



GUIDANCE NOTES: DISCIPLINE

Index

1. Purpose of guidance notes
2. Purpose of the Disciplinary Procedure
3. Modification of the Disciplinary Procedure
4. Relationship with other Policies and Procedures
5. Informal procedure
6. Precautionary Suspension
7. Investigations
8. The Disciplinary Hearing
9. The Right to be Accompanied
10. The Outcome and Notification
11. Right of Appeal

Annex A – Authority to take Disciplinary Action

Annex B - Procedure to be followed at Disciplinary Hearings

1. Purpose of Guidance Notes

- 1.1 The purpose of these Guidance Notes are to provide practical advice to managers who are authorised to take disciplinary action under the University's Disciplinary Procedure, and others who may be involved in investigations or appeals. They are not intended to repeat the Disciplinary Procedure but to provide supplementary guidance and therefore should be read in conjunction with the Disciplinary Procedure.
- 1.2 It is a requirement of the University's Disciplinary Procedure that the Director of Human Resources or his/her designate be consulted at key stages in the Procedure and before formal action is taken, including suspension or a disciplinary hearing. An HR Business Partner ("HRBP") will also be involved at all stages to support the Procedure and process. Managers should therefore seek advice from their HRBP at the earliest opportunity in every case.
- 1.3 Details of persons authorised to take action under this procedure are specified at annex A.

2. Purpose of the Disciplinary Procedure

- 2.1 All organisations have required standards of behaviour, conduct and performance. These standards may be set out in the contract of employment or the University's policies and procedures, including (but not limited to):

- The Alcohol at Work Policy and Guideline,
- Data Protection
- Financial Handbook and Regulations and Bribery Policy
- Expense Regulations
- Fraud Policy
- Dignity and Respect Policy
- Regulations for the Use of Computing Facilities
- Codes of Conduct
- Policy and Guidelines on Substance Abuse
- Code of Good Practice on Conduct in Research
- Health and Safety

General standards of behaviour are also implied terms of the employment contract, for example the implied duty that an employee not act against the interests of the employer and the duty to obey reasonable instructions given by the employer. When required standards are not adhered to, appropriate action needs to be taken.

- 2.2 The disciplinary process should be viewed as a means by which employees are helped and encouraged to achieve and maintain the required standards of conduct. The Disciplinary Procedure helps ensure, for the benefit of both the University as an employer and its employees, that any issues are dealt with promptly, and any shortfalls in an employee's conduct are dealt with effectively and in a reasonable, fair and consistent manner and in accordance with the ACAS Code of Practice.
- 2.3 The procedure for staff working on a claims basis or via the Temporary Staff Bank is set out in the [Terms and Conditions for Individuals Paid by Claim](#):
- The procedure for Postgraduate Teaching Assistants is set out in an appendix to the [Terms and Conditions for Postgraduate Students Paid in Monthly Instalments](#):
- 2.4 Where any part of this Procedure is being or has been applied, the University will not disclose that fact, or the details of the issues, to other members of staff or anyone outside of the University except where this is required under law, a duty of care or any other University procedure, or in confidence as part of an investigation, to facilitate a

disciplinary hearing or appeal, or where a limited disclosure is considered to be justified by the circumstances.

- 2.5 The employee being investigated/subject to the disciplinary procedure should also be reminded of the confidential nature of disciplinary proceedings and the need to keep the matter confidential and not to discuss it with colleagues or third parties. This is to protect the employee concerned and to prevent any prejudice to any subsequent investigation and hearing(s). This does not prevent the employee from discussing the matter in confidence with their immediate family, trade union representative or legal adviser.

3 Modification of the Disciplinary Procedure

- 3.1 Whilst it is not possible to specify every circumstance where the Director of Human Resources or his/her designate may feel it appropriate to modify the Disciplinary Procedure, circumstances where this would be likely to apply are:

3.1.1 Where the member of staff works in or is managed by employees of a third party organisation, including in cases of secondment, where the Director of Human Resources or his/her designate may authorise managers employed by the third party organisation to investigate allegations against the employee and/or to take action under the Disciplinary Procedure in conjunction with or in substitute for appropriate University managers.

