

## **DISCIPLINARY PROCEDURE (Regulation 31)**

### **A. GUIDANCE NOTES**

#### **Introduction**

The University is committed to supporting its staff in carrying out their responsibilities to the highest possible standard within a culture which encourages productive and cooperative working practices. Where disciplinary action is required, it will be carried out by means of a fair and supportive structure focused upon the principles of natural justice.

#### **1. General**

- 1.1 This procedure has been developed in accordance with the ACAS Code of Practice "Disciplinary and grievance procedures", 2009, and the relevant legislation<sup>1</sup>. The procedure is designed to encourage staff to achieve and maintain acceptable standards of conduct, to ensure the safety and well-being of all staff, and to provide a fair and consistent mechanism for dealing with situations where misconduct is alleged.
- 1.2 This Procedure applies to all University staff and should be applied in accordance with the University's Equality and Diversity Policy.
- 1.3 This procedure and any revisions to it will be collectively agreed with the University's recognised trade unions.
- 1.4 A member of staff has the right to be represented at all meetings held in accordance with the Disciplinary Procedure. References to the member of staff in the procedure apply to the member of staff or his/her representative.
- 1.5 The latest version of this procedure will be held on the HR website at <http://www.sussex.ac.uk/humanresources/documents/disciplinaryprocedure>.

#### **2. Principles**

- 2.1 It is essential that appropriate levels of confidentiality and privacy are maintained at all times during the disciplinary process. This applies to all documentation, interviews and hearings.
- 2.2 At each stage of the procedure, the member of staff will be informed of the alleged misconduct, and given the opportunity to state his/her case prior to any decision being taken.
- 2.3 A member of staff will not be dismissed for a first disciplinary offence, unless it is a case of gross misconduct, in which case the misconduct is deemed sufficiently serious to destroy the employment contract and to make any further working relationship untenable. In such cases, summary dismissal may be justifiable, i.e. without the normal period of notice.
- 2.4 The procedure may result in any of the listed outcomes according to the nature of the alleged misconduct, and any previous warnings.

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<sup>1</sup> Employment Rights Act, 1996, Section 1; Employment Act 2008

### **3. Responsibilities and rights**

#### **3.1 Members of staff**

##### **Members of staff are responsible for:**

- (i) conducting themselves with dignity, honesty, and integrity to promote an atmosphere of mutual respect, in accordance with the University's equality and diversity and harassment policies;
- (ii) familiarising themselves with and adhering to acceptable standards of conduct, relevant policies, procedures and practices, and rules;
- (iii) seeking clarification from their manager if there are aspects of (ii) above which they do not understand.

##### **Members of staff have a right to:**

- (iv) seek guidance and advice from a trade union official or Human Resources in relation to any disciplinary matter affecting him/her;
- (v) be treated fairly and consistently. This includes representation, the right of appeal, and the right to be provided with all the evidence and relevant documentation prior to attending a disciplinary hearing.

#### **3.2 Managers**

##### **Managers are responsible for:**

- (i) confronting, challenging and dealing with unacceptable behaviour;
- (ii) establishing standards of conduct and ensuring that staff understand and comply with these;
- (iii) ensuring that staff receive, understand and observe any policies, procedures, practices or other rules governing their employment;
- (iv) ensuring that matters relating to an individual's conduct are treated in a fair and consistent way, with sensitivity and confidentiality;
- (v) ensuring that they receive appropriate advice and training relating to the operation of the Disciplinary Procedure, subject to such training being provided by the University;
- (vi) consulting Human Resources when taking action under the Disciplinary Procedure;
- (vii) ensuring that their actions are lawful and do not expose the University to legal liability, either by ill-advised action or negligence.

##### **Managers have a right to:**

- (viii) use their discretion to resolve problems through informal discussion. Constructive guidance can often resolve difficulties and obviate the need for formal disciplinary action;
- (ix) enquire of issues that may be affecting a member of staff's behaviour, with appropriate sensitivity.

### 3.3 Human Resources

#### Human Resources is responsible for:

- (i) training and advising managers on all aspects of the Disciplinary Procedure;
- (ii) advising members of staff on the Disciplinary Procedure;
- (iii) keeping a formal record of any meetings held under the Disciplinary Procedure. This is not a verbatim record but a detailed and accurate summary of the proceedings;
- (iv) monitoring the use of the Disciplinary Procedure across the University;
- (v) ensuring that the Disciplinary Procedure is applied consistently throughout the University.

### 4. Right to be accompanied

- 4.1 At all hearings held in accordance with the Disciplinary Procedure, a member of staff may be accompanied by a fellow worker or trade union representative. The chosen companion will be allowed to address the hearing in order to put the member of staff's case, sum up the member of staff's case, and respond on behalf of the member of staff to any view expressed at the hearing. The companion does not have a right to answer questions on the member of staff's behalf.
- 4.2 Members of staff must make a reasonable request to the University to be accompanied, for example, it would not be reasonable to request a companion whose presence would prejudice the hearing, or one who is from a remote geographical location if someone suitable and willing was available on site.
- 4.3 Members of staff are required to give notice of the name and relevant details of any companion to the Human Resources representative responsible for the case at least two working days prior to a meeting under this procedure.
- 4.4 If the chosen companion cannot attend on the date proposed and a suitable alternative companion cannot be found, the member of staff may propose an alternative date and time which is reasonable and is normally within five working days of the original date set (exceptional arrangements may be needed during vacation periods). The University will make the necessary arrangements to postpone the hearing.
- 4.5 If the member of staff is disabled, it may be appropriate to allow him/her to be accompanied by a suitable person because of his/her disability, in addition to any chosen companion.
- 4.6 If the member of staff's first language is not English, it may be appropriate to allow him/her to be accompanied by someone who can provide support with communication in English, in addition to any chosen companion.

