**Managing Discipline**

The purpose of these notes is to provide guidance to managers who have to deal with investigations and disciplinary matters. The aim of our disciplinary procedures and guidance notes is to ensure that all members of staff are treated equitably and that disciplinary matters are dealt with in accordance with best practice and the relevant ACAS codes.

## Introduction

Everyone needs to understand the underlying reasons for rules and standards of behaviour, and what the consequences will be if they do not respect those rules or standards. It is a manager’s responsibility to ensure that good basic training is followed up with regular feedback and support. Members of staff also need to know that they will be treated equitably if problems do occur. The path to improvement should always be the first priority of any disciplinary procedure and the punitive element of discipline should only be used when informal interventions have failed.

## Responsibilities

It is the responsibility of all managers to ensure that appropriate standards of conduct and performance are met, and to take action when standards are not reached.

When dealing with investigations and disciplinary matters, there are specific responsibilities required of both the investigating manager and the manager chairing the disciplinary hearing. These are set out in this guidance.

**Addressing issues and concerns**

Managers should take action promptly and deal with issues when they arise, either formally or informally. Managers have a right to challenge unacceptable behaviour, but should remember that the procedure is to be used primarily to help and encourage individuals to improve not just as a way of imposing punishment.

Managers also have to distinguish between poor performance, performance related to ill health and misconduct and deal with the accordingly.

HR can provide advice on determining the best course of action in each case.

**Distinguishing between informal and formal action**

Managers should always be clear about whether disciplinary action is appropriate in any given circumstance. Sometimes genuine mitigating circumstances indicate that informal action rather than discipline may be required.

Determining whether to use the informal or formal procedure may depend on the nature of the offence and the manager’s knowledge of the member of staff. Managers need to decide how they wish to approach the informal procedure, based on their knowledge and the specific circumstances.

Regardless of whether a manager is using the informal or formal procedure, any member of staff faced with allegations of disciplinary offences must be given the details of those allegations so that they can put their version of events and respond to the allegations.

Formal procedures may need to begin could be when minor misdemeanors are repeated. Some ‘offences’ will be serious enough to skip informal stages entirely, and the procedure can begin at the formal stage if appropriate.

## Informal Action

The intention of the informal stage is to give people a chance to put things right before problems escalate. This stage should be treated as positive and corrective in intent.

Members of staff should always be spoken to in private. This should be a two-way discussion, aimed at finding ways for the individual to improve. Where improvement is required make sure the individual understands what needs to be done, how their conduct will be reviewed, and over what period.

It may be useful to confirm in writing what has been decided, even if it is just by email.

Be careful that any informal action does not turn into formal disciplinary action, as this may unintentionally deny the employee certain rights, such as the right to be accompanied. If, during the discussion, it becomes obvious that the matter may be more serious, the meeting should be adjourned and the member of staff should be told that the matter will be continued under the formal disciplinary procedure.

Keep brief notes of any agreed informal action and schedule a follow up / review period. Notes should include:

* The subject of the misconduct or poor performance
* Any relevant background information
* The manager’s decision / any agreements or actions
* Any comments made by the member of staff
* What, if anything, the manager said about further action and review dates.

You may send a copy of your records to HR.

**Suspension**

If a matter is very serious suspension it may be appropriate. If time allows, contact HR for advice. Suspension will normally be appropriate in all cases of alleged gross misconduct or where it is reasonably

believed that there are risks (for example to the process, other people or of further misconduct) if the member of staff remains at work.

Where gross misconduct is alleged, consider if the member of staff should be suspended on full pay pending an investigation. Suspension is not an assumption of guilt and is not a disciplinary sanction.

Suspension should be undertaken as soon as possible after the alleged issue and confirmed in writing. It may be appropriate to tell the member of staff that they may not have contact with other colleagues (apart from a trade union representative or a work based colleague to accompany them at future meetings) whilst an investigation is ongoing.

There should then be a full and thorough investigation.

**Investigations**

The purpose of an investigation is to determine whether there is a disciplinary case to answer.

A member of staff subject to a disciplinary investigation should be informed at the earliest opportunity and invited to an investigatory interview. The individual should be informed about the allegations against them, their right to be accompanied and the potential consequences of the process.

It is important to keep an open mind when conducting an investigation. HR run training courses on conducting investigations, and can provide specific advice.

**Who should investigate?**

The investigating manager may be the manager of the employee who is subject to the disciplinary allegation – however the most important factor is that the investigating manager is independent. In circumstances where the manager believes there to be a conflict of interest or the manager needs to be

interviewed as part of the investigation, the HR department can advise as to who would be a suitable manager to conduct the investigation.

HR can support the manager conducting the investigation if required. Once they have concluded their investigation, the manager will decide if there is a disciplinary case to answer. The investigation should be concluded as soon as possible.

At the end of the investigation, if it is decided that there is a disciplinary case to answer, the member of staff should be notified in writing.

It is sensible at this point to inform other parties (eg witnesses) who have been part of the investigation as to the outcome, particularly if they may be required to attend as witnesses at a disciplinary hearing.

**Witnesses**

Witnesses can be critical in determining the facts and managers should arrange to meet with them as quickly as possible. Witnesses should normally be interviewed one at a time.

Where the member of staff subject to the disciplinary process requests that specific individuals should be invited as witnesses, the investigating manager should normally try to accommodate their request if the witness can add to the facts.