3.1.2 Where reasonable adjustments may be required due to an employee's disability.

3.1.3 In certain circumstances it may be appropriate for a disciplinary hearing to be heard by a Disciplinary Chair only, with the support of an HRBP, for example where a panel of two or three managers could reasonably be considered to be excessive in the circumstances of the case and/or intimidating to the individual.

3.1.4 In certain circumstances it may be appropriate for the case to be presented on behalf of the University by the disciplinary chair or the HRBP in which case the Investigating Officer would not be required to attend the disciplinary hearing, for example where the issues are straightforward and/or the employee does not dispute the findings of the investigation.

3.1.5 Where the allegation involves misconduct in research then an investigation may be carried out by an investigation team to include an external expert, who may also present the case at disciplinary hearing and/or appeal. Such investigations may also involve joint investigations with other/multiple institutions (see Code of Good Practice on Conduct of Research).

3.1.6 In exceptional circumstances, where the outcome of a hearing under the Disciplinary procedure could result in the employee being prevented from being allowed to practice their profession (e.g. by being removed from the medical register, disbarred as a solicitor or barrister etc.) the University may agree to the employee being accompanied by an appropriate legal adviser. For avoidance of doubt this will not apply where the only risk the employee faces is losing their job.

- 3.2 Where it is proposed that the Procedure be modified then the employee should be informed of the changes and the reasons for them. The employee should be given an opportunity to raise any concerns about the changes, however the final decision on procedure lies with the Director of Human Resources or his/her designate.

4 Relationship with other Policies and Procedures

- 4.1 Although it is generally envisaged that where a disciplinary investigation and/or

procedure has been commenced, that the issue will be addressed under that procedure; there may be occasions where it is appropriate to transfer to an alternative procedure and cease (or in certain circumstances, suspend) the Disciplinary procedure. Again it is not possible to specify every circumstance where this may be appropriate, but some examples are set out below:

- 4.1.1 Where during an investigation for alleged issues of misconduct it becomes apparent that the issues are related to the employee's capability and that the matter would be better addressed under the Capability/Performance Procedure.
 - 4.1.2 Equally it is possible that during an investigation into a complaint or a meeting relating to poor performance it becomes apparent that the issue is related to conduct (for example attitude rather than performance) and should be addressed under the Disciplinary Procedure.
 - 4.1.3 During a disciplinary procedure an employee may go on a period of sickness absence and be unable to participate in an investigation and/or disciplinary hearing. Subject to clause 8.4 of the Disciplinary Procedure, and depending on the circumstances/length of absence it may be appropriate to stop or suspend the Disciplinary Procedure whilst an ill health/incapacity procedure is followed.
- 4.2 Investigations that have been undertaken in one procedure may where appropriate be used to inform another procedure, where that other procedure is a direct and immediate consequence of the investigation. for example (this list is not intended to be exhaustive):
- 4.2.1 Where an investigation into a grievance finds evidence to support the grievance, the investigation report may be used to inform a disciplinary procedure. (This is in any event expressly provided for at clause 2.3 of the Grievance Procedure.)
 - 4.2.2 Where an investigation under the Dignity and Respect Policy find evidence of bullying and/or harassment, the investigation report may be used to inform a disciplinary procedure. This is in any event expressly provided for in the Dignity and Respect Policy
 - 4.2.3 Where an investigation into a performance related complaint shows evidence of poor conduct, the investigation report may be used to inform a disciplinary procedure.
 - 4.2.4 Where an investigation into absence/attendance shows the employee has wrongly claimed to be sick, the investigation report may be used to inform a disciplinary procedure.
 - 4.2.5 Where an investigation into a student complaint against a staff member finds evidence of misconduct by the staff member, the investigation report may be used to inform a disciplinary procedure.
- Where this clause 4.2 applies the appropriate procedure will immediately follow the investigation, it will not be used at some stage in the future to inform another and unrelated procedure. This does not preclude the University from carrying out any further investigation it considers reasonable in the circumstances, including further interviews with witnesses where appropriate.
- 4.3 Whilst the Disciplinary Procedure does not apply to dismissals that arise as a result of redundancy or non-renewal of a fixed term contract, this does not prevent the University from taking disciplinary action against an employee on a fixed term contract where appropriate. If upheld, any such dismissal would be by reason of conduct and not non-renewal of the fixed term contract.