### 5. Time limits

- 5.1 Every effort will be made to deal with alleged breaches of discipline in the shortest possible timescale. This will vary according to the time required to investigate a specific case.
- 5.2 Time limits are set out in the procedure to reinforce the need to deal with disciplinary issues as quickly as possible. They must be followed unless varied by mutual consent.
- 5.3 Working days include all weekdays except days when the University is closed or has a Minimum Service Day.

## **6. Grievances raised during disciplinary proceedings**

- 6.1 The staff grievance procedure cannot be used to challenge or complain about:
- (i) any decision to invoke the formal or informal stages of this procedure;
  - (ii) any decision or action taken or proposed under this procedure;
  - (iii) the operation of this procedure.

6.2 In the event that a member of staff raises a complaint about such matters his/her complaint will be investigated and dealt with under this procedure (i.e. the staff Disciplinary Procedure) at the same time as any allegations of misconduct are being discussed or considered. The application of this procedure may be modified as deemed appropriate by the Director of Human Resources to facilitate this. If the member of staff is dissatisfied with the outcome of this process, he/she may appeal under the appeal stage of the staff grievance procedure. The purpose of this paragraph is to assist all parties by allowing both the substantive issues and any related complaint or grievance from the member of staff to be considered speedily.

## **7. Disciplinary action against a trade union representative or safety representative**

7.1 Where disciplinary action is being considered against a member of staff who is a trade union representative (or safety representative) the normal Disciplinary Procedure applies. The Human Resources representative will discuss the case with the relevant trade union full-time officer at an early stage, after obtaining the individual's consent. The Human Resources representative will advise the hearing manager as to when s/he can proceed with the planned disciplinary hearing.

## **8. Criminal investigations, charges or convictions**

8.1 Where a member of staff is subject to investigation or other proceedings in relation to the alleged commission of a criminal offence, which may also amount to a breach of the University's disciplinary rules (see examples at appendix 3) and that offence:

- may have been committed in the course of his/her employment; and/or
- may be considered to be related to or impact on his/her employment; and/or
- may be considered to have an impact on another member of the University or any visitor to the University;

the Disciplinary Procedure will apply separately to any police investigation or criminal proceedings. In all such cases, advice should be sought immediately from Human Resources upon the University becoming aware of the investigation or criminal proceedings. Please note that nothing in the University's policies or procedures prevents the University from commencing disciplinary proceedings and implementing disciplinary action against a member of staff whilst the investigation or criminal proceedings are ongoing.

8.2 If a member of staff is subject to investigation or criminal proceedings in relation to the alleged commission of a criminal offence not related to their employment with the University, or which appears to have no implications for the individual's work, or for any other member of the University or any visitor to the University, advice should be sought immediately from Human Resources upon the University becoming aware of the investigation or proceedings as to whether there is any need for disciplinary investigation and potential action by the University. Each case will be considered on its facts. Please note that in some circumstances, disciplinary action may still be appropriate and nothing in the University's policies or procedures prevents the University from commencing such disciplinary proceedings and implementing disciplinary action whilst the investigation or criminal proceedings are ongoing.

8.3 If, as a result of the commission of a criminal offence, a member of staff is in breach of his/her contract of employment, the appointment will normally be terminated.

**9. Allegations of fraud**

9.1 Any allegations of fraud should be reported in accordance with the University's Fraud Response Plan, in addition to following this procedure.

**10. Exclusions**

10.1 The procedure does not apply to:

- (i) cases of incapacity due to ill health which are dealt with under the University's Sickness Absence and Medical Incapacity Procedure and/or Disability Policy;
- (ii) cases of incapability or professional incompetence which are dealt with under the University's Capability Procedure;
- (iii) issues of misconduct during the probationary period, which are dealt with under the University's process for managing probation and induction;
- (iv) cases where the alleged misconduct may be solely or partly due to a disability, in which case advice should be sought from Human Resources, and reference made to the University's Disability Policy and/or Sickness Absence and Medical Incapacity Procedure.

**11. Statutory changes**

11.1 Any changes to statutory provisions that affect this collective agreement will automatically be incorporated.

**12. Statistical data**

12.1 Statistical data will be collected and reported to the Human Resources Committee, the Equality and Diversity Committee, and the Joint Negotiating Committees in order to meet the University's obligations under the relevant legislation. All reports will be anonymised.

**13. Review**

13.1 These procedures will be reviewed by Human Resources in association with the trades unions in response to relevant statutory changes, changes in University procedures or structures, changes in good practice, or as a result of analysis of the statistical data collected.

