MANAGER'S GUIDE: DISCIPLINE

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1 Purpose of this guide
The purpose of the manager’s guide is to provide practical advice to managers who are authorised to take disciplinary action within the University’s Disciplinary Procedure¹ and others who may be involved in investigations or appeals. The guide is not a substitute for formal training but a supplement to this training. Nor is it a substitute for seeking advice from the appropriate Personnel Manager/Officer within Personnel and Staff Development. It is a requirement of the University's Disciplinary Procedure that a representative of the Director of Personnel and Staff Development is involved at all stages and managers should seek advice from their Personnel Manager/Officer at the earliest opportunity in every case.

2 Purpose of the Disciplinary Procedure
All organisations have required standards of behaviour, conduct and performance. Although written regulations (for example in conditions of employment or policies and procedures) are generally kept to a minimum, general standards of behaviour are implied terms within the employment contract. When required standards are not adhered to, corrective action needs to be taken.

¹ http://admin.exeter.ac.uk/personnel/~docs/disciplinary_procedure.pdf
It is important that the disciplinary process is viewed as a means by which employees are helped and encouraged to achieve and maintain the required standards of conduct and behaviour. The Disciplinary Procedure helps ensure – for the benefit of both the University as an employer and its employees - that any shortfalls in an employee's conduct are dealt with effectively and in a reasonable, fair and consistent manner.

In summary, ‘fair’ and ‘reasonable’ mean (ACAS Code of Practice):

- employers should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions;
- employers should act consistently;
- employers should carry out any necessary investigations to establish the facts of the case before any decisions are made under the formal Disciplinary Procedure;
- employers should inform employees of the basis of the problem and give them an opportunity to offer an explanation and to put his/her version and his/her facts forward before any decisions are made under the formal Disciplinary Procedure;
- employers should allow employees to be accompanied at any formal disciplinary meeting;
- employers should allow an employee to appeal against any decision made under the formal Disciplinary Procedure.

The University has developed its Disciplinary Procedure to take account of the ACAS Code of Practice on disciplinary procedures and good employment practice. Trade union representatives have been consulted in the development of the Procedure. Failure to follow a fair procedure could result in the disciplinary action being held to be unfair. In cases of dismissal a claim could be brought to an Employment Tribunal which in turn could lead to heavy financial penalties for the University, which would be borne by the employing School or Service.

3 Responsibilities of managers and employees

**Employer's Obligations**

It is the responsibility of the University as the employer to ensure that employees are aware of the standards of conduct and behaviour required of them, that they have been provided with reasonable opportunity to fulfill those requirements and understand the consequences of not meeting them. These obligations are met through documents issued by Personnel and Staff Development, Academic Services and the employing School or Service, advising of University rules, procedures and standards, and through managers advising and reminding employees of these rules, procedures and standards.

In particular, managers should ensure that:

- employees are aware of any rules, procedures and standards applicable to their role and function and understand what is required of them;
- where necessary, guidance and training are given to employees to enable them to meet these standards;
- employees are aware of the consequences of not complying with these rules, procedures and standards.

**Employee's Obligations**

There are general standards of conduct which are implicit in any employment contract and therefore form contractual expectations which the University can expect of its staff. In particular, employees are expected to:

- maintain conduct in keeping with the interests and standing of the University, both at work and outside of work;
• devote their full attention while at work, to the duties of their position;
• act with responsibility, judgement and good faith when exercising the duties of their position;
• carry out any reasonable instruction given by University managers relating to those duties;
• never under any circumstances divulge to any unauthorised person, or make personal use of confidential information connected with the University, its employees, students or partners.

In addition to these implied rules, employees are expected to comply with published University policies, procedures and standards relevant to their role, including:

- Data Protection
- Financial Handbook and Regulations (The Financial Handbook and Regulations include the University’s requirements regarding procurement, hospitality, acceptance of gifts and hospitality and Professional Development Accounts)
- Expense Regulations
- Fraud Policy
- Policy for Protection of Dignity at Work and Study
- Public Interest Disclosure Policy (‘Whistleblowing’)
- Regulations for the Use of Computing Facilities (These Regulations summarise the appropriate use of University IT Facilities and apply to all members of the University in their use of University IT Facilities)
- Student Complaints Procedure
- Code of Professional Conduct: Relations Between Staff and Students and Between Staff
- Policy and Guidelines On Substance Abuse
- Code of Good Practice in Research and Procedure for Responding to allegations of misconduct in research

4 Managing issues before they become problems

Many potential disciplinary issues can be resolved by the line manager intervening at an early stage as part of their normal day-to-day responsibilities as a manager: ‘A quiet word is often all that is required to resolve an issue’ (ACAS Code of Practice). In many instances, good management should prevent recourse to formal procedures. The induction and probation processes are particularly important for communicating standards of conduct and behaviour.

In cases of minor breaches of discipline (eg lateness for work, careless mistakes, lack of attention to detail/instructions/procedures), the immediate line manager should discuss these concerns with the employee to ensure that the employee is:

- aware of the concerns;
- knows what is required to meet expected standards of conduct;
- made aware of the timescale over which an improvement is required;
- made aware of the consequences of not achieving the required standard.

This is not a stage in the formal Disciplinary Procedure. It is part of the standard day-to-day relationship between managers and the people they manage. However, in certain circumstances it will be necessary for the discussion and outcome to be confirmed in
writing as it may become necessary to pursue the issue through the formal Disciplinary Procedure if there is a re-occurrence or a failure to improve to the required standard.