- 4.4 Nor for avoidance of doubt, if an employee working under notice to terminate their employment on grounds of redundancy (or for avoidance of doubt, on any other grounds, including resignation) is discovered to have committed an act of misconduct (whether the misconduct was committed before or after notice was given) does it prevent the University from taking disciplinary action during the employee's notice period and if appropriate, dismissing for misconduct including summary dismissal for gross misconduct. In these circumstances dismissal would be on grounds of conduct and not redundancy and therefore the employee would have no entitlement to any redundancy payment (whether statutory or under any terms the University may offer from time to time).
- 4.5 If an employee raises a grievance during a disciplinary process then the disciplinary process may, if appropriate, be suspended however there is no legal requirement to do so. The following factors may be considered:
- 4.5.1 Is the grievance related to the disciplinary issues? If so, depending on the circumstances, it may be appropriate to deal with both cases concurrently under a single investigation and hearing.
- 4.5.2 Is the grievance so bound up with the disciplinary issues that they cannot sensibly be considered separately and/or is the grievance effectively the employee's defence to the disciplinary issues? If so no discussion of one can sensibly be carried without a rehearsal of the other, so in this case a separate grievance may be declined and both matters dealt with at the same time under the disciplinary process (for example as part of the employee's case or as mitigation).
- 4.5.3 Is the grievance wholly unrelated to the disciplinary allegations? If so you may run them concurrently with separate panels/hearings, or depending upon the circumstances, it may be safe to continue the disciplinary process and address the grievance at a later date.
- 4.5.4 Does the grievance case doubt on the motive for the disciplinary proceedings, and/or allege the decision to commence the proceedings is discriminatory? If so it may be appropriate to suspend the Disciplinary Procedure until the grievance has been heard.

5. Informal procedure

- 5.1 Many potential disciplinary issues can be resolved by the line manager intervening at an early stage as part of their normal day-to-day management responsibilities: '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.
- 5.2 In cases of minor breaches of discipline (e.g. lateness for work, careless mistakes, lack of attention to detail/instructions/procedures), the immediate line manager should discuss these concerns with the employee as soon as possible 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.
- 5.3 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 and have they been communicated to the employee?

- are there any factors you are aware of which may be relevant (e.g. health, domestic difficulties, lack of training or supervision and/or previous discussions)?
- how might 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.

Ideally, the manager should aim to reach an understanding with the employee on the following points, but where this is not possible, the manager should make the University's expectations clear, including:

- the standards expected;
- where the employee is currently falling short of these standards (i.e. the gap between current conduct and the standards required);
- the action required to close that gap – what the employee is going to do, what the manager is going to do, the timescale for improvement (e.g., what support, training or other advice and guidance will be provided if applicable, and who is responsible for organising and providing it, and what are the timescales for these interventions);
- timescale for a follow up and review;
- summarise what you have agreed (in an e-mail or letter to the employee) to avoid misunderstanding.

5.4 A contemporaneous note should be made of the meeting to record what was discussed, and 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 recurrence or a failure to improve to the required standard.

5.5 After speaking to the employee, the manager should:

- continue to monitor the employee's conduct over the agreed timescale and provide regular reviews and feedback;
- make sure they deliver on the action agreed (e.g. 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 – i.e. if there is no improvement/further instances of the conduct complained of, 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 their HRBP or the HR Casework team as to whether it is necessary to move forward to the formal Disciplinary Procedure.