Witnesses should be advised that the purpose of the meeting will be to discuss in detail their account of a particular incident / allegation, which forms part of the disciplinary procedure.

Sometimes witnesses request that they are not asked to attend the disciplinary meeting to be questioned, or even that their identity is not disclosed. These can be reasonable requests, but no guarantees can be made – ultimately a tribunal might require a witness to attend in the event that a case was bought. Take advice from HR in these circumstances.

If a witness is not an employee of the University (such as a member of the public), it may not be practicable or desirable for that person to attend a disciplinary hearing. In such cases, ACAS recommend that the employer try to get a written statement from the individual and seek corroborative evidence, and check that the person’s motives are genuine.

Any notes taken during the investigation interviews should ideally be typed and checked by the witness.

**Grievances raised during disciplinary hearings/investigations**

Where the grievance and disciplinary issue are related, it will normally be appropriate to proceed with them both concurrently.

Occasionally where a member of staff raises a grievance during a disciplinary process, it may be appropriate to consider suspending the disciplinary process where the issues are related.

Take advice from HR in these circumstances.

**Preparing for the Disciplinary Hearing**

When planning a disciplinary hearing, the following matters should be considered:

* Where possible arrange for someone who is not involved in the case to take notes of the meeting and to act as a witness to what was said. This will normally be someone from HR.
* Provide copies of any relevant papers and witness statements should be made available in advance.
* Arrange a time for the hearing in a suitable room where there will be no interruptions.
* Arrange for witnesses to attend if necessary. Allow the employee to call witnesses or submit witness statements.
* Make provision for any reasonable adjustments to accommodate the needs of a person with disabilities.
* Think about the structure of the hearing and make notes of the points you wish to cover.

HR can help with preparations and advice.

**Conducting the Disciplinary Hearing**

The hearing may not proceed in neat, orderly stages but it is good practice to:

* State the subject of the alleged misconduct clearly.
* Ensure that the focus of the hearing remains on that topic alone.
* Ensure that the work colleague or representative accompanying the member of staff understand their role.
* Ensure all relevant documentation is available.
* Allow whoever is accompanying the member of staff to make a statement, pose questions and confer with the individual.
* Make notes.
* Consider adjourning the meeting if new facts emerge which need further investigation.
* Summarise the main points of the hearing after the questioning is completed. Ask the member of staff and their companion if they have anything further to say.
* Always adjourn before making a decision. Take time for reflection and proper consideration.

**Making a decision**

The first decision is to determine whether a disciplinary sanction is appropriate, and to do this consideration needs to be given to all the evidence and witness testimonies to decide whether or the allegations are founded. In particular consider:

* The penalty imposed in similar circumstances
* The individual’s disciplinary record (including current warnings), general work record, and length of service
* Whether the proposed penalty is reasonable in view of all the circumstances
* Whether any training, additional support or adjustments to the work are appropriate in the circumstances of the particular case.
* Any mitigating circumstances.

Each case must be looked at on its own merits.

**Confirmation of the Outcome**

Details of any disciplinary action (including dismissal) should be given in writing to the employee as soon as the decision is made.

HR will assist with the letter.

**Types of disciplinary action and time limits**

Types of disciplinary action and time limits are set out in relevant policies.

**Equality Issues**

Consideration must be given to equality issues when dealing with disciplinary matters. If a member of staff has a disability reasonable adjustments must be made in order to allow them to fully participate in the process.

For example, they might need:

* Documents provided in a different format – perhaps on audio CD, or in large print or in Braille, for people with a visual impairment.
* Meetings to be held in an accessible room, for people with mobility impairment.
* A British Sign Language (BSL) interpreter if they are hearing impaired.
* Someone to help them complete a form if they have dyslexia.
* A personal assistant with them. They may need a personal assistant for this situation even if they do not normally use one at work.
* Changes to the process, such as more breaks to ask for an explanation from their official companion, if they have a learning disability.

This list is not exhaustive.

**Criminal charges or convictions**

A member of staff should not be dismissed or otherwise disciplined solely because they have been charged with or convicted of a criminal offence. The question to be asked in such cases is whether the conduct or conviction merits action because of its employment implications. The facts should be investigated and it should be considered whether the conduct is sufficiently serious to warrant disciplinary action. Where the conduct requires prompt attention it is not necessary to await the outcome of a prosecution before taking fair and reasonable action.

In some cases the nature of the alleged offence may not justify disciplinary action – for example, off-duty conduct which has no bearing on employment. If the member of staff is not available for work because they are in custody or on remand, the University must decide whether the employee’s job can be held open.

Take advice from HR in these circumstances.

**The right to be accompanied**

A principle embedded in the procedure is that members of staff have a statutory right to be accompanied by a representative or work colleague at any stage in the formal procedure.

The chosen companion may be a fellow worker, a trade union representative or an official employed by a trade union. The representative cannot act in a legal capacity.

Additionally, some disabled employees may request other types of companions that they will be legally entitled to, for example, a sign language interpreter.

It would not normally be reasonable for a member of staff to insist on being accompanied by a companion whose presence may prejudice the hearing nor would it be reasonable for a worker to ask to be accompanied by a colleague from a remote geographical location if someone suitable and willing was available on site.

The representative should be allowed to address the hearing to put and sum up the case, ask questions and confer with the employee during the hearing in a reasonable fashion.

The representative does not however have the right to answer questions on the individual’s behalf.