



Human Resources

Disciplinary Policy and Procedure

Updated February 2016

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1.0 Purpose and Scope

The University expects satisfactory standards of behaviour, conduct and attendance from all its employees. The procedures set out in this document aim to:

- Assist in enabling both the employee and the University to be clear about the expectations of both parties.
- Provides a framework for dealing with instances where employees are alleged not to have met the required standards of conduct.
- Provide a mechanism for consistent, prompt, and fair treatment for all employees in disciplinary matters.
- Provide a mechanism for managing the remuneration of employees who demonstrate continued unsatisfactory conduct. In accordance with the principal statement, automatic increments will be halted if conduct is unsatisfactory (formal stage only). This action will be taken if an individual at the time of the 1st April automatic increment has a live formal disciplinary warning on file.

Separate procedures apply to:

- Non-academic staff under an initial period of probation¹ (*Probation Assessment Review procedure*);
- The management of underperformance (*Capability Policy*);
- The management of sickness absence (*Sickness Absence Policy*).

There are circumstances where an allegation or complaint will be investigated and dealt with under another University policy, but may, following the outcome of the investigation, transfer to be dealt with under the Disciplinary Procedures. Examples of this include allegations investigated under the following University procedures:

- *Harassment and Bullying*
- *Misconduct or Fraud in Research*
- *Anti-Bribery*
- *Public Interest disclosure (Whistleblowing)*
- *Complaints about Learning Opportunities*
- *Grievance Policy and Procedure*
- *Social Media Policy*

This policy and procedure applies to all members of staff. Ordinance (11.2 *Disciplinary Procedures*) also applies to Academic staff². Whilst this policy has been written to ensure that the process outlined in Ordinance 11.2 is followed, this Ordinance should be referred to when an Academic member of staff is going through the disciplinary process.

Where Ordinance does not outline a process, these procedures provide a best practice process which can be followed.

Employees who undertake research within the University of Surrey, irrespective of how it is funded, should refer to the *Code of Practice on Allegations of Research Misconduct*.

¹ Employees who are under a further period of probation due to a promotion/new role within the organisation and have more than 12 months continuous service (or 24 months for starters after 6 April 2012) are subject to this Disciplinary policy and procedure.

² Those covered by Lecturer A & B, Senior Lecturer, Associate Professor, Professor Role Profiles

This should be read in conjunction with the UUK Concordat to Support Research Integrity and the RCUK's Research and Code of Conduct on the Governance of Good Research Conduct.

This policy and procedure does not form part of any employee's contract of employment. It may be amended from time to time with appropriate consultation with recognised trade union representatives.

A flowchart of this policy and procedure is shown in Appendix C.

2.0 Definitions of Conduct

It is expected that every employee should:

- be honest;
- maintain at all times a high standard of integrity and conduct;
- not use their position to further private interests or those of relatives and friends;
- fulfil the duties specified in their contract of employment/job purpose / role profile.

Disciplinary action would normally be considered in cases of misconduct. There are two levels of misconduct: ordinary and gross.

Ordinary misconduct

This misconduct would not lead to dismissal for a first offence on the part of the employee. However, repeated instances of ordinary misconduct can lead to dismissal. Non-exhaustive examples of ordinary misconduct are shown in Appendix A.

Gross misconduct

Conduct so serious that it effectively breaches the contract of employment and could result in dismissal with notice pay or summary dismissal (with no notice pay). Non-exhaustive examples are given in Appendix B.

3.0 Principles of the Procedure

Managers are responsible for addressing conduct and behaviour issues as early as possible and for taking appropriate action. Where appropriate, steps will be taken to resolve issues on an **informal basis** in the first instance without recourse to the formal procedure.

Before disciplinary action is taken an **investigation** shall be undertaken.

The employee against whom an allegation has been made shall be advised in writing of the **nature of the allegations** made against him/her and will be given the opportunity to respond to the allegations during the investigation.

Dismissal will not be an outcome for a **first breach of discipline** except in the case of gross misconduct.

All employees who are the subject of this procedure have the **right to be accompanied** at any formal disciplinary hearing held under the procedure by a recognised trade union representative or work colleague. It is the employee's responsibility to make such arrangements.

Employees may be accompanied at meetings by an appropriate person to **provide support in the case of a disability or language issue**. The employee has the responsibility to inform the

relevant manager of their specific requirements in this respect so that the University can source this support and consider reasonable adjustments.

All parties involved in these procedures must ensure that they maintain, as appropriate, the **confidentiality** of the process within and outside the University. All disciplinary records will be treated as confidential and will be kept in accordance with the data protection guidelines.