Preparation

Before speaking to the employee, the manager should consider the following points:
- what are the facts, what is the evidence?
- what are the standards expected? Are these standards clear?
- are there any factors you are aware of which may be relevant (eg health, domestic difficulties, lack of training or supervision)?
- how can the issue be put right, what should be done differently in the future?
- remember that the objective is to improve conduct to the required standard.

Outcome

Ideally, the manager should aim to reach agreement with the employee on the following points, but where it is not possible to reach a consensus, the manager should make the University’s expectations clear:
- the standards expected;
- where they are currently falling short of these standards (ie the gap between current conduct and the standards required);
- the action required to close that gap – what they are going to do, what you are going to do, the timescale for improvement (eg, what support, training or other advice and guidance will be provided, who is responsible for organising and providing it and what are the timescales for these interventions);
- follow up and review;
- summarise what you have agreed to avoid misunderstanding;
- make a record if necessary – this will be helpful if the employee’s conduct does not improve to the standard required.

Next steps

After speaking to the employee, the manager should:
- continue to monitor the employee’s conduct over the agreed timescale and provide for regular reviews and give feedback;
- make sure they deliver on the action agreed (eg training, additional support);
- if the employee’s conduct does improve to the standard required then make a point of telling them and encourage them to continue.
- if the employee’s conduct does not improve to the standard required – ie if there is no improvement, or what improvement there has been still falls short of the standard required – then it will be necessary to speak to the employee again.
- take advice from Personnel and Staff Development as to whether it is necessary to move forward to the formal Disciplinary Procedure.

5 Who can take disciplinary action

Disciplinary action may only be taken by a manager with the appropriate authority.

The Vice-Chancellor, Registrar and Secretary, Deputy Vice-Chancellors, Heads of School, Heads of Service and School Managers have, by virtue of the offices they hold, been delegated authority by the University to take disciplinary action at all stages detailed in paragraph 7, including the authority to dismiss. However, such decisions must be taken in accordance with this procedure and following consultation with their Personnel
Manager/Officer. Personnel and Staff Development have arranged training programmes in the use of the Disciplinary Procedure for these office holders and it is the expectation of the University that new office holders will have attended this training before they take any action under the Procedure.

Delegated authority may be given to other named managers to take defined levels of disciplinary action in accordance with this procedure following appropriate training and with the agreement of the Director of Personnel and Staff Development.

For staff in the academic job families (ie Lecturers, Senior Lecturers, Associate Professors, Professors, Associate Research Fellows, Research Fellows, Senior Research Fellows, Associate Teaching Fellows, Teaching Fellows and Senior Teaching Fellows), disciplinary action must be taken by another employee in the academic job families who has a management responsibility and has been authorised to take action under the Procedure. Managers in the support job family are not authorised to take action in respect of staff in the academic job families.

Other managers and supervisors/team leaders are authorised, as part of their day-to-day management responsibilities, to take the steps summarised in section 6 of the Disciplinary Procedure to ensure that minor breaches of discipline are dealt with promptly and appropriate without recourse to the formal Procedure, taking advice from their Personnel Manager/Officer. (See section 4 of this guide.)

6 Roles and Responsibilities

It is important during any disciplinary process the people fulfilling the roles below are aware of their responsibilities.

Manager

This is the manager who has authority to take action under section 3 of the Disciplinary Procedure and who is ‘the manager who is to conduct the hearing’ under section 7 of the Procedure.

When concerns about an employee’s conduct or behaviour are drawn to their attention, they should discuss these with their Personnel Manager/Officer and decide:

• whether they are minor breaches which should be addressed outside the formal Disciplinary Procedure;
• whether to arrange a hearing in accordance with section 7.1 of the Disciplinary Procedure;
• whether an investigation is necessary; and
• (in appropriate circumstances) whether suspension should be considered.

The disciplining manager is responsible for deciding how the hearing should be conducted (see section 9 of this guide), including which witnesses should be called to give evidence or be questioned on their statements. During the hearing itself, they are responsible for ensuring that the hearing is fair and that the employee has the opportunity to challenge the evidence, question witnesses and present their case fully.

In exercising this role, they should take advice from the Personnel Manager/Officer appointed to support them. However, it is the manager who has been delegated authority by the University to take action and, after taking advice, it is their responsibility to make a decision in accordance with section 7.4 of the Disciplinary Procedure. Similarly it is the manager who will be required to defend that decision at any appeal or subsequent employment tribunal.

Personnel Manager/Officer

The Personnel Manager/Officer acts on behalf of the Director of Personnel and Staff Development in accordance with paragraph 8 of the ‘Principles and Standards’, advising at
all stages to ensure that decisions relating to the Disciplinary Procedure are fair, reasonable and consistent.

In particular, the Personnel Manager/Officer will:

- advise managers in Schools/Services on the appropriate response to any concerns which are drawn to their attention, i.e. whether they are minor breaches which should be addressed outside the formal Disciplinary Procedure; whether to arrange a hearing in accordance with section 7.1 of the Disciplinary Procedure; and whether an investigation is necessary; and (in appropriate circumstances) whether suspension should be considered;

- in appropriate cases, arrange with the Director of Personnel and Staff Development for an investigation to be undertaken in accordance with section 4 of the Disciplinary Procedure, ensuring that an appropriate person or persons are appointed to undertake the investigation and that there are clear terms of reference and a target completion date;

- where a decision is made to arrange a hearing in accordance with section 7.1 of the Disciplinary Procedure, advise the manager on the procedures to be followed;

- attend the hearing to take notes and advise the manager, asking questions where appropriate;

- following the hearing, provide advice to the manager on their decision under section 7.4 of the Disciplinary Procedure;

- advise the manager in the notification of their decision in accordance with section 8 of the Disciplinary Procedure.