6. Precautionary Suspension

6.1 In some instances it may be necessary to suspend an employee while an investigation is carried out. While suspension of an employee is not a disciplinary act in itself, it should only be applied in appropriate circumstances.

6.2 Examples of the circumstances in which it could be appropriate to suspend an employee are below. This list is not intended to be exhaustive:

- (i) where this will allow a more objective examination and investigation of the circumstances.
- (ii) where there are reasonable grounds for concern that by allowing the employee to remain at work they may tamper with evidence and/or witnesses.

- (iii) where there are reasonable grounds for concern that the employee's presence at work could be intimidating to potential witnesses.
 - (iv) where the alleged misconduct is potentially gross misconduct such that there is the possibility of summary dismissal.
 - (v) 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;
 - (vi) where the employee's continued presence at work could be prejudicial to the investigation and/or the interests of the University.
 - (vii) where relationships have broken down.
 - (viii) where there are risks to an employee's or the University's property.
- 6.3 Before suspending an employee, consideration should be given to alternatives to suspension, for example whether it would be appropriate in the circumstances of the case to move the employee from their normal place of work and/or to other duties on a temporary basis until the completion of the investigation.
- 6.4 Where possible the employee should be informed of the decision to suspend in a face to face meeting. There is no right to be accompanied to this meeting however, the employee can, if they wish, be accompanied by a fellow worker or trade union representative provide this does not delay the meeting. For avoidance of doubt a suspension meeting will not be postponed due to unavailability of a companion.
- 6.5 There may be circumstances where it is appropriate for a manager to send an employee home under paragraph 5.4 of the Disciplinary Policy, 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. Before 'sending home' the manager should explain the allegations to the employee and give them an opportunity to respond. The manager should make a contemporaneous note of the conversation, and confirm the decision to send the employee home in writing. The letter should confirm the allegations and what was discussed in the meeting, including any response by the employee (or if they failed/refused to respond, that fact). A report should be made to a senior manager authorised to take disciplinary action and Human Resources at the earliest opportunity (and in any event within 48 hours of the 'sending home') outlining the full circumstances together with any response made by the employee.
- 6.6 The fact of the employee's suspension and the reasons for it should be confirmed in writing, making it clear that suspension is not a pre-judgment of guilt and is not a disciplinary sanction. The letter should also set out the terms for the suspension including pay, and the details at paragraphs 5.7 and 5.8 of the Disciplinary Procedure.
- 6.7 Suspension is on normal pay, which means the pay the employee would have received if they were not suspended. Therefore if the employee is on sick leave for all or part of the suspension (whether self-certified or covered by doctor's certificate), then the contractual rules on sick pay will apply and they will receive sick pay during that period.
- 6.8 In cases where a period of suspension is considered necessary, this period should be as brief as possible, and should be kept under review. It may also be necessary to review a decision not to suspend if, during the investigation, it appears that the employee's presence is causing a disruption to witnesses and/or the business of the University.
7. Investigations
- 7.1 When a manager becomes aware of any concerns or allegations of misconduct they should contact their HRBP or the Casework Manager to determine whether an investigation is necessary. Such concerns or allegations may be drawn to the attention

of the manager in a number of ways, for example, in cases of suspected fraud, the concerns may come to light during an audit; in other cases, a member of staff may witness conduct affecting a colleague which gives them cause for concern and report these concerns to manager.