## **B. DISCIPLINARY PROCEDURE**

### **14. Informal action**

14.1 Cases of minor misconduct are usually best dealt with by a manager informally, and without delay. The manager should speak to the member of staff in private, and advise him/her of the problem and what is required of the member of staff to rectify it. Although there is no statutory right to be accompanied at this informal stage, a request to be accompanied by a fellow worker or trade union representative will not be unreasonably refused. The Disciplinary Procedure should only be used where informal action has failed or the misconduct is considered sufficiently serious to warrant formal action.

### **15. Allegations**

15.1 Allegations will be referred to the relevant manager (hereafter referred to as the hearing manager) for initial consideration. This would normally be a Head of School, Divisional Director, Head of Department, Section Head, Strategy & Operations Manager, or equivalent. Where the hearing manager considers the allegations to have substance, s/he will notify the relevant Human Resources representative, and make arrangements to progress the case.

### **16. Suspension**

16.1 Suspension should only occur in exceptional circumstances, including where it is deemed necessary to suspend the individual to allow the investigation to be carried out or to protect the interests of other individuals who may be impacted by the individual remaining in the workplace. Suspension is with full pay, for as short a period as possible, and does not constitute disciplinary action. All suspensions will be kept under review.

16.2 Examples of circumstances in which suspension may be necessary are where the hearing manager considers that:

- the alleged conduct, if proved, may constitute gross misconduct;
- there are health and safety concerns or other risks about the continued presence of the member of staff at work, e.g. risks to University property or to other individuals or to the individual him/herself;
- the presence of the employee at work during the investigation may hinder or prejudice the investigation;
- there are difficulties in relationships between the employee and other people e.g. colleagues and students, with whom they would normally expect to come into contact with at work which would be exacerbated by continuing to work in close proximity.

16.3 The hearing manager is responsible for the act of suspension, and should meet with the individual in private and at the earliest opportunity, after consulting the relevant Human Resources representative. The hearing manager should explain to the individual:

1. That serious allegations have been made that will need to be investigated in accordance with the University's Disciplinary Procedure. If substantiated, these allegations may amount to gross misconduct for which the member of staff may be dismissed without notice.
2. The nature of the allegations and confirm that they fall within the definition of gross misconduct in the Disciplinary rules (see Appendix 3).
3. That the suspension will be with immediate effect.

4. The period of suspension, and confirm that a further period of suspension may be necessary in order to complete the investigation.
  5. That suspension is not a disciplinary penalty. It is a neutral act pending the outcome of a disciplinary investigation.
  6. That the member of staff is not required to carry out any work during the period of suspension and should refrain from the University's campus unless prior permission has been granted by the Human Resources representative.
  7. That the member of staff will receive full pay during the period of suspension (i.e. the total pay s/he would have received had s/he been at work during this period).
  8. That during any investigation the member of staff should not discuss the case with anyone (except for his/her representative) involved with, or witness to, the incident under investigation, without prior permission from a Human Resources representative (see also 16.4 below). The member of staff will be able to suggest the names of potential witnesses or others who may have information relevant to the investigation, so that these can be interviewed by the investigating manager. The member of staff may discuss the case with a colleague employed by the University who is not involved with, or witness to, the incident under investigation, but he/she shall only do so in private and in strict confidence and on the basis that that person undertakes not to discuss the case with any other person.
  9. That the member of staff is required to be available for interviews that form part of the investigation, and to cooperate fully with the process.
  10. That the member of staff must return any keys or other items of University property.
- 16.4 The hearing manager should accompany the member of staff to collect any personal belongings before escorting him/her from the University's premises.
- 16.5 Any suspension will take immediate effect, and will be confirmed in writing by Human Resources within two working days of the suspension. The letter will confirm the details of the suspension covered under points 1-10 above.
- 16.6 All suspensions will be kept under review. Examples of circumstances in which suspension may be necessary are where the hearing manager considers that:
- the allegation may constitute gross misconduct;
  - the member of staffs presence at work may hinder the investigation;
  - there are health and safety concerns or other risks about the continued presence of the member of staff at work, e.g. risks to University property or to other individuals or the individual him/herself.
- 16.7 During a period of suspension the member of staff will be allowed reasonable access to information and colleagues in relation to the preparation of his/her case. Requests should be made to the Human Resources representative.
- 16.8 Where the suspension relates to an allegation of fraud, the University's Fraud Response Plan should be followed in addition to this procedure.
- 17. Investigation**
- 17.1 Before any disciplinary hearing is convened there will usually be an investigation into the potential disciplinary matter(s) to establish the facts of the case. The investigation will be carried out, without unreasonable delay, by an investigating officer in liaison with a Human Resources representative.