Manager(s) responsible for the investigation

See section 8 of this guide for detailed guidance about the conduct of investigations. The manager(s) responsible for the investigation will:

- decide who should be asked to give statements/be interviewed and what additional information (e.g., documents, records) should be inspected;

- explain to those giving statements why they are being interviewed, that they will be taking notes and that a record of the interview may be made available to the employee and their representative;

- conduct interviews, make notes and arrange for the witness to either sign a statement compiled from the interview or a record of the interview;

- ensure, as far as practicable, that the investigation is completed within the agreed timescale and keep the Director of Personnel and Staff Development, or his nominated representative, informed of the progress of the investigation;

- compile a report the Director of Personnel and Staff Development, or his nominated representative, with witness statements and other supporting evidence. This report should be sufficiently detailed to enable a decision to be made in accordance with section 4.2 of the Disciplinary Procedure. Where a decision is made to consider the matter under the formal disciplinary procedure, the report of the investigation will normally be sent to the employee in accordance with section 7.1 of the Procedure.

7 Suspension

In certain cases it may be necessary to consider removing an employee from the workplace in advance of any disciplinary hearing or decision. While suspension of an employee is not a disciplinary act in itself, it is a very serious step and should only be applied in appropriate circumstances, after careful consideration and consultation with Personnel and Staff Development.
The circumstances in which an employee may be suspended are:

(i) where this will allow a more objective examination and investigation of the circumstances. (However, consideration should also be given to whether it would be more appropriate to move the employee from their normal place of work to other duties, on a temporary basis, until the completion of the investigation);

(ii) where, the alleged misconduct is potentially gross misconduct such that there is the possibility of summary dismissal;

(iii) where the employee is the subject of investigation by the Police and the alleged offence is considered relevant to the duties of the individual as an employee;

(iv) where the employee's continued presence at work could be prejudicial to the interests of the University.

Suspension can only be taken (and lifted) by a manager authorised to take disciplinary action, following consultation with the Director of Personnel and Staff Development, or by the Director of Personnel and Staff Development (or designate). The period of suspension should be as brief as possible and must be kept under review to determine whether suspension is still appropriate.

A suspension is always on ‘normal’ pay: The means the pay which the employee would have received if they were not suspended. If the employee is on sick leave for any period of the suspension, then the contractual rules on sick pay will apply.

The fact of the employee's suspension and the reasons for it must be confirmed in writing (see template letter).

This letter will advise the employee that, whilst suspended, they must not contact fellow workers or visit University property or access University facilities including email and databases without first obtaining authority from the Director of Personnel and Staff Development. The purpose of such action is to solely to protect the interests of the University and to facilitate an objective investigation and any limitations placed on the employee should be proportionate to these objectives. For example, it may be appropriate to advise an employee that they can come to the University to undertake reading and research in the Library but should not attend their department/school, or continued access to emails is permitted conditional upon them not emailing staff or students. Staff retain the right to contact their Trade Union representative and they should be permitted (subject to any conditions considered appropriate) to contact colleagues in order to prepare their response.

This must be reported to an authorised manager and the Director of Personnel and Staff Development as soon as possible so that they can determine whether the employee is to be formally suspended in accordance with section 5.1 of the Disciplinary Procedure.

Sending Home

In circumstances – for example, during weekends or evenings - 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 in order to protect the University's interests (for example, where the manager has good reason to consider that the employee's continued attendance at work may place staff, students or others at immediate risk or where there appears to be an issue which could result in dismissal). Wherever possible advice should be sought from Personnel staff before such action is taken.

The manager should first ask the employee to respond to the matter before ‘sending home’. It is important that the employee understands what allegations are being made and that anything said will be recorded and may be used at a later date as part of any further investigation and/or a Disciplinary Hearing. A report should be made to a senior manager and Personnel and Staff Development at the earliest opportunity (and in any event within
24 hours of the ‘sending home’) outlining the full circumstances together with any response made by the employee.

Also within 24 hours of the ‘sending home’, should be sent by the senior manager (or Personnel and Staff Development)

If the senior manager (who is authorized to take action under the Disciplinary Procedure) is unable to make a decision within 24 hours of the ‘sending home’ to suspend the employee or to allow the employee back to work, a letter should be sent to the employee confirming the ‘sending home’ and circumstances surrounding it.

8 Investigations

In dismissals for suspected misconduct the employer must be able to show that there was a genuine and reasonable belief in the employee's misconduct, held on reasonable grounds after reasonable investigation

An investigation will be necessary:

(i) to gather evidence so that a decision can be taken on whether the matter should proceed to a formal hearing under the Disciplinary Procedure. (Under the University's procedure, this decision is taken by the Director of Personnel and Staff Development or designate);

and, if a decision is made that there should be a disciplinary hearing under the procedure:

(ii) to present the manager responsible for conducting the disciplinary hearing with a clear understanding and knowledge of the allegations made so they can question the employee (and any witnesses) about these issues with a view to making a decision whether or not disciplinary action is appropriate;

(iii) so that the employee is presented with a clear understanding and knowledge of the evidence supporting the allegations they are required to respond to in the disciplinary hearing.

Concerns or allegations of misconduct may be drawn to the attention of managers in the University in a number of ways. In cases of suspected fraud (see section 10 below), the concerns may come to light during an audit; in other cases, colleagues may witness conduct which concerns them and report these concerns to manager; in case of alleged bullying and harassment, complaints may be made under the Policy on the Protection of Dignity at Work and Study; sometimes complaints may be made by customers or students.

The manager should discuss these concerns with their Personnel Manager/Officer to determine whether an investigation is necessary. Under the University's Disciplinary Procedure, it is the responsibility of the Director of Personnel and Staff Development (or designate) to 'commission' an investigation.