Involvement of Human Resources. A member of the human resources team will be consulted and will advise on suspension, investigation and the formal procedure.

An employee will have the **right to appeal** against any sanction imposed under the formal disciplinary procedure. Sanctions or warnings issued will remain in force pending the outcome of any appeal.

The University will make every effort to deal with disciplinary allegations as quickly as possible, at the appropriate management level. Implementation of any stage of the formal disciplinary procedure will be discussed first between the line manager and the HR department. Whilst every endeavour will be made to comply with **timescales**, due to the complexity and or specific circumstances of cases, timescales may be extended. In such circumstances the employee will be advised of the reasons for any delay.

Criminal Offences - If an employee is charged with, or convicted of, a criminal offence (outside of employment) this will not in itself be considered a reason for disciplinary action. Consideration will be given to the relevance and effect the charge or conviction has to or on the employee's suitability to do their job and their relationship with the University, work colleagues, students and customers.

We will not usually wait for the outcome of any prosecution before deciding what action, if any to take. Where an employee is unable or has been advised not to attend a disciplinary hearing due to pending criminal action, the employee will be informed that, unless further information is provided, the University may make a disciplinary decision on the evidence available.

If at any stage within this procedure it becomes clear that the performance or conduct issue relates to capability the matter will then be dealt with under the *Capability Policy* and the disciplinary process will cease.

Nothing in this policy or procedure removes the right of a member of staff to invoke the relevant Grievance Procedure. Should a member of staff believe they have been treated unfairly, or that problems with work outside their control have been inadequately dealt with, they have the right to raise a grievance. In the event that any formal complaint or grievance is raised against the University and/or named individuals whilst formal disciplinary proceedings have been instigated under this procedure, the disciplinary process *may* be held in abeyance pending the conclusion of any connected grievance proceedings.

The University will provide training to Heads of Department, managers and supervisors in the appropriate handling of disciplinary issues under this policy and procedure, through the HR department and formal Staff Development training events.

4.0 Informal Procedure

It is part of the normal management responsibility to bring to the attention of the employee the standards required and any failure to meet those standards.

Cases of minor misconduct should be dealt with by the line manager informally and without delay. The manager must speak to the employee in private and should encourage them to conduct themselves in accordance with the required standards.

Examples of such offences may include isolated instances of:

- poor time keeping;
- non-compliance with sickness notification rules;
- repeated errors in work;
- inappropriate comments or behaviour;
- failure to follow a procedure.

The purpose of these discussions is to ensure that the employee understands the nature of the concerns, expectations of improvements in conduct and where appropriate timescales and the nature of any support available. They should be notified that if they do not improve then they may be subject to formal disciplinary action as set out below.

The manager should confirm the outcomes of any discussion in writing to the employee, including the agreed objectives, expectations and timescales for review. These notes must clearly state that this is the **Informal Stage** of the Disciplinary Procedure. The line manager should retain any note of these informal discussions or meetings.

If there is a satisfactory improvement in performance following the informal stage of this procedure, the matter will be considered resolved and the individual informed in writing of this. In the event that the improvement is not maintained / or if a similar disciplinary issue reoccurs within 12 months, the formal procedure should be invoked.

5.0 Formal Procedure

In matters that are more serious or in cases of repeated minor breaches the alleged misconduct will be dealt with under the formal disciplinary procedure. The University reserves the right to implement the formal procedure at any stage taking into account the alleged misconduct, its nature and seriousness, and any previous disciplinary action.

5.1 Suspension

Certain alleged offences may require that an employee be suspended pending the outcome of an investigation or a disciplinary hearing. **Suspension will be on full pay and is a neutral act and is not a disciplinary sanction.**

A Head of Department (or nominated representative) may, after consultation with an appropriate HR representative, suspend an employee on full pay. Suspension should be for the minimum period possible, while the alleged offence is investigated and will be reviewed regularly.

Suspension may be appropriate in the following circumstances (not an exhaustive list):

- to allow an investigation which might be inhibited by the presence of the employee;
- when there are strong reasons for doubting the ability or willingness of the employee to work normally;
- if the employee is the subject of criminal proceedings which may affect their job;
- where the presence of the employee on site is unacceptable to others and may increase the likelihood of further misconduct;
- where it is deemed to be in the employee's or the University's best interest to be removed from the workplace.

There may be alternatives to suspension available, such as temporarily moving the employee to another location / role whilst the investigation is on-going and this should be considered. If this is not possible, the individual will be given formal written notification of the suspension and, where possible, an indication of the length of the suspension.