- 17.2 The investigating officer will be appointed by the hearing manager, in liaison with the Human Resources representative, and should normally be someone who does not work closely with either the individual under investigation, the individual(s) making the complaint (if appropriate), or the manager, and should not have had any previous involvement in the case. The investigating officer will receive advice and guidance from Human Resources.
- 17.3 The investigation process will depend on the nature of the alleged misconduct, the initial evidence against the member of staff, and whether the individual has admitted to the misconduct. In cases where the facts are very clear and not in dispute, the investigation will be very short and it may be appropriate for it to be undertaken by the hearing manager.
- 17.4 A member of staff who is the subject of an investigation will be informed promptly by the hearing manager that the investigation is going to take place and why.
- 17.5 The investigation will be concluded as quickly as possible.
- 17.6 A member of staff who is the subject of an investigation will normally be required to attend an investigatory interview. Where practicable, the member of staff will receive at least 48 hours' notice of the interview. This will not be a disciplinary hearing, and will be confined to establishing the facts of the case. Although there is no statutory right to be accompanied at this interview<sup>2</sup>, a request to be accompanied will not be unreasonably refused. The member of staff should inform the investigating officer of any witnesses that s/he feels are relevant to the case. The investigating officer will normally be accompanied by a Human Resources representative who will take a formal note of the interview (this will be a summary rather than verbatim notes). This note should be agreed, signed and dated by the member of staff and included as an appendix to the investigation report. Where agreement cannot be reached, the individual should be invited to give reasons for his/her disagreement, and this should be reflected in the investigation report.
- 17.7 Where witnesses have been identified by either the investigating officer, the person under investigation or the person(s) making the allegations, signed witness statements should be obtained at the earliest opportunity. In addition to or as an alternative to the witness statement, the investigating officer should interview relevant witnesses as part of the investigation. The investigating officer will normally be accompanied by a Human Resources representative who will take a formal note of the interview (this will be a summary rather than verbatim notes). This note should be signed and dated by the witness and included as an appendix to the investigation report, together with any witness statements. Any disagreement about the interview note should be reflected in the investigation report. Witnesses will be informed that their statements and interview notes may be used in a disciplinary hearing, in which case they would normally be made available to the member of staff under investigation. In extreme situations, for example, serious allegations of harassment or violence, witnesses will be offered the opportunity to provide evidence in a protected environment.
- 17.8 The investigating officer will provide the hearing manager with a report detailing the facts of the case and recommending to the hearing manager whether the matter should proceed to a disciplinary hearing.
- 17.9 Following the investigation, the hearing manager will need to assess the case and decide on the next steps. Possible outcomes to the investigation are:
- (i) to resolve the issue without the need to take further action - a letter confirming that there is considered to be no case to answer, and that all reference to the investigation will be removed from the record, will be sent to the individual who

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<sup>2</sup> Unless the person is disabled and needs facilitation or support, or where the person's first language is not English and s/he needs support with communication in English.

has been the subject of the investigation.

- (ii) to arrange advice, support and/or training in an attempt to resolve the problem without recourse to the Disciplinary Procedure;
- (iii) to arrange and chair a disciplinary hearing (in cases where the alleged misconduct is *not* a potentially dismissible act);
- (iv) if the hearing manager considers that the alleged misconduct *is* a potentially dismissible act, s/he will recommend to the Vice-Chancellor (or nominee) that the case is heard by a disciplinary panel under section 1 below.

17.10 Option (iii) or (iv) should only be pursued if it is inappropriate to deal with the issue under options (i) or (ii). Whatever the outcome, the member of staff will receive a copy of the investigation report.

## **18. Convening a disciplinary hearing**

18.1 Where option (iii) above applies (i.e. in cases where the alleged misconduct is not a potentially dismissible act), the hearing manager will convene a disciplinary hearing as set out in 18.3 to 18.5 below.

18.2 Where option (iv) above applies (i.e. in cases where the alleged misconduct is a potentially dismissible act) the hearing manager will recommend to the Vice-Chancellor (or nominee) in writing that a Disciplinary Panel is convened to consider the alleged misconduct. The hearing manager will attach a copy of the investigation report to the recommendation. The Vice-Chancellor (or nominee) will consider the matter in the light of all the material submitted and will decide:

- (a) To refer the case back to the hearing manager to deal with under 17.9 (i), (ii) or (iii) above; or
- (b) To appoint a disciplinary panel.

18.3 Where option (b) above is chosen, the Vice-Chancellor (or nominee) will appoint a disciplinary panel consisting of three senior<sup>3</sup> members of staff (which will normally include the hearing manager), one of whom shall be the Chair. One of the panel members will be from another School/area of the University<sup>4</sup>). The Chair must have the authority to dismiss. The panel will be supported by a Human Resources representative. The disciplinary panel will convene a disciplinary hearing in accordance with sections 18.3-18.5 below.

18.4 The Human Resources representative will write to the member of staff at least 5 working days in advance of the hearing confirming the reason for the hearing; the date, time and venue of the hearing; and the individual's right to be accompanied. Copies of the investigating officer's report, any other relevant documents, and these procedures will be attached to the letter. The letter will give notice of any witnesses that are to be called by the investigating officer to give evidence at the hearing.

18.5 Should the employee wish to be accompanied or to call witnesses, it will be his/her responsibility to provide his companion and any witnesses with all the appropriate details, including the date, time and location of the hearing, as well as the details and documentation related to his/her case.

18.6 The member of staff shall provide the names of his/her companion and any witnesses

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<sup>3</sup> Grade 8 or above

<sup>4</sup> Where the member of staff is employed within a School, the panel member will be from a different School; where the member of staff is employed with Professional Services, the panel member will be from another Division. The panel member will normally be from the same staff group as the member of staff (e.g. academic, professional support, technical etc)

he/she wishes to call to the Human Resources representative at least two working days before the hearing. It shall however be for the hearing manager to determine whether any witness evidence shall be heard, whether the proposed witness is to be called by the member of staff or the investigating officer/other management representative.

