

Disciplinary policy and procedure

1 Introduction

- 1.1 Whilst the University expects its employees and staff to comply with this policy, it does not confer contractual rights or form part of any contract of employment and may be amended by the University or replaced at any time following appropriate consultation and negotiation with recognised trade unions. Breach of this policy may be addressed via the University's Disciplinary Policy and Procedure and code of conduct.
- 1.2 This policy will be reviewed by the Human Resources (HR) department on a 3 year basis or amended in response to changes in future legislation, case law or the ACAS code.
- 1.3 From here on the University of Northampton is referred to as 'UON' or 'we'.

2 Ownership

- 2.1 The HR department owns and manages this policy on behalf of UON.

3 Organisational scope

- 3.1 This Disciplinary policy is a corporate policy and applies to all employees (and workers, as applicable) of UON including any wholly owned subsidiaries, unless an alternative policy exists, subject to any qualifying conditions. It does not apply to Senior post holders for example the Vice Chancellor.
- 3.2 The provisions of this procedure in relation to dismissal do not apply where

dismissals arise out of:

- The expiry of a fixed-term contract of employment;
- Redundancy;
- The termination of a probationary contract under the provisions of the Probation Policy and Procedure;
- Incapacity due to long term sickness absence or ill health.

4 Policy statement

- 4.1 This policy is intended to reinforce the expectation that appropriate levels of staff conduct and performance must be maintained to ensure the efficient operation of the University.
- 4.2 Failure to reach and maintain required standards of conduct or abide by the University's policies and procedures may result in an individual being subject to disciplinary action up to and including dismissal.
- 4.3 We have four policies to address conduct and poor performance; the Disciplinary Policy and Procedure, the Performance Management Policy and Procedure, Sexual Harassment, Misconduct and Violence Policy and Procedure and the Absence Management Policy and Procedure.
- 4.4 We will not discriminate on the grounds of gender, race/ ethnicity, disability, age, sexual orientation, religion or belief or lack of, pregnancy/maternity, marriage/civil partnership or gender reassignment when applying this policy and associated procedures.
- 4.5 We will ensure employees are aware of this policy and procedure and how to access the contents.

5 Examples of misconduct

- 5.1 Misconduct/Negligence
General misconduct tends to cover minor misdemeanours. Behaviour like this would not warrant dismissal for a first offence but may lead to a written warning.

- Unauthorised or unjustifiable persistent absence (dealt with under the Absence Management Policy and Procedure)
- Unacceptable behaviour (particularly aggressive or offensive)
- Insubordination
- Wilful unsatisfactory work performance
- Breach of confidentiality (except whistleblowing)
- Refusal to comply with reasonable management instruction
- Failure to observe health and safety regulations
- Failure to observe and comply with university policies and / or procedures
- Breach of trust and confidence (except whistleblowing)
- Poor timekeeping
- Misuse of University equipment and resources including IT, email and the internet
- Harassment / bullying

5.2 Gross Misconduct/Gross Negligence

Gross misconduct is either deliberate wrongdoing or gross negligence by an individual which is so serious that it fundamentally undermines the relationship of trust and confidence between an individual and the University. Gross misconduct entitles us to dismiss without notice or payment in lieu of notice (known as a summary dismissal). Examples of behaviour that could amount to gross misconduct are:

- Fraud or deliberate falsification of records (as defined in the University's Fraud and Corruption policy)
- Physical violence or bullying / harassment
- Gross / serious insubordination
- Attending work under the influence of alcohol or illegal drugs
- Serious breach of health and safety rules
- Serious breach of confidentiality
- Criminal damage on the University's premises.
- Direct discrimination as defined in the University's Equality and Inclusion Policy
- Serious misuse of University equipment and resources, including IT, email and the internet
- Serious breach of security or of financial procedures
- Behaviour which brings the University into serious disrepute

- Intentional and / or malicious refusal to comply with reasonable management instructions
- Serious breach of University regulations, policies and procedures
- A criminal offence, which may (whether it is committed during or outside the employee's hours of work for the University) adversely affect the University's reputation, the employee's suitability for the type of work they are employed to do.