When ‘commissioning’ an investigation, the Director of Personnel and Staff Development (or designate) will:

- appoint one or more appropriate persons to conduct the investigation (‘the investigating officer/team’) – see advice below on ‘Who should conduct the investigation’;

- agree with the investigating officer/team, the purpose of the investigation (ie the allegation(s)) and the scope of the investigation – eg the areas to be covered, the questions to be addressed, the people to be seen and the timescale for completion.

In addition, the Director of Personnel and Staff Development (or designate) will:

- regularly review progress;

- if, at any stage during the investigation, it becomes necessary to consider suspension, consult with the appropriate senior manager in the School/Service to decide whether the employee should be suspended and take the appropriate steps. Similarly, where
the employee has been suspended, if it becomes clear during the investigation that suspension is no longer necessary, the suspension should be reviewed and lifted;

- determine when the investigation is complete;
- on completion of the investigation and receipt of the report of the investigating officer/team, decide what steps should be taken, ie:
  - 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 under the formal disciplinary procedure.

Where no action is taken, the employee should be formally advised in writing that the matter is closed.

Who should conduct the investigation?
The investigation will normally be conducted by a Personnel Officer/Manager. In cases of alleged fraud (see section 10), a member of Finance Services or the University’s internal auditors may also be part of the investigation team. Managers from the School or Service may also be appointed as co-investigators where this will facilitate the objectives of the investigation – eg where they have specialist knowledge of the issues or activities under investigation. In cases of alleged bullying and/or harassment, the investigating officer/team should be individuals who – as well as being independent and objective – can secure the trust and confidence of those making the allegations.

It is important that the investigation is seen as objective, so neither the person who has made the allegation nor the manager who will conduct the disciplinary hearing should conduct the investigation.

Conducting the investigation
The investigating officer/team must ensure that the investigation is factual, objective and properly conducted. In the stages leading up to a disciplinary hearing, the outcome should not be prejudged in any way. The investigation should be conducted in a manner which meets the statutory and policy requirements and reflects good personnel practice.

The investigating officer/team should keep the representative of the Director of Personnel and Staff Development who commissioned the investigation informed of progress and seek advice where necessary.

Investigations should start as soon as possible after the alleged incident has occurred or complaint has been received. Delays may reduce the opportunity for allegations to be investigated while events are still fresh in everyone’s minds.

Interviewing witnesses
The investigating officer/team should – subject to the advice below – interview anyone who has been a witnesses to an incident, or anyone who has reported an allegation against someone else or made a complaint against an employee.

People being interviewed must be told the nature and purpose of the investigation, that written notes or statements will be taken and that these may be used in whole, or in part, at a disciplinary hearing. (See section 11 below on record-keeping and discovery.)

Members of staff should also be advised that their attendance at a disciplinary hearing, as a witness, may be required. The University can require an employee to attend a disciplinary hearing as a ‘reasonable instruction’ and the employee has a contractual duty to attend if instructed to do so. However, consideration should be given to any concerns expressed by an employee who has given a statement – particularly in cases of bullying and harassment (see section 10 below).
Employees have a right to be accompanied by a trade union representative or colleague only in a formal disciplinary hearing: there is no right to be accompanied during an investigative interview. However, requests to be accompanied during an investigative interview should not be unreasonably refused. The investigating officer/team will need to make a judgement whether the attendance of a trade union representative or colleague will support or hinder the objective of the interview, which is to describe all the facts they know and have observed about the issue under investigation.

Students, customers and others who are not members of the University, such as members of the public, may be interviewed as part of the investigation but will not normally attend disciplinary hearings. In exceptional circumstances, it may be necessary to ask them to attend but this cannot be required.

Interviews should not normally take place with vulnerable people, eg children, people with learning disabilities etc, without support from a representative, friend or parent.

Following the interview, the investigating officer/team should either arrange for a typed record of the interview to be produced or for the relevant parts of the interview to be produced as a typed statement. Written notes or statements should be factual and not express the opinions of the witness. In taking statements it is important to note the date, time and place of each observation or incident; whether the person had the opportunity to observe clearly and accurately; circumstantial evidence such as knowledge of a system, the reason for the person's presence or any memorable small details.

As part of the investigation the person making the statement should be given an opportunity to confirm that the responses recorded are an accurate record and to make amendments. Ideally, there should be an agreed record but in exceptional circumstances this may not be possible – for example, the witness may make statements at the interview which they subsequently seek to amend or retract.

**Interviewing the employee(s) under investigation**

In some instances it may be necessary to seek an initial interview with the employee who is the subject of the investigation. The investigating officer/team should advise the employee that this is not 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. The employee should understand that a potentially disciplinary issue is being investigated, that the investigation may lead to a formal disciplinary hearing and that whatever is said in the interview will be recorded and may be used as part of the disciplinary process. As noted above, while there is no right to be accompanied, any request should not be unreasonably refused.

The purpose of such an interview will be to:

(i) bring to the attention of the employee the allegation made against them;
(ii) provide the employee with an opportunity to respond at an early stage;
(iii) establish facts or gather information;
(iv) explain what further steps it is intended to take.

**Anonymous informants**

Only in exceptional circumstances will the Director of Personnel and Staff Development permit statements to be anonymised. Employment Tribunals expect employers to apply standards of fairness which require employees to be given a reasonable opportunity to respond to the allegations made against them, which normally includes knowing the identity of the people who have provided the evidence. Courts have applied very stringent ‘rules’ for the circumstances in which an employer can withhold the identity of witnesses. Essentially, this is only permitted where there is a genuine concern for personal safety.