## **19. Postponing the hearing**

- 19.1 Where a member of staff requests that the hearing is postponed due to circumstances outside his/her control and not foreseeable at the time the hearing was arranged, an alternative date will be set by the hearing manager. Where a postponement is agreed, this should be confirmed in writing with the new date for the hearing. Any further request for postponement may be refused unless there are exceptional circumstances.
- 19.2 If the member of staff is absent due to sickness prior to the hearing, the individual may be required to see the University's Occupational Health Adviser to assess his/her fitness to attend a hearing, and to give advice on any special requirements or adjustments for the hearing. The Human Resources representative will make the necessary arrangements.
- 19.3 It is possible to proceed with the hearing in the absence of the member of staff (for example, where the member of staff is remanded in custody, or on long-term sick leave), in which case all details that will be considered at the hearing should be made available to the member of staff in advance, and the individual should be invited to make a written submission. Alternatively, the hearing manager may decide to conduct the hearing with a representative nominated by the member of staff, after careful consideration and the full agreement of the member of staff and his/her chosen representative.

## **20. Conduct of a disciplinary hearing**

- 20.1 The disciplinary hearing will be chaired by the hearing manager. The Chair will ensure that the number of people present at the hearing is kept to a minimum. In most cases this will be:
- (i) the manager responsible for chairing the hearing (and the two other panel members if applicable);
  - (ii) the investigating officer responsible for submitting the report leading to the disciplinary hearing;
  - (iii) the person against whom disciplinary action is being considered;
  - (iv) his/her representative or colleague;
  - (v) a Human Resources representative who will advise on the procedure, be responsible for keeping a formal record of the hearing, and offer advice to the Chair on the appropriate level of disciplinary action to be taken based on similar cases. The Human Resources representative's role is to provide information to the Chair to enable him/her to make a fair decision regarding the member of staff's case; and
  - (vi) witnesses called subject to permission of the Chair<sup>5</sup>.
- 20.2 Depending on the circumstances, it may be possible to rely on the written evidence submitted by witnesses, rather than calling witnesses into the hearing. If the Chair gives permission for witnesses to be called, they will attend to give their evidence, and answer questions. They will then leave the hearing.
- 20.3 The hearing will follow the procedure detailed in Appendix 1.

## **21. Record of the disciplinary hearing**

- 21.1 The Human Resources representative is responsible for making a confidential, accurate and detailed record of the hearing. This is not a verbatim record but a summary of the

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<sup>5</sup> The permission of the Chair should not be unreasonably withheld.

proceedings.

21.2 It is not the University's normal practice to tape record disciplinary hearings.

## **22. Outcome of a disciplinary hearing**

22.1 Where the alleged misconduct is *not* a potentially dismissible act, the options available to the Chair are:

- (i) to determine from the evidence presented that the member of staff has not committed an act of misconduct, and that disciplinary action is not appropriate. This will be confirmed in the letter with the outcome of the hearing, and a copy held on the individual's personal file;
- (ii) to determine that misconduct has occurred, but that the situation can be rectified by an alternative to issuing a disciplinary warning, for example, by staff development;
- (iii) to issue a formal warning the level of which will be dependent on the severity of the misconduct, the member of staff's disciplinary record, and any mitigating circumstances raised. It will be recorded and a copy placed on the individual's personal file.

N. B: It may be appropriate for the Chair to decide on more than one of the above outcomes.

22.2 The disciplinary sanctions available are detailed in Appendix 2.

22.3 In cases where the alleged misconduct *is* a potentially dismissible act, the option to dismiss the member of staff may be considered in addition to options (i) to (iii) above.

22.4 Where a member of staff has committed an act of gross misconduct, the University reserves the right to dismiss without notice (summary dismissal). Examples of actions which could constitute gross misconduct are given at Appendix 3.

## **23. Confirmation of the outcome**

23.1 The Chair is responsible for confirming the outcome to the member of staff in writing within 5 working days of the hearing.

23.2 For action short of dismissal, the letter should state the nature of the misconduct, the level of any disciplinary warning issued and how long it will last, any action required of the member of staff, and the consequences of any further misconduct. The letter will also contain details of the appeals process.

23.3 Where the decision has been made to dismiss the member of staff, the letter will give details of:

- (i) the reason(s) for dismissal;
- (ii) the right of appeal against the decision - any appeal should be submitted to the Director of Human Resources within ten working days of receipt of the dismissal letter. Receipt will be deemed to be 48 hours from the date of the letter. The appeal would normally be heard within 15 working days of the date the appeal was received;
- (iii) The period of notice (if appropriate) and the arrangements for the completion of such notice;
- (iv) details of final payments due.

23.4 A copy of the notes of the hearing should be attached to the letter, or forwarded to the individual as soon as they are available.

