

## Disciplinary & Dismissal Procedure

### 1 Introduction

1.1 Disciplinary rules and procedures are necessary for providing fairness and order in the treatment of individuals and in the conduct of relations between employee and the employer. The University of Manchester Conferences Limited (UMC Ltd) (“the company”) is responsible for maintaining discipline within the organisation, for ensuring that there are disciplinary rules and procedures and that these are observed in dealing fairly and equitably with employees. It provides a method of dealing with any shortcomings in conduct or performance and is aimed primarily at helping an undisciplined or poorly performing employee to become effective again. The consistent application of a fair and effective disciplinary procedure will help minimise disagreements about disciplinary matters and reduce the need for dismissals. This document has been drawn up in agreement with UNISON and reflects ACAS guidelines and advice on the matter of discipline. It sets out the procedures that apply within the company to the relevant employees, both on campus and at separate locations except that it will not apply to the following:

- i. Employees serving probationary periods where dismissal arises from unsuitability for confirmation of appointment,
- ii. Employees whose employment terminates on the grounds of redundancy,
- iii. Employees whose contract is for a limited, specified period of time, provided that the termination arises only from the expiry of the contract on the due date
- iv. Separate arrangements will apply to employees whose employment ends under categories i to iii above.

### 2 General Procedure

2.1 This document should not be interpreted as preventing a supervisor or manager discussing with an employee ways in which their performance or conduct could be improved. Counselling may often be a more satisfactory method of resolving problems than use of the formal disciplinary procedure. It should take the form of a two-way discussion, aimed at pointing out any shortcomings in conduct or performance and encouraging improvement. Criticism should be constructive, and the emphasis should be on finding ways in which the employee understands the improvement required and

how future performance or conduct is to be monitored. They will also be informed of the consequences of a failure to improve. A brief note of any counselling should be kept, for reference purposes as well as any action plan for monitoring the work of the individual or for the provision of training. This will not be regarded as action taken under the formal Disciplinary Procedure.

- 2.2 As there is considerable variation in the size and organisation of different departments it is not possible to be categorical about who will deal with disciplinary matters. Formal disciplinary matters will normally be dealt with, initially, by the member of staff to whom the employee is directly responsible. At later stages the senior manager for the department in which the individual works will normally handle disciplinary procedures. Any employee who is subject to impending disciplinary action and is in doubt about this should seek clarification either within the department or from Human Resources. Any manager considering taking disciplinary action should first seek advice from their designated Human Resources representative.
- 2.3 In all cases where a disciplinary matter is being dealt with formally the employee has the right, if they so wish, to have trade union representation or to be accompanied by a fellow UMC employee. The employee should be given written notice of a disciplinary interview/hearing\* and informed of the complaint to be considered in accordance with 3.9 below.
- 2.4 Any verbal, written or final written warning issued to an employee in accordance with 3.3 3.5 or 3.6 below, will state the following:
  - i. the complaint or offence to which it relates,
  - ii. the action being taken
  - iii. the stage of the procedure which has been reached
  - iv. the right of appeal open to the employee and the time scale in which an appeal can be made
  - v. the consequences of a failure to improve performance or of further misconduct
  - vi. in cases of performance, the timescale for a further review
- 2.5 A copy of any formal warning will be provided to the employee's trade union representative or the colleague who accompanied the employee at the disciplinary interview/hearing.
- 2.6 Employees who are trade union officials shall be subject to normal disciplinary standards, but no disciplinary action beyond informal counselling will be taken against any such employee without the involvement of a full-time official of the trade union concerned.

2.7 In cases of alleged misconduct, the test applied in deciding whether or not the employee is guilty will be whether there are *reasonable* grounds to take this view following an investigation.

2.8 In all cases detailed written notes should be kept of the proceedings and in cases which could result in dismissal, an independent member of staff not previously involved in the case shall be appointed to act as Secretary to the hearing. The Secretary shall be required to provide those in attendance at the hearing with any documentation that is deemed to be necessary, to take notes at the hearing and to give clerical assistance to the senior manager who is chairing the hearing, in the preparation of a report which should be copied to all parties.

\* These terms are used interchangeably in this document depending on which most accurately describes the nature of the proceedings at each stage.

