplinary hearing is to give the employee an opportunity to state their case and to answer the allegations made against them.

7.3 The investigating officer will attend the disciplinary hearing to present the findings of the investigation and to answer questions from the employee (or their companion) and the Disciplinary Panel, but will not otherwise take part in the hearing and they will not participate in the decision making process.

7.4 If the employee wishes to submit written evidence for consideration at the hearing, this must be submitted to the Chair of the Disciplinary Panel at least two working days before the hearing.

8. Timing and Postponement

8.1 The hearing will be arranged by the University at a time and venue which is convenient for the employee's working hours and work location. Written notification will be given as set out in paragraph 7.1

8.2 The employee and their companion must make every effort to attend the hearing. If the employee is unable to attend at the time and date given through circumstances beyond their control e.g. sickness, they must promptly notify the Chair of the Disciplinary Panel and the hearing will be rearranged. The reconvened hearing will be within 5 working days of the original hearing date, unless this is not reasonably practicable.

8.3 Where the employee's companion is unavailable to attend the hearing then the employee may propose an alternative date which should be not more than five working days after the date originally proposed.

8.4 Where an employee is unable to attend a reconvened hearing or is unwilling to attend without good cause, the University shall be entitled to hold the hearing in the employee's absence and make a decision on the evidence available. An employee may postpone a hearing once but no more than this unless there is clear medical evidence to support a reasonable delay in hearing the case; however, any such delay should not be taken as a waiver of the misconduct by the University, and should the employee continue to be unavailable then the University may decide to hold the hearing in the employee's absence on the evidence available, provided that the employee is notified in advance that this will occur and is given an opportunity to make a written submission for consideration at the hearing.

8.5 Exceptionally, with written consent of the employee and with the prior agreement of the Chair of the Disciplinary Panel, a trade union representative may attend the hearing in the employee's absence to present the employee's case as set out in paragraph 9.2.

9 Right to be accompanied

9.1 If the employee wishes to exercise their right to be accompanied by a fellow worker or trade union representative at the disciplinary hearing, they should give advance notice of this to Chair of the Disciplinary Panel, stating the name of their chosen companion and whether they are a fellow worker or trade union representative.

9.2 The companion may address the disciplinary hearing to put and sum up the employee's case but may not answer any questions on behalf of the employee or address the hearing if the employee does not wish it. The companion must not act in a manner which prevents the University from presenting its case (including evidence from relevant witnesses).

10 Outcome of the Disciplinary Hearing

10.1 Following a disciplinary hearing the Disciplinary Panel will adjourn to consider the evidence. The panel may conclude one of the following courses of action, according to the circumstances of the case:

- take no disciplinary action
- recommend the issue is dealt with informally by the employee's line manager
- give a first formal written warning if there has been either a repeated minor breach in conduct, or a first but more serious breach of discipline. Such a warning will remain current for 6 months from the date of the hearing.
- give a final written warning if there has been an insufficient response to previous warnings and conduct is still unsatisfactory, or in the case of a first but sufficiently serious breach of discipline. Such a warning will remain current for 12 months from the date of the hearing.

- give the employee notice of dismissal if, following a final written warning, conduct remains unsatisfactory and the employee still fails to reach or maintain the prescribed standards.
 - dismiss the employee summarily without notice and without there having been any previous disciplinary warnings when there has been gross misconduct. (Examples: Appendix 1).
- 10.2 In the case of a written warning, the warning will be disregarded for further disciplinary purposes after the timeframes specified at 10.1 above, unless there are circumstances which justify a longer period and which are explained in the letter to the employee confirming the outcome of the disciplinary hearing.
- 10.3 The Conditions of Employment provides that “Subject to satisfactory performance, and subject to a minimum of six months’ service in the grade, increments are payable on 1 August each year until the top progression point of the grade is reached”. The University reserves the right to withhold an increment from an employee on the grounds that their performance or conduct is unsatisfactory. Therefore where an employee has been subject to a formal warning under this procedure, then the University may withhold any eligible increments due for that period. This will be confirmed in writing.

11 Alternatives to Dismissal

- 11.1 The University may at its discretion consider one or more of the following sanctions as an alternative to dismissal:
- demotion, which may include demotion to a lower grade, with resulting reduction in salary
 - remain on the same grade but reduction in spine point on the University of Exeter pay scale as applicable from time to time
 - loss of right to an increment and/or bonus payment (where applicable)
 - a period of unpaid suspension of no longer than one month
 - transfer to a different role, college, service or site
- and/or retraining, mediation or other appropriate course of training/counselling.
- 11.2 Where such alternative sanction(s) are deemed appropriate, they will be applied in addition to a final written warning, to remain current for 18 months from the date of hearing.

12 Notification of the Outcome

- 12.1 The employee will be informed of the outcome of the disciplinary hearing in writing, usually within 5 working days of the hearing. The letter will confirm:
- the action taken (or the fact that no formal action was taken) and the reasons for that action;
 - any remedial action required of the employee and the consequences of any recurrence of misconduct, including any dates for review;
 - that the employee has a right of appeal and how to exercise that right;
 - in the case of a written warning, that the warning will be disregarded for further disciplinary purposes after six months (for a formal written warning) or twelve months (for a final written warning);
 - in the case of dismissal, the date on which the employment contract will end, giving the appropriate period of notice if applicable, or in the case of gross misconduct, the fact that dismissal is without notice or payment in lieu of notice.