6 Key principles

- 6.1 Every effort will be made to avoid the use of disciplinary action where alternatives are considered appropriate including resolving issues informally.
- 6.2 Each stage of the disciplinary procedure will normally be taken in sequence, however, the procedure may be implemented at any stage if the alleged misconduct warrants such action.
- 6.3 Individuals will not normally be dismissed for a first disciplinary offence except in cases of gross misconduct or gross negligence.
- 6.4 In the interest of ensuring that disciplinary matters are resolved as fairly and efficiently as possible, all parties are expected to raise issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions. All parties must make time available to progress the investigation including rearranging diarised appointments and organising teaching cover, if appropriate.
- 6.5 Individuals do not have the right to be accompanied at any informal stage meetings or at disciplinary investigation meetings; however, requests to be accompanied will be accommodated if bringing a companion (work colleague or Trade Union Representative or official) does not unduly delay the investigation.
- 6.6 Individuals have the right to be accompanied by a companion (work colleague or a Trade Union Representative or official) at disciplinary hearings. The chosen companion will be allowed to address the hearing or meeting in order to put forward the employee's case, sum up the employee's case and respond

on behalf of the employee to any view expressed at the meeting. The companion does not have the right to answer questions on the employee's behalf or prevent the manager chairing the hearing from explaining their case.

- 6.7 We will make reasonable adjustments in line with our statutory obligations. Examples of reasonable adjustments may be: to be accompanied by a support worker or carer in the case of disability; to be accompanied by an interpreter.
- 6.8 Witnesses may be invited to a hearing by the employee to assist them in presenting their case and should provide any additional documentation they wish to be considered at the hearing at least 24 hours prior to the hearing.
- 6.9 Individuals will have the right of appeal against formal warnings and dismissal; however, there is no right of appeal during any informal procedures.
- 6.10 All formal disciplinary procedures must fully involve the HR Department to ensure consistency and fairness is applied across the University. The chair of the hearing is responsible for decision making.
- 6.11 The Articles of Government confer the Vice Chancellor with the power to suspend or dismiss; however, the Vice Chancellor has the right to delegate this power to senior members of staff as deemed appropriate.
- 6.12 The proceedings and outcome of a disciplinary hearing will normally be kept confidential between all persons involved. If the action has arisen originally from a grievance, the original complainant will only be informed that 'appropriate action has been taken'.
- 6.13 Where an individual raises a grievance during the disciplinary process, it may be temporarily suspended in order to deal with the grievance if appropriate. Where the grievance and disciplinary cases are unrelated it may be appropriate to deal with both issues concurrently.
- 6.14 Unauthorised recording of conversations is prohibited. Anyone in breach of this may be subject to disciplinary action.

7 Procedure

Informal Procedure

- 7.1 A Manager should discuss concerns about conduct with their team member at the earliest opportunity with the intention to resolve issues informally; for example offering support, help and appropriate training and development before resorting to formal disciplinary procedures.
- 7.2 A disciplinary sanction **will not** be applied during the informal stage.
- 7.3 If during the informal procedure it becomes obvious that the matter may be more serious, or if despite informal discussions, the conduct does not meet acceptable standards, an individual should be advised that the matter will be addressed under the formal disciplinary procedure.

Formal Disciplinary Procedure

- 7.4 Precautionary Suspension
 - 7.4.1 Suspension is where there is an alleged act of misconduct which requires an investigation. When someone is suspended this is not a disciplinary sanction as it is often in place to protect a colleague during an investigation and precautionary suspension will only be imposed after careful consideration. Where a manager deems it appropriate to precautionarily suspend someone being investigated, approval must be sought from the HR Business Partner normally in consultation with a member of the University Management Team. If precautionary suspension is required outside normal operational hours (e.g. night time, weekend) then the most senior manager / supervisor present will ask the person being investigated to leave the premises immediately and explain they must not return to work until they are asked to do so. The individual will be informed verbally of the precautionary suspension, which will be confirmed in writing by the HR department within a reasonable timeframe.

7.4.2 Examples where precautionary suspension may be appropriate include:

- relationships have broken down;
- in some cases of alleged gross misconduct/negligence;
- where there are potential risks to an employee's or the University's property or there are health and safety concerns;
- the University must exercise its duty of care to other parties;
- the employee's presence at work may hinder the investigation.

7.4.3 The period of precautionary suspension will be as brief as possible, and kept under weekly review by HR in consultation with a member of the University Management Team. During suspension the employee is not required to work or attend work except to attend pre-arranged appointments/ meetings/ hearings in relation to the disciplinary proceedings. Employees will only be asked to attend meetings during their normal working hours.