A concern of the potential impact upon working relationships (although understandable) is not a sufficient reason for witnesses to be anonymous. Every effort should be made to
reassure the employee in such circumstances, noting that their cooperation with an investigation is a reasonable instruction which they are under a duty to follow and that the University would take seriously any subsequent reprisals, if they did occur.

When an allegation is received and the informant is known but does not wish to be identified, or a witness requests anonymity, the investigating officer/team should be clear for the reason for the request and refer this to the Director of Personnel and Staff Development, who is responsible for deciding whether to accede to the request. Where a decision is taken to proceed, for the manager conducting the disciplining hearing to be satisfied about the accuracy and reliability of information which will be used in the hearing, they will need to assess the reliability and objectivity of the witness and the weight to give the information given their wish to remain anonymous. This should normally be done by that manager personally interviewing the informant.

When an allegation is made anonymously, the appropriate manager should consult with their Personnel Manager/Officer and consider the nature of the alleged offence a decision is made whether and how to investigate.

Report of the Investigation
The investigating officer/team should present a report on the conclusion of the investigation which details:

- the facts of the allegation/complaint;
- the scope of the investigation;
- all notes/statements produced as part of the investigation;
- any other relevant evidence (eg copies of documents, data etc);
- the conclusions of the investigating officer/team regarding the issues, if any, to which the employee should be required to respond in a disciplinary hearing.

The Director of Personnel and Staff Development should be able to decide, on the basis of the report, whether the case should be referred to a disciplinary hearing and if so what issues need to be covered at that hearing.

9 The disciplinary hearing

Notification
The manager responsible for conducting the disciplinary hearing must write to the employee advising him/her of the date, time and place of the hearing and giving details of the allegations or complaints to which he/she is required to respond. Any supporting evidence should also be included with the letter. The letter must advise of the right to representation and if a dismissal is contemplated as a possible outcome of the proceedings, this should also be made clear.

The letter should include the names of any witnesses who will be giving evidence at the disciplinary hearing and advise the employee that they may also present witnesses. The employee should be asked to give prior notification of any witnesses. The employee should be advised that it is their responsibility to arrange for the attendance of any witnesses they are calling.

See appendix for a template/example of the letter calling the employee to a disciplinary hearing.

Who should attend?
Only those who have a role within the disciplinary process should attend:

- the manager responsible for conducting the disciplinary hearing;
- the employee;
the trade union representative or work colleague (‘fellow worker’) accompanying the employee, if any. (The employee has a statutory right to be accompanied by a trade union representative or fellow worker and this right is re-stated in the University’s Disciplinary Procedure. There is no right to be accompanied by a solicitor. Nor is there a right to be accompanied by a family member or a friend.)

the investigating officer/team (to answer questions about their investigation. Additionally, in certain cases, the investigating officer/team may be asked to formally present their report as the ‘case’ against the employee);

witnesses as necessary (witnesses should attend to answer questions about the evidence they have given and should withdraw afterwards: they should not be present for the whole of the disciplinary hearing);

the representative of the Director of Personnel and Staff Development.

(See section 6 on Roles and Responsibilities.)

Postponements

There is a legal right for an employee to request a postponement of up to one week if the person they have chosen to accompany them cannot attend on the scheduled date. The University’s Disciplinary Procedure extends this, so that employee may make a reasonable request for a disciplinary hearing to be postponed for up to one week for any reason (eg sickness). Only one postponement will be permitted and, following such a postponement, the employee should be advised that if they do not attend on the re-arranged date, the University reserves the right to proceed with the meeting in the employee’s absence.

However, before proceeding in the employee’s absence, the manager should consider any reasons given by the employee for their non-attendance and take advice from the representative of the Director of Personnel and Staff Development about whether or not to proceed in the absence of the employee or whether to re-arrange the hearing again.

Conducting the Hearing

At the commencement of the hearing, the manager responsible should:

- introduce those present and explain why they are there;
- explain that the purpose of the hearing is to consider the complaint(s) made against the employee (as detailed in the letter), to give the employee the opportunity to respond to them and to determine, in the light of his/her response and all the circumstances whether any action should be taken within the disciplinary procedure;
- explain how the hearing will be conducted.

It is essential that the employee has a reasonable opportunity to state their case and to answer the allegations that have been made. Generally, the disciplinary hearing will follow the following format (although paragraph 7.3 of the Disciplinary Procedure provides a significant degree of flexibility on how the disciplinary hearing should be conducted and variations may be necessary in certain cases, for example in cases of bullying and harassment):

(i) the manager asks the investigating officer/team to outline the outcomes of their investigation and the evidence against the employee;

(ii) the employee or the person accompanying them may ask questions of the investigating officer/team;

(iii) the manager and the representative of the Director of Personnel and Staff Development may ask questions of the investigating officer/team;

(iv) the investigating officer/team present any witnesses, one at a time, and may ask questions of them (witnesses statements should be taken as read);

(v) the employee or the person accompanying them may ask questions of the witnesses;
(vi) the manager and the representative of the Director of Personnel and Staff Development may ask questions of the witnesses;

(vii) the manager should ensure that the employee or the person accompanying them has no further questions of each witness before asking the witness to leave;

(viii) the manager should give the employee or the person accompanying them the opportunity to make an oral submission;

(ix) the manager and the representative of the Director of Personnel and Staff Development may ask questions of the employee (who must answer themselves – the person accompanying them is not permitted to answer questions on their behalf);

(x) investigating officer/team may ask questions of the employee;

(xi) the employee may call witnesses and ask questions of them;

(xii) the manager and the representative of the Director of Personnel and Staff Development may ask questions of the employee’s witnesses;

(xiii) the investigating officer/team may ask questions of the employee’s witnesses;

(xiv) the manager should give the investigating officer/team the opportunity to sum up;

(xv) the manager should give the employee or the person accompanying them the opportunity to sum up;

(No new evidence should be introduced during summing-up.)