- 7.2 The Director of Human Resources, the Casework Manager or their designate will appoint an Investigating officer ("IO") to carry out the Investigation. The IO will be someone who has not been involved in the incidents/matters being investigated nor have any personal involvement with the individuals concerned.
- 7.3 The purpose of an investigation is to establish the facts of a case to enable a decision to be taken on whether the matter should proceed to a formal hearing under the Disciplinary Procedure. The level of investigation required will depend on the circumstances of the matter being investigated, with allegations of serious or gross misconduct (which could result in dismissal if proved) being likely to require more detailed investigation. The extent of the investigation need not be forensic but should be whatever is reasonable in the circumstances to establish the facts of the case.
- 7.4 The Casework Manager will agree the purpose and scope of the investigation in advance of the investigation commencing, including the summary of issues and allegations to be investigated, relevant witnesses and timescale for completion. If new witnesses are identified during the investigation then the IO should update the Casework Team of this and any impact on the timescale of the investigation. Where new matters come to light during the investigation then the IO should contact the Casework manager to discuss these and it may be necessary to change the scope of the investigation and inform the employee of any new allegations. This may necessitate re-interviewing witnesses and/or the employee being investigated.
- 7.5 The IO will gather relevant evidence, including documentary evidence such as documents/records, CCTV footage, IT/telephone records, training records etc. They will also obtain statements from witnesses to the incident(s) or witnesses who may otherwise have information relevant to the matter being investigated. It is a reasonable expectation of the University that its employees will co-operate with the IO and participate in the investigation. A failure to do so could result in disciplinary action. Witnesses should be informed of the fact that their evidence may be used in subsequent proceedings (including where the evidence may be used to inform a different procedure under 4.2 above). Witnesses should be reminded of their duty of confidentiality and the need to keep the investigation confidential, and not to discuss the case with colleagues or third parties. The IO will usually interview the employee (being investigated) as part of their investigation.
- 7.6 There is no right to be accompanied to an investigation meeting however, the employee can, if they wish, be accompanied by a fellow worker or trade union representative provided this does not unreasonably delay the meeting. The IO may at their absolute discretion agree a request to postpone the meeting by up to 5 working days where the employee's preferred companion is unavailable, but no further extension will be granted. In these circumstances the employee may choose a different companion or attend unaccompanied.
- 7.7 A note taker will be present during investigation meetings. Notes will be a summary of the meeting and not a verbatim record. A copy of the notes (which may be typed or handwritten) should be sent to the witness and they should be asked to confirm they are an accurate record of the meeting. The witness should be made aware that the notes and/or any witness statement they make, could be used in subsequent disciplinary proceedings.
- 7.8 A witness may disagree with the contents of the notes and request changes. If the amendment is factual (such as an incorrect date) then the IO may agree that the notes

should be changed. If however the amendments are substantial, for example adding additional information or potentially changing the context of what was said, then the witness should be asked to provide their comments/concerns about the notes on a separate document and both the original notes and the witness's comments included in the IO's report. Where a witness fails to confirm the notes then this fact should be recorded in the report. It should not delay the finalisation of the investigation or the report.

- 7.9 A witness may ask that their notes/statement be anonymised. Wherever possible this should be agreed in advance with the Casework Manager. The IO should ask the witness why they want the notes anonymised and consider the reason for the request. This will only be permitted in exceptional circumstances where the witness has a genuine fear over reprisals and/or for their personal safety. Where this is agreed the notes should be taken as normal and redacted afterwards to remove names/identifying details.
- 7.10 When the IO has gathered the evidence they will prepare a report of their investigation to include:
- An introduction
 - The allegations
 - The investigation – how it was carried out, witness statements and evidence gathered.
 - Statement of case – sequence of events
 - Summary and recommendation for action, i.e. the action (if any) to be taken, in accordance with paragraph 6.3 of the Disciplinary Procedure.

The IO will not make a decision on the culpability/Guilt of the employee concerned but will only determine whether there is sufficient evidence for a disciplinary hearing to take place.

- 7.11 The IO will send the Investigation report to the Casework Manager who will then agree the next steps with the Director of Human Resources or his/her designate. Where no action is to be taken then the employee will be informed of that fact in writing. If the decision is to deal with the matter outside the formal disciplinary process the matter will be referred back to the relevant HRBP and the employee's line manager who should arrange a meeting with the employee to discuss the action to be taken.