7.4.4 While under precautionary suspension, the individual must not access their university IT account, including their emails, unless they are gathering information directly related to their disciplinary case. An alternative means of communication may be agreed with the university while their disciplinary case is being dealt with so that there is no need to access their university IT account.

7.5 Investigation

7.5.1 The investigation should be full, thorough and completed in a timely manner. However the detail will depend on the nature of the alleged misconduct, the initial evidence against the individual, and whether the individual has admitted to the misconduct.

7.5.2 The individual subject to investigation will be invited to a meeting with an Investigating Manager and a member of HR to establish the facts of the case. They will be informed of the basis of the investigation and will have the opportunity to put their version or viewpoint across as well as any other evidence relevant.

7.5.3 The Investigating Manager should not have had any involvement in the

case and will not normally be the employee's line manager. However there may be occasions where it is appropriate for the line manager to investigate for example due to the need to deal with the issue quickly.

7.5.4 Witnesses may be interviewed and/or signed witness statements obtained. In cases of alleged bullying/ harassment the identity of the original complainant may be withheld until the initial phase of the investigation is completed.

7.5.5 Following the investigation, the Investigating Manager will conclude whether they are recommending formal action, informal action or no further action and will compile a summary report of facts which will clearly set out their reasons for the recommending a certain course of action.

The formal actions the Investigating Manager could recommend are:

- to initiate a disciplinary hearing
- changes to a policy or procedure
- further investigation into other matters uncovered.

The Investigating Manager should not suggest a possible sanction or prejudge what the outcome to a disciplinary hearing will be.

The informal actions the Investigating Manager could recommend are:

- training or coaching for parties involved
- counselling for parties involved
- mediation for parties involved
- notification that further similar action may result in disciplinary action.

Although an investigating manager may find there is no further action necessary, they could recommend that counselling, mediation or another form of support may be beneficial to the parties involved and the organisation.

7.5.6 The individual subject to investigation will be informed of the outcome of the investigation as soon as practicable and within 5 working days of the end of the investigation. This will not necessarily be 5 days after they have

been interviewed if further investigation is required for example interviewing other witnesses, gathering written data/ evidence.

7.6 Disciplinary Hearing

7.6.1 The Disciplinary Manager will be at the same level or more senior than the Investigating Manager and will not previously have been involved. This may be individual's line manager if they have not been involved in the investigation or another manager appointed by the HR Department.

7.6.2 The individual will be informed in writing of a disciplinary hearing giving at least 5 working days' notice and ensuring sufficient time to prepare their case. Full details of the alleged misconduct and copies of written evidence including the summary report will be provided along with information on the following:

- the possible consequences, up to and including dismissal (in cases of gross misconduct, gross negligence or where an employee has a live final written warning for a similar offence)
- the right to be accompanied by a companion (work colleague or a Trade Union Representative or official)
- the right to provide further evidence
- the right to call witnesses to support their case.

Also present at the hearing will be an HR representative who will advise on procedure and legislation, precedents within the organisation, ensure fairness and consistency and ensure that any penalty is reasonable in view of all the circumstances. Wherever possible another member of HR will attend as a note taker.

7.6.3 The Disciplinary Manager will accommodate one alternative hearing to take place within 5 working days of the original date if the individual or their companion cannot attend due to circumstances outside their control.

7.6.4 Any further request to reschedule may be refused unless there are exceptional circumstances. The individual subject to disciplinary will be invited to make a written submission.

- 7.6.5 Where the individual continues to be unavailable to attend a hearing, a decision may be made in their absence and on the evidence available.
- 7.6.6 The individual will provide copies of all documentation that they intend to reply upon to the HR department 24 hours before the hearing.
- 7.6.7 During the hearing the Disciplinary Manager will state the case and the individual or their companion will then have the opportunity to present their case and answer the allegations made. They will be able to present any additional evidence they have and call witnesses.
- 7.6.8 A witness will only be present in the hearing during their own part in the proceedings. If it is not practical for a witness to attend, the Disciplinary Manager should consider whether proceeding will affect the outcome and consider accepting written answers to any questions they put to the witness.