## **C. APPEALS**

### **24. General**

- 24.1 A member of staff who is disciplined or dismissed will be informed of his/her right of appeal, and the right to be accompanied. This information should be included in the letter confirming the outcome of the disciplinary hearing.
- 24.2 When submitting an appeal, the member of staff must state the grounds of appeal which could be:
- s/he thinks that the decision is flawed because the evidence did not support the decision reached;
  - s/he thinks a finding or penalty is disproportionate to the disciplinary breach; and /or
  - significant new evidence has emerged since the original hearing; and/or
  - s/he thinks the Disciplinary Procedure was not followed properly.

The above list is not exhaustive.

- 24.3 The Chair of the appeal hearing will be provided with records and notes of the original disciplinary hearing.

### **25. Appeals against warnings**

- 25.1 The member of staff should submit written notice of his/her intention to appeal, stating the grounds of appeal (see 24.2 above), to the Director of Human Resources within ten working days of the date of the letter confirming the outcome of the disciplinary hearing.
- 25.2 An appeal shall not normally take the form of a re-hearing of the evidence and witnesses may only be called with the permission of the Appeal Chair which shall usually be given only where there was good reason for the witnesses not being called to give evidence at the disciplinary hearing. If the member of staff wishes to propose that evidence is heard at the appeal hearing from any person other than the member of staff and the Chair of the Disciplinary Hearing, he/she should name such proposed witnesses in his/her grounds of appeal and explain, by reference to the ground of appeal, why his/her evidence is required.
- 25.3 The appeal should be chaired by a more senior manager who has not previously been involved in the case. The Chair will ensure that the number of people present at the appeal hearing is kept to a minimum. In most cases this will be:
- (i) the manager responsible for issuing the disciplinary warning or notice of dismissal;
  - (ii) the member of staff;
  - (iii) his/her representative;
  - (iv) a Human Resources representative who will advise on the procedure, give general advice based on employment law and good employment practices, and keep a formal record of the hearing. This should not be the same Human Resources representative who attended the disciplinary hearing.
- 25.4 The appeal will normally be held within ten working days of receiving the appeal.

## **26. Appeals against dismissal**

- 26.1 Appeals against dismissal are heard by a Disciplinary Appeals Panel appointed by the Vice-Chancellor (or nominee), and consisting of two independent senior managers (one of whom shall be the Chair), and an independent employment solicitor appointed by the University (who shall not be employed by the University nor act for the University other than in their capacity as a member of a panel for appeals against dismissal). In the case of the independent peer (from the staff), independent shall have the meaning of not having had prior involvement in the case. In the case of the independent person external to the University, independent shall have the meaning of having no involvement with the University which might be prejudicial to impartial judgement (and for the avoidance of doubt, any payment by the University to such external person in respect of their time incurred in respect of the appeal shall not be deemed to prejudice their impartial judgement). In the case of an appeal of an academic member of staff, one of the two senior managers shall be a Head of School from another School or other academic peer. The panel will be supported by a Human Resources representative.
- 26.2 Appeals must be submitted in writing to the Director of Human Resources within ten working days of receipt<sup>6</sup> of the letter confirming the dismissal, specifying the grounds for appeal (see 24.2 above). The appeal will normally be held within fifteen working days of receipt of the paperwork, and the member of staff will be given at least five days' notice in writing of the arrangements for the appeal hearing.
- 26.3 The letter confirming the appeal arrangements will specify that the details of any witnesses and/or any additional documentation must be submitted to the Human Resources representative at least three working days prior to the appeal.
- 26.4 The appeal hearing will follow the format detailed in Appendix 4, and will represent the final stage in the procedure.

## **27. Outcome of the appeal**

- 27.1 Where the appeal is not upheld, this will be confirmed in writing to the individual, and a copy placed on the personal file.
- 27.2 Where an appeal against a disciplinary warning is upheld, and a lesser disciplinary warning issued, this will be confirmed to the member of staff in writing and a copy placed on the personal file.
- 27.3 Where an appeal against a disciplinary warning is upheld and there is felt to be no case to answer and therefore no warning to be issued, all reference to the disciplinary action will be removed from the individual's personal file and confirmed to the member of staff in writing.
- 27.4 Where an appeal against dismissal is upheld, and a disciplinary warning issued, this will be confirmed to the member of staff in writing and a copy placed on the personal file. The member of staff will normally be reinstated from the date of dismissal.

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<sup>6</sup> Receipt will be deemed to be 48 hours from the date of the letter.