8. The Disciplinary Hearing

- 8.1 Where a decision is taken to proceed to a formal disciplinary hearing the Casework Team will commission a disciplinary chair/panel and make arrangements for the hearing, including arrangements for meeting rooms, relevant paperwork and for details to be sent to the employee in accordance with paragraph 7.1 of the Disciplinary Procedure.
- 8.2 Only those who have a role in the disciplinary process should attend. This may include:
- the members of the panel responsible for conducting the disciplinary hearing;
 - the employee;
 - the trade union representative or work colleague ('fellow worker') accompanying the employee, if any.
 - the investigating officer (IO);
 - the HR Business Partner (HRBP) advising the panel;
 - the note taker;
 - witnesses called on behalf of the University;

- witnesses called on behalf of the employee.
- 8.3 A guide to the procedure to be followed at the disciplinary hearing is at Annex B.
- 8.4 During the hearing, the employee may request an adjournment, for example to consult with their companion or to review an item of evidence. Such requests should not be unreasonably refused. The Chair/Panel or HRBP may also request an adjournment for example to look into a query/new information that has arisen during the hearing, review a document provided by the employee and/or to check a point of law and/or procedure. Where a hearing is adjourned, everyone present should withdraw, with the exception of the HRBP whose role is to advise the disciplinary panel on the disciplinary procedure, process and points of law.
- 8.5 If during the course of the disciplinary hearing the employee raises a grievance the disciplinary panel should ask why the grievance is being raised at that time, and may request an adjournment to seek advice from the HRBP and/or the Casework Manager. Only in exceptional circumstances will it be appropriate to stop the hearing:
- if the grievance relates to a conflict of interest that the chair and/or any panel member or HRBP is alleged to have
 - where bias is being alleged in the conduct of the disciplinary meeting.
 - where there is a need for clarification of the evidence.
- 8.6 Once the evidence has been heard (see Annex B) the Chair will usually adjourn the hearing pending the outcome, and advise the employee that they will be notified of the decision in writing. In exceptional cases the Chair may adjourn the hearing to consider the decision and inform the employee of the decision the same day. This may be appropriate for example if the employee does not dispute the University's case or has admitted the conduct alleged.
9. Right to be accompanied
- 9.1 Workers have a statutory right to be accompanied by a work colleague, trade union representative or official employed by a trade union where a disciplinary meeting could result in:
- a formal warning
 - other disciplinary action, including dismissal or sanction imposed as an alternative to dismissal
 - the confirmation of a warning or disciplinary action (i.e. an appeal)
- 9.2 If the chosen companion is a trade union representative then they should be certified by their trade union as competent to accompany a worker. The Chair may ask to see evidence of this at the outset of the hearing.
- 9.3 There is no right to be accompanied by a friend or family member who is not a fellow worker, or to be accompanied by a legal representative or another professional support body. Where the employee has a disability an alternative companion may be agreed as a reasonable adjustment.
- 9.4 The request to be accompanied should be reasonable, for example someone based at the same site/campus rather than a geographically remote location (e.g. it might be reasonable for someone based at St Lukes to request a companion from Streatham, however it may not be reasonable for them to request to be accompanied by someone based at Penryn if there is someone suitable and available at the same site or a closer location). It would not normally be reasonable for an employee to be accompanied by a companion whose presence would prejudice the hearing or who might have a conflict of interest

- 9.5 The employee should tell the University who they have chosen as their companion in advance of the hearing. Where applicable the university will make arrangements for the companion to be made available if they need to be given time off work to attend the hearing.
- 9.6 If the companion acts in a manner which prevents the University from explaining its case or otherwise becomes disruptive then the Chair should inform the companion that if their conduct continues that the hearing will be postponed and reconvened at a later date with a different companion.