Where the Disciplinary Manager has questions about the investigation report, the Investigating Manager will be invited to attend the first part of the hearing and answer any questions. If this is the case, then the individual subject to disciplinary will be informed in advance. Where the Investigating Manager is unavailable to attend the disciplinary hearing, the Disciplinary Manager may consider submitting their questions in writing so that written answers can be provided in advance of the disciplinary hearing.

- 7.6.9 If new facts emerge it may be necessary to adjourn the hearing to allow the Disciplinary Manager to investigate them.
- 7.6.10 The Disciplinary Manager will consider all of the evidence presented and will decide one of the following outcomes:
- No case to answer; the case is dismissed in full and will not be considered in any future cases;
 - Informal action is appropriate;
 - Disciplinary sanction is appropriate.

7.6.11 When deciding any disciplinary sanction, the following should be taken into account:

- The sanction imposed in similar cases in the past;
- Whether standards of other employees are acceptable, and that this employee is not being unfairly singled out;
- The employees disciplinary record (including live warnings, general work record, work experience, position and length of service);
- Any special circumstances which might make it appropriate to adjust the severity of the sanction;
- Whether the proposed sanction is reasonable and proportionate in view of all the circumstances;
- Whether any training, additional support or adjustments to the work are necessary.

7.7 Notification of the outcome

7.7.1 The outcome will be notified to the individual in writing as soon as is practicable (normally within 5 working days) and will include details of their right to appeal. In some circumstances it may be possible to inform the individual of the outcome at the end of the hearing and confirm it in writing.

7.7.2 There are three levels of sanction and each stage will normally be taken in sequence. However, there may be times when it is appropriate to give a higher level of sanction due to the seriousness of the issue.

7.8 Levels of warning

7.8.1 First Written Warning

A first written warning will normally be given for a first act of misconduct and remains in force for 6 months.

7.8.2 Final Written Warning

A final written warning will normally be given when:

- a further act of misconduct has occurred during a 'live' first written warning
- there has been failure to achieve the required improvements

- an employee's first misconduct is sufficiently serious.

A final written warning will remain in force for 12 months.

Warnings will cease to be live following the specified period.

7.8.3 Dismissal

Dismissal is normally considered reasonable and proportionate outcome when an individual has already received a final written warning for similar misconduct or may be appropriate in the first instance of an offence amounting to gross misconduct or gross negligence. In the case of gross misconduct summary dismissal is usually the outcome and pay in lieu of notice is not paid.

7.9 Appeals

7.9.1 An individual may appeal if they feel the disciplinary action taken against them is wrong or unjust. They may appeal on any number of grounds, e.g.

- belief the disciplinary procedure was not followed;
- belief the sanction was too severe/ inconsistent
- where evidence was presented but considered;
- where there is new evidence to be considered.

7.9.2 Following receipt of their disciplinary outcome letter, the individual can appeal in writing to the Director of Human Resources within 5 working days. The letter must state precisely the grounds of the appeal.

7.9.3 The HR department will acknowledge the appeal within 5 working days of receipt.

7.9.4 The individual will be invited in writing to the appeal hearing giving at least 5 working days' notice and will be informed of:

- the potential outcomes of the appeal;
- details of the procedure;
- the right to be accompanied by a work colleague or Trade Union representative;

- the right to introduce and comment on any new evidence.
- 7.9.5 The appeal hearing will normally be chaired by a more senior manager than the Disciplinary Manager, who has not previously been involved in the case, and where possible is external to the Faculty or Professional Service that the individual works in. They will be supported by a Human Resources representative.
- 7.9.6 In the case of an appeal against a dismissal the appeal will be heard by a panel consisting of 2 members of University Management Team and supported by a member of the HR Business Partnering team normally within 4 weeks of receipt of the appeal.
- 7.9.7 During the hearing the individual or their representative will be given the opportunity to explain their reason for appeal and any additional evidence.
- 7.9.8 After the hearing consideration will be given by the Appeal Manager or panel to either uphold or overturn the original decision. If further investigation is required, the individual will be informed. No sanction can be increased as an outcome of an appeal.
- 7.9.9 The decision will be communicated in writing as soon as reasonably practicable but normally within 5 working days of the appeal hearing. On some occasions it may be possible to adjourn the hearing and provide a response on the same day which will then be confirmed in writing. Where further investigation has been necessary the individual will be informed of the timeframe for an expected outcome.
- 7.9.10 The decision of the Appeal Manager (or panel in the case of dismissal) is final and concludes the internal procedure. There is no further recourse to appeal within the institution.
- 7.9.11 Where there is an appeal against a summary dismissal the individual will not be paid during the appeal procedure. If the sanction is revoked and the individual is re-engaged, their pay and service will be restored so that there is no break in them.