## Appendix 1

### Format of the disciplinary hearing

1. The Chair introduces those present and their roles. Where the member of staff is accompanied, the Chair may seek clarification as to the role of the colleague, for example, will s/he be presenting the case (i.e. representing the member of staff) or is s/he present in a supporting capacity? In either case both parties should be encouraged to contribute to the hearing.
2. As an introduction to the hearing, the Chair will:
  - (i) confirm that the hearing represents a formal disciplinary hearing in line with the university's Disciplinary Procedure and check that those present are familiar with this document;
  - (ii) note that it is his/her aim is to conduct the hearing in a fair and systematic manner, and to ensure that the issues are explored thoroughly and with dignity to reach a fair outcome;
  - (iii) confirm that the details of the discussion should remain confidential between those present until a decision is made;
  - (iv) note any previous discussions that have taken place relating to the matter and the documents that will be considered. All parties should have a copy of these documents;
  - (v) explain the nature of the alleged breach of discipline and make sure that the member of staff understands the complaints(s) made against him/her;
  - (vi) explain that the investigating officer will be present throughout the hearing, and witnesses will be called into the hearing (subject to prior permission of the Chair – see section 18.5) if appropriate. Each witness shall leave the hearing upon completion of their evidence and questioning;
  - (vii) confirm the role of the Human Resources representative;
  - (viii) offer the member of staff the opportunity to request reasonable time to confer with his/her representative at any time during the hearing.
3. The Chair asks the investigating officer to go through his/her report into the allegations.
4. The member of staff has the opportunity to ask questions of the investigating officer.
5. The Chair (and/or members of the panel, if applicable) has the opportunity to ask questions of the investigating officer.
6. Where appropriate, the investigating officer calls and questions each witness in turn.
7. The member of staff<sup>7</sup> has the opportunity to ask questions of the witness.
8. The Chair (and/or members of the panel, if applicable) has the opportunity to ask questions of the witness.
9. The member of staff responds to the allegations, giving details of any mitigating circumstances.

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<sup>7</sup> References to the member of staff apply equally to his/her representative.

10. The investigating officer has the opportunity to ask questions of the member of staff.
11. The Chair (and/or members of the panel, if applicable) has the opportunity to ask questions of the member of staff.
12. If appropriate, the member of staff calls and questions each of his/her witnesses in turn.
13. The investigating officer has the opportunity to ask questions of the witness.
14. The Chair (and/or members of the panel, if applicable) has the opportunity to ask questions of the witness.
15. The investigating officer sums up and makes a closing statement.
16. The member of staff sums up and makes a closing statement.  
  
N.B: In the summing up neither the investigating officer nor the member of staff may introduce new evidence.
17. All parties except the Chair (and members of the panel, if applicable) and the Human Resources representative leave the room to allow the chair to consider the evidence presented, to take into account the member of staff's previous disciplinary record, and to decide on the appropriate outcome. If there are any points of uncertainty that need resolving, both parties will be asked to return and informed of the proposed course of action.
18. The Chair will normally reconvene the hearing in order to give a decision on the case. The decision will be confirmed in writing within five working days and the letter will give details of the member of staff's right of appeal.

## Appendix 2

### Types of disciplinary action and time limits on personal file

The following types of disciplinary action may be taken by the chair of a disciplinary hearing where the allegations are upheld:

1. Formal **oral warning** - for a first act of minor misconduct. The manager should ensure that the member of staff understands the standards of conduct expected. An oral warning will be disregarded for disciplinary purposes and removed from the individual's personal file after 6 months, subject to satisfactory conduct.
2. Formal **written warning** - for further acts of minor misconduct, not necessarily of the same nature, or for a first act of more serious misconduct. A written warning will be disregarded for disciplinary purposes and removed from the individual's personal file after 12 months, subject to satisfactory conduct.
3. **Final written warning** - for further acts of misconduct subsequent to the issuing of a formal oral and/or written warning, or for a first act of very serious misconduct, or for an act of gross misconduct for which dismissal is not considered to be applicable due to mitigating circumstances. The member of staff will be informed that any further misconduct will almost certainly result in dismissal. A final written warning will normally be disregarded for disciplinary purposes and removed from the individual's personal file after 24 months.
4. A **decision to dismiss the member of staff** either with notice (for further acts of misconduct subsequent to a final written warning) or without notice (summary dismissal)<sup>8</sup>.

Note: The procedure may result in any of the listed outcomes according to the nature of the alleged misconduct, and any previous warnings.

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<sup>8</sup> **Summary dismissal** – where a member of staff is summarily dismissed for gross misconduct there is no entitlement to a notice period or to payment in lieu of notice. Summary dismissal will only take place in exceptional circumstances and in accordance with section 12 of the disciplinary procedure.

## Appendix 3

### Disciplinary rules, gross misconduct and misconduct<sup>9</sup>

1. The University's disciplinary rules set standards of conduct at work, and indicate the likely consequences of a breach of the rules. **The rules are not exhaustive.** They apply generally to all University staff and will be reviewed periodically. Due to the variance in the nature of work at the University, there may be additional rules that are specific to an individual's area of work. Although the rules apply to standards at work, there may be circumstances where conduct outside work could make impact on a member of staff's employment. In such cases, the rules will apply to conduct outside work.
2. **Gross misconduct** is defined as acts "resulting in a serious breach of contractual terms"<sup>10</sup> for which dismissal is justified without previous warnings. By breaching any of the examples of gross misconduct given below, a member of staff will be at risk of immediate dismissal. It is recognised that there may be situations where action short of dismissal is appropriate, and equally, there will be acts that are not specified below which may be considered as gross misconduct.
3. **Examples of action which could constitute gross misconduct**
  - 3.1 Theft or misappropriation of property of the University, any member of the University, or any visitor to the University.
  - 3.2 Threatening or using violence<sup>11</sup> on any member of the University or any visitor to the University.
  - 3.3 Deliberate damage to, or neglect of, the University's property, assets, cash, investments etc.
  - 3.4 Harassment or bullying on any of the grounds stated in the University's Harassment or Equality and Diversity policies, and other acts of unlawful discrimination.
  - 3.5 Fraud, for example falsification of qualifications, timesheets, overtime claims.
  - 3.6 Serious breaches of safety regulations or the University's safety policy.
  - 3.7 Engaging in unauthorised employment during contracted hours with the University or periods of sick leave.
  - 3.8 Conviction for a criminal offence which prevents a member of staff from being able to fulfil his/her contractual duties and/or which makes continued employment untenable.
  - 3.9 Breach of the University's Charter and Statutes.
  - 3.10 Serious breach of University's regulations, policies or procedures, for example, the regulations for the use of computers and computer networks, code of practice for research, data protection policies.
  - 3.11 Action which results in the loss of trust and confidence in the member of staff, or which may bring the University into disrepute.
  - 3.12 Gross negligence in the performance of duties or responsibilities which may cause unacceptable loss, damage or injury.