### **3 Disciplinary matters other than gross misconduct**

3.1 Employees have a responsibility to achieve a satisfactory level of performance and UMC has a responsibility to provide support and encouragement to the employee to enable them to achieve this. In all cases of poor performance, management should consider whether any shortfall is due to unreasonable expectations, poor instruction, or inadequate training. Consideration should be given to whether performance might be improved by reorganisation of work or provision of additional training. Standards of performance should be realistic and measurable in respect of quality, quantity, time and cost. Employees should be made fully aware of the standards required, the timescale on which their performance will be monitored and the consequences of any failure to meet the required standards. In cases of unsatisfactory performance where, despite effort from the employee and encouragement and assistance from the supervisor/manager, the employee is unable to reach the required standard of performance, then the Disciplinary Procedure as set out in 3.3 onwards (below) will apply as a last resort following these efforts. The exception to this will be when there has been an incident of serious negligence or under-performance.

3.2 In cases of poor attendance as a result of sickness the provisions of any current policy on sickness absence will be used and not the Disciplinary Procedure.

3.3 If, following an investigation, the conduct or work performance of an employee proves unsatisfactory in spite of action taken in 2.1 and 3.1 above, this will be pointed out to them and they will be asked to attend an interview with the appropriate line manager. The employee will be informed that they have the right if they wish to have trade union representation or to be accompanied by a fellow University or UMC employee. The employee should be reminded that they have the right to representation if they are

unrepresented at the hearing and they should expressly state that they are content to continue without representation. If, following the interview, the line manager decides that a **verbal warning** is necessary this will be given and a record kept. The employee should be informed that this is the first stage of the procedure and, at the same time, be advised of their right of appeal.

- 3.4 In the case of a problem relating to an employee's performance, the employee will be informed of any action to be taken by way of training and the monitoring of performance as well as the timescale for any further review of performance. This also applies at stages 3.5 and 3.6 below.
- 3.5 Should the conduct of or work performance of the employee continue to be unsatisfactory, or if the matter is a more serious one, the line manager will inform the senior manager, or their representative. Following an investigation of the circumstances, the employee will be asked to attend an interview to which they may be accompanied as in 3.3 (above) if they wish. If the senior manager is not satisfied by the employee's explanation they will, after consulting with Human Resources, issue a **written warning** setting out the information given in 3.4 above. The employee will, at the same time, be advised of their right of appeal.
- 3.6 Should the employee fail to comply with this warning, after an appropriate investigation they will again be interviewed by the senior manager or their representative and be given the opportunity to explain their conduct or under-performance, accompanied as in 3.3 (above) if they wish. A member of Human Resources will be present at this meeting and will have responsibility for advising the senior manager or their representative on relevant matters (for example, employment law and correct and consistent application of UMC policy and procedure). If the explanation is unsatisfactory, the senior manager will issue a **final written warning** recording the circumstances in accordance with 3.4 above and explaining that any recurrence of the offence may lead to dismissal. The employee will, at the same time, be advised of their right of appeal.
- 3.7 If after a final written warning has been issued the conduct or work performance of the employee still does not appear to improve, the employee will be given a final opportunity to explain themselves, after an appropriate investigation, on the same basis as above. If the explanation is found to be unsatisfactory, a member of Human Resources will notify the employee in writing of the disciplinary action that will be taken, which will normally be **dismissal** and, at the same time, advise them, of their right of appeal.
- 3.8 After investigating and considering a case of misconduct or performance problems involving negligence or serious under-performance, the company may, if the gravity of the offence justifies it, proceed straight to the written warning or final written warning

stage of the procedure according to the circumstances. In addition, a verbal warning may in certain circumstances be issued without any previous counselling.