10. The Outcome and Notification

- 10.1 Before reaching a decision the Chair/panel should consider all of the evidence, including evidence from the investigation and the hearing, including written submissions (if any) from the employee and decide whether any disciplinary or other action is justified. In some circumstances it may be appropriate for the panel to make further enquiry/investigation before deciding the outcome, e.g. to check or clarify something raised by the employee or their companion during the hearing.
- 10.2 In reaching its decision the Chair/panel should consider the following:
- whether the rules of the University indicate what the likely penalty will be as a result of the particular misconduct
 - the penalty imposed in similar cases in the past
 - the employee's disciplinary record including previous warnings (if applicable) or previous good conduct
 - any special circumstances which might make it appropriate to adjust the severity of the penalty
 - other relevant circumstances including length of service, general work record, position, work experience or any other circumstances specific to the case.
- 10.3 Where there are current 'live' warnings, these can be used to impose to a more severe sanction/penalty. E.g. an employee has a formal written warning for misconduct. During the period the warning is live there is a further instance of misconduct, which is upheld. The first written warning could therefore be used to justify giving a final written warning. The Panel should check the current warning to see whether the employee understood the consequence of further failure.
- 10.4 Previous warnings which have expired should not be used as a reason to impose a more severe penalty than would otherwise be justified; however they may be relevant in deciding culpability, in showing that an employee was aware that their conduct was unacceptable, and/or in deciding whether to impose a less severe sanction that would otherwise be justified.
- 10.5 Whilst the Panel should form a genuine belief that the employee is guilty, based on reasonable grounds following a reasonable investigation; the decision is made on the balance of probabilities i.e. that the alleged misconduct is more likely to have occurred than not. The Panel does not have to prove it beyond all reasonable doubt.
- 10.6 The role of the HRBP is to advise and assist the IO and the Chair/Panel in relation to questions of law, procedure and process. The HRBP will not advise on culpability and the disciplinary decision is a matter for the Chair/Panel.
- 10.7 First formal written warnings will normally remain current for 6 months and final written warnings will normally remain current for 12 months. The Panel may impose a longer time limit where there are circumstances to justify this. If a longer period is imposed then the reasons for this must be explained in the letter to the employee informing them of the outcome of the hearing (see 10.8 below)

10.8 The Chair should inform the employee of the outcome of the hearing in accordance with paragraph 12 of the Disciplinary Procedure.

11. Right of Appeal

11.1 The employee has the right to appeal any disciplinary action taken following a disciplinary hearing.

11.2 Where an employee appeals against a disciplinary sanction, the Casework Team will commission an appeal chair/panel and make arrangements for the hearing, including arrangements for meeting rooms and relevant paperwork.

11.3 The appeal hearing will be conducted in accordance with [ordinance 35](#)

11.4 The appeal will normally comprise a review of the original decision. Other than in limited circumstances the appeal will not be a rehearing of the case. Where the appeal is on grounds that the investigation or hearing was flawed or incorrect process was followed, the Casework Manager will, following consultation with the Director of Human Resources or his/her designate, decide whether a full rehearing is appropriate.

11.5 Exceptionally, the appeal panel may consider that new evidence should be presented, for example where the employee could not reasonably have been aware of a new fact/evidence at the time of the original hearing, or if it is otherwise considered necessary in the interests of fairness, in which case arrangements may be made for new evidence to be presented and/or for witnesses to attend.

11.6 Once the appeal has been heard the Chair will usually adjourn the hearing pending the outcome, and advise the employee that they will be notified of the decision in writing. In some circumstances it may be appropriate for the panel to make further enquiry/investigation before deciding the outcome, e.g. to check or clarify something raised by the employee or their companion during the appeal hearing.

11.7 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 other than in exceptional circumstances where new evidence has been produced which merits this. Where a higher or more severe penalty is imposed then the employee should be given a further right of appeal.

12. Recording Hearings

12.1 Other than in exceptional circumstances, the University does not agree to meetings being recorded. The employee and anyone accompanying them (including witnesses), should not make electronic recordings of any meetings or hearings conducted under this procedure.

12.2 Where it is subsequently found that an employee (or anyone accompanying them) has secretly recorded any meeting or hearing conducted under this procedure, this will constitute misconduct, and could result in separate disciplinary action.