(xvi) the manager should ask everyone to withdraw (except the representative of the Director of Personnel and Staff Development) and advise the employee that they will be notified of the decision in writing within one week of the hearing.

Adjournments

During the hearing, either side may request an adjournment for private consultation. Such requests from the employee should not be unreasonably refused.

Adjournment might be necessary if new information comes to light requiring further investigation or consideration by either side.

Where a hearing is adjourned, everyone present should withdraw, with the exception of the representative of the Director of Personnel and Staff Development whose role is to advise the manager on their decision. This will ensure that no information is disclosed to the manager which the employee and the person accompanying them do not have the opportunity to consider or respond to.

Decisions

At the conclusion of the disciplinary hearing, after everyone has withdrawn, the manager – taking the advice of the representative of the Director of Personnel and Staff Development - should consider everything that has been heard before reaching his/her conclusion. The manager is required to come to a view about the validity or otherwise of the allegation(s) and to decide what action, if any, should be taken.

The manager should consider the following in reaching their decision:

- do I believe the employee to be ‘guilty’ of the alleged misconduct?
- what are the reasons for this belief?
- does the evidence from the investigation and disciplinary hearing support this belief?
- has the investigation been thorough and reasonable?
- if witnesses have given conflicting accounts, why do I believe one witness over another?
how serious is the misconduct, taking account of the guidance/examples in Appendix 1 of the Disciplinary Procedure and any precedent within the University or in case law generally?

After a disciplinary hearing, the manager may take one of the following courses of action, according to the circumstances of the case:

(a) To take no disciplinary action under the Disciplinary Procedure and advise the employee that the issue is closed.

(b) To take no disciplinary action under the Disciplinary Procedure but, if it is concluded that a minor breach has occurred, give advice/guidance and offer support and/or training as appropriate in accordance with the management interventions suggested under paragraph 6 of the Disciplinary Procedure (Addressing issues prior to the use of the formal procedure).

(c) To give a formal written warning if there has been either a repeated minor breach in conduct or performance, or a first but more serious breach of discipline or shortcoming in performance. Appendix 1 of the Disciplinary Procedure gives examples of the misconduct which may lead to a formal warning.

(d) To give a final written warning if there has been an insufficient response to previous warnings and conduct or performance is still unsatisfactory, or in the case of a first but sufficiently serious breach of discipline. Appendix 1 of the Disciplinary Procedure gives examples of the misconduct which may lead to a final warning.

(e) To give the employee notice of dismissal if, following a final written warning, conduct or performance remains unsatisfactory and the employee still fails to reach or maintain the prescribed standards.

(f) To dismiss the employee summarily without notice and without there having been any previous disciplinary warnings when there has been gross misconduct. Gross misconduct is action that goes to the root of the employment contract with the result that the employer's trust and confidence in an employee's ability to fulfil the terms of his or her contract is damaged beyond repair. Examples of behaviour that may be regarded as gross misconduct and may therefore lead to summary dismissal are included in Appendix 1 of the Disciplinary Procedure. This list is not comprehensive or exclusive, but indicates the kind of misconduct that might result in summary dismissal for employees. In certain circumstances, serious misconduct that has taken place outside of employment may also be regarded as gross misconduct.

The representative of the Director of Personnel and Staff Development will advise the manager on the reasonableness of the decision which should take into account all the circumstances of each case, the gravity of the offence, any mitigating factors, the employee's position and record (including their length of service and any current disciplinary warnings) and the relevance of principles established either by case law or by precedents within the University.

If disciplinary action is proposed, the manager must believe that the employee was at fault and must have reasonable grounds for sustaining that belief. They must be satisfied that there has been a thorough investigation which supports the grounds for their belief. If it becomes clear at any point during the proceedings that the evidence is inadequate, a subsequent dismissal is likely to be unfair. Additionally, the action proposed must fall within the range of responses open to a reasonable employer given the circumstances of each case.

The reasons for the decision should be recorded so that these can be set out in the notification letter.

Communicating the Decision
The representative of the Director of Personnel and Staff Development will draft the notification letter for the manager. In addition to advising the employee of the decision, the letters should indicate the factors taken into account and the reasons for the decision.

If a warning is issued, the employee should be told the length of time for which it will remain on their personal file, the improvements required and the consequences of any further breach of discipline within this period.

They should also be advised of the right of appeal and of how they may exercise this right.

The decision must be confirmed to the employee, in writing, within one week of the disciplinary hearing.

See Appendix for a template/example letter confirming the outcome of a disciplinary hearing.

Follow up
In cases of disciplinary action short of dismissal, consideration should given to any additional support and monitoring which may be necessary to ensure that there is no re-occurrence.

10 Special circumstances
Bullying and harassment
The University’s Policy on the Protection of Dignity at Work and Study summarises the University’s commitment to providing a working and learning environment where all individuals are treated with dignity and respect and where harassment is unacceptable. The Policy includes examples of unacceptable behaviour and outlines the steps open to an employee or student if they consider they have been subject to bullying or harassment.

Employees can pursue a formal complaint through the Grievance Procedure and students can pursue complaints through the Student Complaints Procedure. However, the Policy provides that, at any time, a Head of School/Professional Service may determine that there is sufficient evidence for the issue to be considered under the Disciplinary Procedure. Consequently, it is not always necessary for the (staff) Grievance Procedure/Student Complaints Procedure to run its full course before a decision is taken for the University to ‘take ownership’ of the issue and manage it under the Disciplinary Procedure. Nor is it necessary for a formal complaint to be made in writing: an oral report can trigger an investigation provided the individual alleging harassment is willing to be interviewed and make a formal statement as part of the investigation.