- 3.9 Notice and detail of any complaints at stages 3.3 will be submitted in a letter to be received by the employee in writing at least 2 working days in advance of the hearing. In the case of complaints that have the potential to be considered at stages 3.5, 3.6 or 3.7 notice will be given at least 5 working days in advance of the hearing. The letter will be accompanied by a copy of the Procedure and, where possible, details of witnesses who will be called at the hearing and/or details of statements they have submitted as part of any investigation into the complaint. Hearings will be scheduled so that the employee's representative and witnesses can attend. However, where there is an inordinate delay because a particular representative is unavailable, the employee will be expected to arrange an alternative representative.
- 3.10 If any evidence is presented at stage 3.3, 3.5, 3.6 or 3.7 based on statements made by other employees as part of an investigation, those employees will normally be made available at any disciplinary hearing/interview in order to be questioned on that evidence. (Note: Where employees do not attend to be questioned on their evidence, no decision will normally be taken which relies upon their evidence.) Employees may call fellow employees as witnesses who have not participated or submitted statements as part of the investigation. In this event it will be their responsibility to arrange the attendance of any such witnesses and to provide notice to the senior manager of the attendance of such witnesses at least one working day in advance of the hearing/interview.
- 3.11 Any employee subject to disciplinary proceedings will be given a full opportunity to respond to any complaints at each stage and she/he and the representative will normally be afforded the opportunity to question any witness or manager involved in any investigation of the complaint. (Note: In any case where an employee and their representative are not afforded such opportunity, no decision will normally be taken which relies upon the evidence of that witness or manager.) The supervisor or manager presenting the complaint will also be afforded the opportunity to question the employee and the witnesses.

#### **4 Other disciplinary sanctions**

- 4.1 At stages 3.3, 3.5, 3.6 above, the company reserves the right to take other additional action in certain appropriate circumstances. This could include a deduction of pay in cases of poor timekeeping and unauthorised absence, withholding of a salary increment, removal of a discretionary increment and redeployment to another post, which may or may not be commensurate with the employee's current grading. This list is not intended to be exhaustive.

## 5 Gross misconduct

- 5.1 Should an employee's behaviour appear to constitute gross misconduct, the Senior Manager or their representative, having consulted a member of Human Resources on relevant matters may suspend the employee immediately on full pay, without prejudice, while the circumstances are investigated, for example, but without limitation (if there is a perceived unacceptable risk to the business or to any of its employees, clients, associates or visitors to its premises, due to the alleged action/s of misconduct by the employee). The employee will be told the reasons for the suspension, normally by word of mouth and this will be confirmed in writing within two working days.
- 5.2 Following the suspension, the complaints against the employee will be investigated by a nominated (by the senior manager) suitably qualified and able employee who has sufficient knowledge of the required procedures and who has not had any prior involvement in the matter to be investigated. The investigator will be advised by a member of Human Resources. Following the completion of the investigation and submission of the investigator's report, if the senior manager concludes that the investigation has shown that there is an apparent case of gross misconduct, then the employee will be required to attend a Disciplinary Hearing at which the matter will be considered. The Hearing will normally be convened within fifteen working days of the suspension, but the actual timescale will vary according to the nature and complexity of the complaints, scale of the investigation and availability of the parties involved. Employees will be kept informed of any delay.
- 5.3 The Hearing will be chaired by the senior manager (or her/his representative). A member of Human Resources will be present at this meeting and will have responsibility for advising the Chair on relevant matters (for example, employment law and correct and consistent application of UMC policy and procedure). A letter will be sent to the employee by Human Resources not later than eight working days before the hearing summarising the nature of the complaints. This will normally be accompanied by relevant witness statements, details of witnesses who will be called at the hearing by the investigators and/or details of statements they have submitted as part of the investigation. The employee will also be asked to notify names of witnesses they wish to call at the hearing by no later than three working days before the date of the hearing. Whereupon any witness requested by the employee has not submitted a statement as part of the investigation (i.e. has not participated and submitted a statement as part of the investigation), it will be their responsibility to arrange the witnesses attendance at the hearing.