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<sup>9</sup> Some but not all of the examples may also constitute a criminal offence, please refer to section 8 of this procedure.

<sup>10</sup> ACAS Code of Practice 1: Disciplinary and Grievance Procedures

<sup>11</sup> See University of Sussex Policy on Violence for definition of violence

- 3.13 Gross insubordination.
- 3.14 Being unfit for work due to alcohol or drug misuse.
- 3.15 Corrupt practices that result in personal advantage or other inducements.
- 3.16 Any other misconduct of a similar severity.
- 4. **Examples of other misconduct which may lead to disciplinary action**
- 4.1 Refusal or failure to comply with reasonable instructions.
- 4.2 Negligence in the performance of duties and responsibilities.
- 4.3 Unauthorised absence from work and unsatisfactory timekeeping.
- 4.4 Falsification of work-related documents, for example records of working hours (flexitime or other).
- 4.5 Inappropriate language and behaviour.
- 4.6 Failure to comply with University policies, procedures, rules and regulations, for example, the Equality and Diversity policy; no smoking policy.
- 4.7 Being an accessory to a disciplinary offence.
- 4.8 Failure to comply with local policies, procedures and regulations, for example, dress codes, safety and hygiene rules.
- 4.9 Threats or retaliatory action taken against individuals who act as witnesses in disciplinary cases.
- 4.10 Breach of the conditions of employment.
- 4.11 Any other misconduct of a similar severity.

## Appendix 4

### Format of the appeal hearing

1. The Chair introduces those present and their roles. Where the member of staff is accompanied, the Chair may seek clarification as to the role of the colleague, for example, will s/he be presenting the case (i.e. representing the member of staff) or is s/he present in a supporting capacity? In either case both parties should be encouraged to contribute to the hearing.
2. As an introduction to the hearing, the Chair will:
  - (i) offer the member of staff the opportunity to request reasonable time to confer with his/her representative at any time during the hearing;
  - (ii) confirm that the hearing represents an appeal hearing in line with the university's Disciplinary Procedure and check that those present are familiar with this document;
  - (iii) note that it is his/her aim is to conduct the hearing in a fair and systematic manner, and to ensure that the issues are explored thoroughly and with dignity to reach a fair outcome;
  - (iv) confirm the role of the Human Resources representative;
  - (v) confirm that the details of the discussion will remain confidential between those present until a decision is reached;
  - (vi) note the documents that will be considered. All parties should have a copy of these documents;
  - (vii) explain that any witnesses will be called into the hearing as required. Each witness shall leave the hearing upon completion of their evidence and questioning.
3. The Chair reads out the grounds of appeal and asks the member of staff to confirm that they are correct. Where the grounds are unclear, the Chair may ask for more clarification.
4. The member of staff has the opportunity to submit evidence in support of the appeal and may call witnesses with the permission of the Chair.
5. The manager who chaired the disciplinary/dismissal hearing has the opportunity to question the member of staff and any witnesses.
6. The Chair (and/or members of the panel, if applicable) has the opportunity to question the member of staff and any witnesses.
7. The manager who chaired the disciplinary/dismissal hearing has the opportunity to submit evidence in support of the disciplinary action and call witnesses with the permission of the Chair.
8. The member of staff has the opportunity to ask questions of the manager who chaired the disciplinary/dismissal hearing and any witnesses.
9. The Chair (and/or members of the panel, if applicable) has the opportunity to ask questions of the manager who chaired the disciplinary/dismissal hearing and any witnesses.
10. The manager who chaired the disciplinary/dismissal hearing is invited to make a

closing statement.

11. The member of staff is invited to make a closing statement.
12. All parties except the Chair (or Disciplinary Appeals Panel if applicable) and the Human Resources representative leave the room to allow the chair to decide on the appropriate outcome. If there are any points of uncertainty that need resolving, both parties will be asked to return and informed of the proposed course of action.
13. The Chair (or Disciplinary Appeals Panel if applicable) may confirm, amend or reject the disciplinary action which is the subject of appeal. The Chair will reconvene the hearing in order to give the decision, which will be confirmed in writing. If the decision is to amend the disciplinary penalty, the Chair will inform the member of staff and the manager who issued the penalty of its amendment, and any associated action required to reduce the likelihood of any further misconduct.

Approved by Council by email resolution on 10 October 2017