13 Right of Appeal

- 13.1 An employee has a right of appeal against any formal action under the formal Disciplinary Procedure.
- 13.2 The right of appeal must be exercised within 10 working days of receipt of the letter of confirmation of disciplinary action.
- 13.3 The appeal, stating the grounds on which it is made, must be in writing and set out the grounds for appeal. The grounds for appeal must fall into one or more of the following categories:
- that the investigation or disciplinary hearing was flawed or that the process has been followed incorrectly;
 - that the disciplinary penalty is disproportionate to the allegations;
 - that new evidence has come to light that was not available at the time of the investigation or the disciplinary hearing.
- 13.4 An appeal will be heard by a panel comprising two senior managers who have had no previous involvement in the case. In the case of an appeal against a final written warning or against dismissal, the panel will be drawn from members of the Senior Leadership Team from a different Faculty or Professional Services Division.
- 13.5 The University will aim for an appeal to be heard within 20 working days of the appeal being lodged.
- 13.6 If the decision of the Disciplinary Panel is to dismiss the employee, an appeal will not prevent or delay the dismissal but if the outcome of the appeal overturns the dismissal then the employee will be reinstated and paid any back pay.
- 13.7 The appeal panel may:
- uphold the disciplinary action taken; or
 - withdraw the disciplinary action taken; or
 - reduce the level of disciplinary action taken.
- 13.8 The appeal will be a review of the decision taken by the Disciplinary Panel that conducted the disciplinary hearing and will not be a rehearing of the case, except in the circumstances of paragraph 13.9. No new evidence may be presented to the appeal panel, nor any witnesses called, unless the appeal panel is satisfied that there are exceptional reasons why such evidence or witnesses were not produced at the disciplinary hearing and/or that it is necessary in the interests of fairness, in reviewing the Disciplinary Panel's decision, for the appeal panel to consider this evidence or hear from the witnesses concerned.
- 13.9 Where the appeal is on grounds of a flawed investigation or hearing or incorrect process the appeal panel may agree for the appeal to be a full rehearing of the evidence.
- 13.10 The decision of the appeal panel (usually communicated in writing to the employee within ten working days of the appeal hearing) shall be final within the procedures of the University.

14 Return to Work

- 14.1 The Line Manager and the HR Representative will develop a return to work programme to reintegrate the employee back into the workplace effectively following a period of suspension or a disciplinary hearing where there was no action taken, or action short of dismissal. This may include:
- meeting the employee on their first day back at work before they see any colleagues to check how they are feeling, and any support they feel they need.
 - a conversation with any work colleagues of the employee concerned and in particular those who may have given evidence that sets out clearly expectations about working relationships going forward.

- checking what (if any) support immediate work colleagues or witnesses feel they may need.

Appendix 1

Examples of Gross Misconduct

The following list is not comprehensive or exhaustive.

The following examples of behaviour at work may be regarded as gross misconduct, and may lead to summary dismissal:

- dishonesty, theft, fraud, or serious misuse of University property, including deliberate and serious damage to University property;
- theft from or violence to other members of the University or members of the public including malicious damage to their property;
- obscene or indecent behaviour or sexual misconduct or the circulation of offensive material;
- aggressive or threatening behaviour or physical violence;
- bullying or harassment or unlawful discrimination;
- breach of security or of financial regulations, policies or procedures;
- breach of confidence and/or confidential information;
- serious breach of University policy including the email and IT policy;
- incapability whilst on duty brought on by misuse of alcohol or illegal drugs;
- being in the possession of illegal drugs;
- breach of health, safety and hygiene rules or acting in a manner dangerous to others;
- behaviour bringing the University into disrepute or which could reasonably be expected to bring the University into disrepute;
- serious insubordination;
- serious professional incompetence or gross negligence;
- causing loss, damage or injury through serious negligence;
- plagiarism;
- breach of the University's Code of Conduct on bribery and other Improper conduct
- where the employee has stopped attending work without authority or reasonable explanation.

Appendix 2

Related University Procedures and Policies

The University may, if appropriate in the particular circumstances of the case, take account of the following University procedures and policies before a decision is taken following a disciplinary hearing:

- Good Practice in the Conduct of Research (incorporating Guidance on the reporting and investigation of misconduct in research)
- Alcohol at Work and Study Policy and Alcohol and Drug Abuse Policy
- breach of the University's Code of Conduct on bribery and other Improper conduct
- Data Protection
- Dignity and Respect Policy
- Financial Regulations, policies or procedures (all staff are subject to the Financial Regulations)
- Fraud Policy
- Health and Safety Standards and Policies
- Professional Conduct Code (relations between staff and between staff and students)
- Public Interest Disclosure Policy ('Whistleblowing')
- Regulations for the Use of Computing Facilities (these outline the appropriate use of University IT facilities)
- Social Media Policy
- Student Complaints Procedure

This list is not comprehensive or exhaustive. The University may from time to time amend these policies and procedures and implement new policies and procedures which may be relevant to disciplinary matters.

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