- 5.4 Hearings will be scheduled so that the employee's representative and witnesses can attend. However, where there is an inordinate delay because a particular representative is unavailable, the employee will be expected to arrange an alternative representative.
- 5.5 At the Hearing the person chairing the proceedings will ask the investigator to set out details of the complaint and the investigation undertaken. The Chair will question the investigator about the complaints and the investigation and the employee and their representative will be afforded the same opportunity. As part of this process witnesses may be called in order to provide clarification, so that they can be questioned by the Chair. The employee and his representative will also be given the opportunity to question the witnesses called.
- 5.6 The employee and their representative will then be given the opportunity to respond to the complaints and to call any witnesses they have arranged in accordance with 5.3 above. The Chair will question the employee and the employee's witnesses and the investigator will also be afforded the same opportunity.
- 5.7 After all evidence has been presented and the process described above exhausted, the Hearing will be adjourned in order that the Chair can consider their decision. Where practicable, the hearing will be reconvened the same day in order that the Chair can communicate their decision. If this proves unfeasible, then the decision will be communicated in writing at the earliest opportunity in accordance with 5.10 below.
- 5.8 In the event that the employee fails to appear at the Hearing without prior notification and the submission to the Chair of a justifiable reason, then the Hearing will be rearranged. In the event that the employee is unable to attend the Hearing and submits substantial reasons to the Chair for non-attendance in advance, then the Hearing will be rearranged if they wish. Alternatively, the employee may request that the Hearing proceed in their absence with the representative acting on his behalf. In this event the Chair will request that the representative gives assurance that permission has been given. If the employee fails to appear on a second occasion, then the Hearing will proceed in their absence regardless of the reason. However, should the employee subsequently produce a substantial and significant reason for non-attendance such as a sudden unforeseen domestic crisis involving a death or serious illness of their partner or a member of their family, then the Hearing will be rearranged with a different Chair. In these circumstances the employee will be required to produce substantial evidence of the reason. The original proceedings would be declared null and void.
- 5.9 The availability of the employee's representative will be taken into account whilst arranging a date for the Hearing. If the representative fails to appear at the Hearing or withdraws their availability for any other reason, then the Hearing will again be

rearranged taking due account of their availability. Should they fail to appear or withdraw their availability for the second date, then the Chair will proceed in considering the case in their absence. In these circumstances it will be the employee's decision whether or not he wishes to appear at the Hearing and make their own case in the absence of a representative. Alternatively, the employee can arrange to be accompanied by a different representative.

5.10 Following the Hearing, Human Resources will inform the employee of the outcome in writing. Whether the decision is to **dismiss** the employee or to take some other disciplinary action in accordance with section 4.1, the reasons will be stated. The employee will, at the same time, be advised of their right of Appeal. Other possible outcomes are the issuing of a warning in accordance with sections 3.3, 3.5 and 3.6 of the Procedure, or that no action will be taken. In the event that the employee is not dismissed, they will be instructed to return to work at the next available opportunity.

5.11 In cases where, following a full investigation and Disciplinary Hearing, an employee is found to have committed an act of Gross Misconduct, the company may dismiss summarily (i.e. without notice and without payment in lieu of notice) and such a dismissal would be effective from the date of the letter of dismissal.

5.12 The following represent examples of misconduct that are likely to be considered as constituting Gross Misconduct:

- i. an act or threat of an act of violence;
- ii. theft;
- iii. fraud or dishonesty;
- iv. misuse of UMC, University or staff or student property;
- v. serious misuse of internet email or telephone;
- vi. incapacity due to alcohol intoxication or use of non-prescription drugs;
- vii. repeated failure to carry out a reasonable instruction;
- viii. behaviour likely to bring the company into serious disrepute;
- ix. serious harassment, discrimination or bullying;
- x. certain criminal action;
- xi. serious verbal abuse

This is not intended to represent an exhaustive list.

5.13 If any act on the part of an individual is considered to be of a criminal nature, then the company may report it to the police whilst continuing its own investigation into the matter.

## **6 Criminal Convictions for activities outside of the UMC Ltd Company**



6.1 If an employee is convicted of criminal behaviour in respect of conduct that occurs outside of the workplace, then the Company reserves the right to deal with this matter under the terms of the *Disciplinary Procedure* and to dismiss the employee for 'some other substantial reason.' In this event the employee has the normal right of appeal against the decision. The company may also judge that the employee has 'frustrated' their contract of employment if they are the subject of a custodial sentence. In determining what course of action is appropriate, the company will consider whether the behaviour brings it into disrepute, the nature of the misconduct and whether it has any bearing on their job, the length of any custodial sentence and the need to find a permanent rather than a temporary replacement.