Where this does occur, the manager should notify the individual alleging harassment that it is now being dealt with under another procedure (see paragraph 2.3 of the Grievance Procedure) and take advice from their Personnel Manager/Officer about how much information should be disclosed to them, recognising the University’s duty of confidentiality.

The University has an equal duty of care to both the individual alleging harassment and the alleged harasser and an allegation cannot be presumed proved until properly investigated.

The equal duty of care also applies during a disciplinary hearing. It would not be appropriate for the individual(s) alleging harassment to be cross-examined by their alleged harasser but there are likely to be legitimate questions which the employee who is the subject of the complaint will want to ask of them. Depending on the circumstances, the individual(s) alleging harassment could attend the hearing but the manager may direct that all questions are directed through him/her. (The manager must ensure that the employee does not bully or harass any witnesses during the disciplinary hearing.) Alternatively, the manager may advise the employee in advance that they will be interviewing the individual(s) alleging harassment prior to the disciplinary hearing and ask them to send a

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2 [http://as.exeter.ac.uk/support/equality/challengingdiscrimination/](http://as.exeter.ac.uk/support/equality/challengingdiscrimination/)
list of questions which they wish to be posed to these individuals. If appropriate, the employee’s representative may attend these interviews. The purpose is for the manager to make a judgement about the credibility of these witnesses and the allegations they have made.

**Fraud**

Cases of alleged fraud should be managed in accordance with the University’s Fraud Policy Statement and Response Plan. This defines fraud as ‘the use of deception with the intention of: gaining an advantage, personally and for family or friends; or causing financial loss to the University or one of its subsidiary companies.’ It includes theft, false accounting, abuse of position (abusing authorities and misusing University resources or information for personal gain or causing loss to the University).

Examples of fraud include:
- theft of cash or stock
- fraudulent encashment of payable orders or cheques
- misappropriation of other assets including information and intellectual property
- unauthorised use of University property (eg vehicles, computers, other equipment)
- purchasing or purchase ledger fraud (eg approving/paying for goods not received, approving/paying bogus suppliers, approving/paying inflated prices for goods and services, accepting any bribe)
- travel and subsistence claims overstated or falsely claimed. This may include advances not recovered or forging of counter-signatories
- accepting pay for time not worked (eg false claim for hours worked, failing to work full contracted hours by any member of staff, false overtime claims, or falsification of sickness self-certification)
- computer fraud (eg altering or substituting records, duplicating or creating spurious records, or destroying or suppressing records).

The Fraud Response Plan requires every actual or suspected case of fraud to be reported without delay to the Director of Finance or in his absence to a Deputy Director of Finance, who will discuss the case with the Registrar and Secretary and Director of Personnel and Staff Development to determine what investigations are necessary.

**Conduct outside of work and criminal investigations**

Serious misconduct outside of work may need to be dealt with under the Disciplinary Procedure, but only where it is considered there is an effect upon the employment relationship. and may, in appropriate circumstances, be regarded as gross misconduct.

If an employee is charged with, or convicted of, a criminal offence this is not in itself reason for disciplinary action. Consideration needs to be given to the effect of the charge or conviction on the employee’s ability to do their job.

If during the course of an investigation, it appears that a crime may have been committed the investigating officer/team must inform the Director of Personnel and Staff Development as soon as possible so that the police can be notified.

Where the alleged misconduct relates to behaviour between an employee (who is the subject of the allegation) and the person making the allegation – eg allegations of serious harassment of a sexual or racial nature - the views of the person making the allegation must be fully considered before a decision is made on notifying the police. Where person making the allegation does not wish police involvement, that decision will normally be respected. In such cases, it should be explained to the person making the allegation that it

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3 [http://admin.exeter.ac.uk/finance/publications/fraud.htm](http://admin.exeter.ac.uk/finance/publications/fraud.htm)
is their decision and their responsibility to involve the police. However, there may be exceptions to this in certain cases, depending on the nature of the allegation.

If there is a question of possible criminal proceedings, internal proceedings under the University’s Disciplinary Procedure will not normally be delayed or depend upon the results of a police investigation as the University’s interest relates only to the employee's employment and how the allegation affects that relationship.

Misconduct in research

(The procedure for investigating misconduct in research\(^4\) and its relationship with the new Disciplinary Procedure is under review.)

11 Record keeping

Managers should be aware that written communications may be disclosed in the event of an Employment Tribunal claim or a disclosure request under the Data Protection Act. For example, an email between the manager and Personnel Manager seeking advice on how to manage a situation could be disclosed, so care should be taken when such messages are written. Communications should be factual, objective and professionally worded.

Managers should retain copies of notes of discussions and communications sent to employees while ‘addressing issues prior to the use of the formal procedure’.

The investigation team should retain copies of their handwritten notes of interviews with witnesses (which may also be disclosable). There should be a master file which holds original documents of notes of interviews, signed witness statements and any other documentary evidence which is considered in the investigation.

The manager conducting the disciplinary hearing should retain any handwritten notes made during the hearing as these may be disclosed later. The Personnel Manager/Officer advising the manager will take a note of the disciplinary hearing. This will not be a complete verbatim record. In certain cases, it may be necessary for these notes to be typed up and circulated to the employee and/or appeal panel. Any notes made by the Personnel Manager/Officer during the deliberation phase should also be retained as these may be disclosable in the event of legal action.