7.10 Trade Union Representatives

Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. However, the matter should be discussed at the earliest opportunity with an official employed by the union, after obtaining the employee's agreement.

7.11 Criminal charges/convictions

- 7.11.1 An individual should not be dismissed or otherwise disciplined solely because they have been charged with a criminal offence. Consideration needs to be given to what effect the charge or conviction has on their ability and/or suitability to do the job and their relationship with the University, work colleagues and customers.
- 7.11.2 Failure to disclose a criminal conviction whilst in employment at the University could be considered as gross misconduct, depending on the relevance to the role they have and following full investigation.
- 7.11.3 Where the alleged conduct requires prompt attention, the University need not await the outcome of the prosecution before taking fair and reasonable action.
- 7.11.4 Where the individual is not available for work because they are on remand their pay will be stopped and the University must decide, whether the individual's job can be held open.
- 7.11.5 Where the nature of the conviction would prevent the individual carrying on in their post, e.g.. removal of a relevant licence, consideration should be given to whether alternative work is appropriate and/or available.

7.12 Allegations by individuals who wish to remain anonymous (potentially in cases of bullying/harassment)

- 7.12.1 In these circumstances the University should ensure a balance is maintained between protecting and respecting the individual's wish to remain anonymous with that of the individual facing the allegations right

to have a fair hearing. However, following the initial investigation phase the identity of the complainant will in most cases need to be revealed to the person against which the alleged bullying/harassment is lodged. The Human Resources department should be consulted regarding the appropriateness of the person's identity being revealed.

- 7.12.2 In these cases the disciplinary procedure is still appropriate but the original complainant can submit a written statement anonymously providing full details of the incident are documented (e.g. time, place, date and description). This complaint may arrive in the form of a grievance which, alongside any interviews, will form a part of any disciplinary investigation. The investigating manager where possible must obtain corroborating evidence from other sources for submission at the disciplinary hearing. The investigating manager should also sensitively interview the complainant during the investigation to ascertain the full facts.
- 7.12.3 It is probable that the complainant would be reluctant to attend a disciplinary hearing as a witness because of alleged bullying/harassment. Arrangements should be considered for the employee against whom the allegation is made to question the complainant through the chair of the disciplinary panel.
- 7.12.4 Vexatious or malicious allegations will be treated as disciplinary actions in their own right and are thereby subject to the disciplinary procedure.

7.13 Professional registration

Certain professions (e.g. nursing, midwifery) are regulated by statutory bodies conditional upon continuing registration. Any incidents involving alleged professional misconduct or serious performance issues must be reported to the appropriate registration authority; in such cases, the Human Resources department will undertake to inform the authority in liaison with the Dean/Director.

7.14 Records

- 7.14.1 Written records should be kept of any disciplinary proceedings. The

records should be retained confidentially and within the statutory requirements of the Data Protection Act 2018 and kept for no longer than necessary.

7.14.2 Records should include:

- the allegation against the employee
- the employee's defence
- findings made and actions taken
- the reason for the action taken
- whether an appeal was lodged
- the outcome of the appeal
- Any grievances raised during the disciplinary procedure and subsequent developments
- notes of any formal meetings

8 Associated documents

Performance Management Policy and Procedure
Grievance Policy and Procedure
Absence Management Policy and Procedure
Code of Conduct

9 Equality impact assessment

Completed

10 Version control

Version Control	V3	Approval record	
Author:	HR	Approval:	Board Approval 2013
Date written:	November 2013	Updates:	December 2021

Current status:	Approved	Approval of revision	TU Liaison – 23/11/2021 UMT – 11/01/2022
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Record of Amendments			
Date	Version number	Details of Change	Approval
December 2021	V3	<p>An attempt to make the language more supportive, however the nature of the policy made it difficult to achieve this. A majority of the policy is bound by statutory processes the must be followed which also made the language used sound less supportive.</p> <p>Procedure: the previous version required the investigation manager to attend the disciplinary hearing, however it was felt that this did not add anything to a disciplinary hearing. The new process allows the Disciplinary chair to invite the investigation manager should they have any questions about their report.</p>	11/01/2022