## **7 Objection to an investigating manager**

7.1 Where an employee believes that they have a justifiable reason for objecting to a particular manager conducting a disciplinary investigation in relation to allegations against them, they have the right to raise an objection on the basis that they believe that person's involvement will prejudice the conduct of the investigation. In this event they should write to the senior manager as soon as possible, setting out the reasons. If the senior manager accepts the reasons for the objection, then an alternative investigator would conduct the investigation. If the senior manager does not accept the reasons, then they will inform the employee and the investigation will continue as planned. This decision is final and there is no further right of Appeal on this particular issue at this stage of the procedure.

## **8 Expiry of warnings**

8.1 Warnings issued under the terms of this document will be disregarded after a period of one year and after six months in the case of Verbal Warnings, if there has been no recurrence of the problem during that time.

8.2 In some circumstances, where a serious breach of discipline has occurred, an Indefinite Final Written Warning may be issued, after consultation with the relevant trade union if the member of staff is a trade union member. Such a warning will state that any future repetition of the act of misconduct for which the employee has been disciplined will result in dismissal. Employees may ask (via the UMC-designated HR Partner) the UMC Board of Directors to review the length and status of an Indefinite Final Written Warning after a minimum period of two years from its date of issue.

## **9 Appeals**

9.1 An employee who wishes to appeal against a Verbal or Written warning should raise the matter with UMC-designated HR Partner within ten working days of receiving written

confirmation of the warning. The UMC-designated HR Partner or another HR Partner with no previous involvement in the case will then normally consider the appeal within ten working days. In the case of an appeal against a Final Written Warning, the Appeal will be heard by a nominated member of the UMC Ltd Board of Directors or a senior staff member of the University. At any meeting to consider such a case, the employee will have the right to be accompanied. The format of the hearing will involve the senior manager (or their representative) setting out the basis on which they reached a decision to take action followed by the employee and/or their representative setting out the basis for the appeal. The Chair will also put questions to either party and equally give them the opportunity to question each other on their submission. Both parties will also be given the opportunity to summarise their respective cases. The employee and their representative will be given the opportunity to summarise their case last.

9.2 The Chair's role is to decide whether taking disciplinary action was within the reasonable range of management's responses in the circumstances. It is not the Chair's role to re-hear the case and, as such, none of the witnesses called at the original hearing will be called again and no new or additional evidence will be considered that was not available at the original hearing, except when new evidence that was unavailable at the time of the original Hearing may have had some bearing on the outcome (see (9.3) iv. below).

9.3 The Chair's decision represents the final channel of appeal for the individual. The possible range of decisions is as follows:

- i. Uphold the Appeal and withdraw the disciplinary warning on the basis that the manager's decision was not within the range of *reasonable* management decisions. In these circumstances the Chair can decide that no form of disciplinary action was appropriate or replace the penalty with a lesser disciplinary penalty.
- ii. Uphold the original decision.
- iii. If the Chair judges that there were breaches of procedure associated with the original disciplinary proceedings, then they can order the case to be re-heard by a member of Human Resources who has had no previous involvement with the case. (This does not prevent the employee from submitting a further appeal if action is still taken after a second hearing.)
- iv. If the Chair judges that new evidence is now available that for good reason was unavailable at the time of the original hearing and which may have had some bearing on the outcome, a re-hearing can be ordered in accordance with iii, above. Equally, if relevant evidence was available at the time of the original hearing, but was not considered, a re-hearing can also be ordered.

v. The Chair will communicate their decision to the employee on the day of the Appeal or, if that is not possible, on the next working day. The decision and the reasons will be notified to the employee in writing.

9.4 An employee who wishes to Appeal against dismissal must submit notice of appeal in writing via the UMC-designated HR Partner to the UMC Ltd Board of Directors within ten working days of receiving the letter of dismissal in accordance with the 'Appeals against dismissal-Procedure'.

9.5 The Appeal will be considered in accordance with the provisions of the 'Appeals against dismissal Procedure'.

## 10 Disclosure

10.1 On request an employee has the right to see any information held on file relating to their case. Such requests should be submitted in writing to the appropriate member of Human Resources.

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