12 Appeals under the Disciplinary Procedure

An employee has the right to appeal against a decision to issue a warning (both a ‘first’ and a ‘final’ warning) or to dismiss.

The right of appeal must be exercised within two weeks of receipt of the letter of confirmation of disciplinary action. The appeal, stating the grounds on which it is made, must be in writing addressed to the Director of Personnel and Staff Development.

The Director of Personnel and Staff Development will make arrangements for the appeal to be heard – ideally within four weeks of the appeal being lodged - 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 warning or against dismissal, the panel will be drawn from members of the Senior Management Group from a different School/Service.

The appeal will generally be a review of the original decision rather than an re-hearing, so it will not normally be necessary for all the witnesses from the original disciplinary hearing to attend the appeal hearing and give their evidence again. Rather, the manager who conducted the disciplinary hearing will be required to attend the appeal to explain the reasons for the decision they made and to answer questions, both from the panel and from the employee (and/or the person accompanying them).

\(^4\) [http://www.exeter.ac.uk/research/documents/gnmisconduct.pdf](http://www.exeter.ac.uk/research/documents/gnmisconduct.pdf)
Exceptionally, the appeal panel may consider that new evidence should be presented, in which case arrangements will be made for other witnesses to attend. The Director of Personnel and Staff Development (or designate) will make the appropriate arrangements.

The appeal panel may:

- uphold the disciplinary action taken; or
- withdraw the disciplinary action taken; or
- reduce the level of disciplinary action taken.

They cannot impose a ‘higher’ or more ‘severe’ penalty.

The procedure for appeals is set out in Ordinance 26.

The decision of the Appeal Body is final within the procedures of the University, although in most cases of dismissal the (former) employee will have the right to make an application to an Employment Tribunal.

In the case of a dismissal the resultant vacant post must not be filled until the appeal has been determined.
Appendix: Template letters

Sending Home

Dear

Sending Home

I am writing to confirm my decision to send you home on [date] following the concerns reported to me that you may have [give summary details of allegations]. In view of the seriousness of these concerns, a report will be made to [name/role of appropriate senior manager who is authorised to take action under the University's Disciplinary Procedure], who will be in contact with you as soon as possible. Until then, you should remain at home and should not contact fellow workers or visit University property or undertake any University work, including accessing University facilities including email and databases. You are permitted to contact your Trade Union representative. If you have any questions, you should contact the School’s Personnel Manager [name/contact details].

Yours sincerely

Suspension

Dear

Suspension from duty

It has been drawn to my attention that you may have [give summary details of allegations]. I regard these concerns as serious and the Director of Personnel and Staff Development is making arrangements for an investigation to be conducted.

Following completion of this investigation, it may be necessary to arrange a disciplinary hearing under the University’s Disciplinary Procedure, which may result in disciplinary action being taken. You will be notified of the outcome of the investigation in due course. I am expecting the investigation to be completed in approximately [insert timescale]. While the investigation is taking place, you are suspended from work on normal pay.

While you are suspended, you should not contact fellow workers or visit University property or access University facilities including email and databases without first obtaining authority from myself or the School’s Personnel Manager [name/contact details]. You are permitted to contact your Trade Union representative.

Yours sincerely

Notification of disciplinary hearing

Dear

Disciplinary Hearing: [date]

I require your attendance at a disciplinary hearing held under the University’s Disciplinary Procedure (enclosed). The hearing will take place on [date] at [time] in [venue].

The purpose of the hearing is for you to respond to the following concerns:

- [detail allegations]

I enclose copies of the documentary evidence which I will consider. I have also arranged for the following to attend as witnesses:

- [list witnesses]

I will be advised by a representative of Personnel and Staff Development.

You are advised that the disciplinary hearing may result in serious disciplinary action being taken [(if appropriate) including the possibility of dismissal] and you are reminded of your right to be accompanied by a trade union representative or fellow worker.
You have the right to present your own documentary evidence and to bring your own witnesses. Please notify me no later than [date] to confirm your attendance and to advise if you will be accompanied and by whom and of any witnesses you will be bringing. You should note that it is your responsibility to contact these witnesses and arrange for their attendance. Any additional documentation you wish me to consider should also reach me by [date].

Yours sincerely

Notification of outcome of disciplinary hearing

Dear

Disciplinary Hearing: [date]

I refer to the disciplinary hearing which took place on [date]. The hearing was held under the University’s Disciplinary Procedure. (enclosed). You were accompanied by [name of representative/colleague] and I was advised by [name of Personnel Manager/Officer].

The purpose of the hearing was for you to respond to the concerns detailed in my letter of [date], namely:

- [detail allegations]

At the hearing, I heard evidence from [list witnesses] and took account of the investigation report which was sent to you with my letter of [date].

Having carefully considered the evidence which was presented and the responses which you gave, I have reached the following conclusions:

- [detail conclusions and reasons]

[As appropriate]

In view of the seriousness of this issue, I have concluded that you should be given a formal warning/final written warning. This will remain valid for a period of 6 months/12 months [or longer period if there circumstances which justify a longer period; these must be explained in this letter]. The warning will be disregarded for further disciplinary purposes if there are no further occurrences of misconduct during this period. If there are further occurrences of misconduct during this period then further disciplinary action may be taken, including the possibility of dismissal.

[Detail any remedial action required of the employee, including any dates for review]

In view of the seriousness of this issue, I have concluded that it is necessary to summarily dismiss you from your employment with the University. This means that your final day of employment with the University will be [date of hearing].

You have the right to appeal against this decision. To exercise this right, you should write to the Director of Personnel and Staff Development within two weeks of receiving this letter clearly stating the grounds of your appeal.

Yours sincerely