12.3 At the start of any investigation meeting, disciplinary hearing or appeal hearing the IO or Chair should inform the employee that they must not record the meeting and ask them to confirm that they are not doing so.

Annex A

Authority to take action under the Disciplinary Procedure

This section details who is authorised to:

- request an investigation
 - commission an investigation
 - appoint an Investigating Officer
 - take informal action
 - suspend an employee
 - be a member of a Disciplinary Panel with authority to take disciplinary action including the authority to dismiss
 - be a Chair of a Disciplinary Panel
1. Line-Managers (which for members of the academic job families includes Heads of Discipline/Department), and/or HR Business Partners are authorised to request an investigation.
 2. The Casework Manager (or his/her designate) will commission an investigation and allocate an Investigating Officer (“IO”) to conduct the investigation. The IO will, wherever practicable, have undertaken appropriate training.
 3. All line managers and supervisors/team leaders are authorised, as part of their day-to-day management responsibilities, to take the steps under paragraph 3 of the Disciplinary Procedure (Informal procedure) to ensure that minor breaches of discipline are dealt with promptly and appropriately without recourse to the formal procedure.
 4. A manager authorised to take disciplinary action (see item 4 below) may suspend an employee, following consultation with the Director of Human Resources or his/her designate.
 5. The following managers are authorised to be a member of a Disciplinary Panel with authority to take disciplinary action including the authority to dismiss:
 - Vice-Chancellor
 - Registrar and Secretary
 - Deputy Vice-Chancellors
 - Pro-Vice-Chancellors
 - Directors of Professional Services
 - College Registrars
 - other senior managers nominated by the Director of HR Services (or his/her designate)
 6. Delegated authority may be given to other named managers to take defined levels of disciplinary action under the formal Disciplinary Procedure, following appropriate training and with the agreement of the Director of Human Resources or his/her designate.
 7. Disciplinary Panels will be chaired by an experienced panel member (the “Chair”). The Chair will normally be at Grade G or above, and, wherever practicable, have completed appropriate training.

8. Disciplinary Panels will comprise the Chair and up to two additional panel members and will, where reasonably practicable, be gender balanced and be drawn from a college discipline or professional services department outside of that of the employee concerned.
9. Where the individual being disciplined is an academic then at least one member of the panel will be drawn from the academic 'family'.
10. The Chair will have the final decision on the outcome of the hearing if there is any disagreement amongst the panel members.

Annex B

Procedure to be followed at Disciplinary Hearings

1. At the commencement of the hearing, the chair of the Disciplinary Panel should:
 - introduce those present and explain why they are there;
 - explain the purpose of the hearing
 - explain how the hearing will be conducted.
2. The employee should be given 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:
 - (i) the Chair will invite the investigating officer (“IO”) to present the case on behalf of the university;
 - (ii) the employee or their companion may ask questions of the IO;
 - (iii) the panel and/or the HRBP may ask questions of the IO;
 - (iv) the IO will present any witnesses called on behalf of the University, one at a time, and may ask them to clarify part(s) of their statement (witnesses statements should be taken as read);
 - (v) the employee or their companion may ask questions of the witnesses;
 - (vi) the panel and/or the HRBP may ask questions of the witnesses;
 - (vii) the Chair should check that employee or their companion has no further questions of each witness before asking the witness to leave;
 - (viii) the Chair should give the employee (or their companion if the employee wishes) the opportunity to present their case and any supporting evidence including any mitigating circumstances;
 - (ix) the panel and/or the HRBP may ask questions of the employee (who must answer themselves – their companion is not permitted to answer questions on their behalf);
 - (x) the employee may call witnesses to support their case and ask questions of them;
 - (xi) the panel and/or the HRBP may ask questions of the employee’s witnesses;
 - (xii) the Chair should give the investigating officer the opportunity to sum up the University’s case;
 - (xiii) the Chair should give employee or their companion the opportunity to sum up the employees case;

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