5.2 Investigation

Before a disciplinary hearing is convened there will be an investigation into the circumstances of the alleged misconduct. The purpose of the investigation is to:

- establish the nature of the allegations
- gather evidence to enable a decision to be taken on whether there is a disciplinary case to answer
- consider if the matter should proceed to a formal hearing

The employee will be informed in writing of any allegation and that an investigation to establish the facts will be undertaken.

The appropriate line manager will normally carry out this investigation; however in complex or potentially serious cases, or where there could be a conflict of interest, it will be appropriate for an independent Investigating Officer(s) to be appointed in liaison with the relevant HR representative.

The role of the Investigating Officer will be

- to ensure that, where practicable, all relevant facts and witness statements are obtained in relation to the allegation(s);
- to decide the number and which witnesses are necessary to interview and to invite them to an investigation meeting. Interview statements which are signed and dated will be produced;
- to complete the investigation in a confidential manner, within an appropriate timescale;
- to provide a written report outlining the findings of the investigation.
- to present the findings of the investigation at any subsequent formal hearing.

As part of the investigation the employee who is the subject of the allegation will be asked to attend an investigatory interview.

All employees (whether they are the employee who has allegedly committed misconduct or other employees participating in the investigation) must co-operate

fully and promptly in any investigation. This may include informing the Investigating Officer of the names of any relevant witnesses, disclosing any relevant documents and attending investigation interviews.

The outcomes of an investigation may be:

- There is no case to answer and therefore no disciplinary action is taken
- The matter is dealt with informally, if appropriate with support and or training to resolve the matter.
- Recommendation that there is a disciplinary case to answer and a disciplinary hearing should be arranged.

The individual will be informed of the outcome and this will be confirmed in writing by Human Resources, indicating any next steps.

Internal investigations will not be bound by the outcome of any external criminal investigation, unless the University deems it appropriate to do so.

Where the investigation involves misconduct or fraud in research the University will endeavour to complete investigations as quickly as possible and normally will not exceed six weeks to comply with RCUK requirements.

6.0 Disciplinary Hearing

Should the outcome of the investigation be referral to a disciplinary hearing, the individual should be notified in writing of the date of the disciplinary hearing, with a minimum of 10 calendar days' notice of the hearing date. The letter will outline the allegations/nature of misconduct, and if the alleged misconduct is considered as potentially a serious/gross misconduct case and dismissal could be an outcome, then they will be informed of this. The individual will also be notified of their right to be accompanied by either a work colleague or a recognised trade union representative at the hearing.

The purpose of the hearing is to provide the opportunity for the employee to respond to allegations made under this procedure.

The panel for non-academic staff (in cases where the outcome could be dismissal) should normally comprise:

- As Chair, a senior manager independent from the case;
- One other manager independent from the case.
- An HR advisor

The panel for academic staff (in cases where the outcome could be dismissal) should normally comprise:

- As Chair, a senior manager independent from the case;
- A senior member of Academic staff (e.g. An Associate Dean, a Head of Department, a Head of School, or another senior member of staff who holds an academic contract of employment);
- An HR advisor

For all other cases the panel should normally comprise:

- As Chair, a senior manager independent from the case;
- An HR advisor;
- If designated by the Chair, a third panel member who should be a manager independent from the case.

A note taker should be present to record the hearing, and these notes will be circulated to attendees. Recording devices will not be permitted.

The employee will be provided with a copy of the Investigating Officer's report and any other evidence including the names of witnesses (unless their identity is to be kept confidential) that will be presented at the disciplinary hearing, at the same time that they are invited to attend the hearing.

The employee will be invited to submit evidence and / or a written statement which should be received by HR at least 2 calendar days before the disciplinary hearing.

6.1 Witnesses

At least 5 calendar days prior to the hearing, the employee and Investigating Officer will submit to HR the names of any witnesses they wish to attend, and an explanation of why their evidence is required.

On the basis of the information submitted, the Chair of the panel will determine whether or not such witness evidence is required and will confirm the witnesses to be called. In certain cases the Chair may decide that a witness statement is sufficient. Any witness who will be called to the disciplinary hearing should provide a signed and dated witness statement prior to the Hearing, which will form the basis on which they may be questioned.

Employees are responsible for making arrangements for their witnesses to attend. Where witnesses are employees of the University, appropriate time off will be facilitated.

Requests for additional witnesses shortly before or at the hearing will be considered and decided by the Chair.

6.2 Conduct of the disciplinary hearing

The Chair conducting and hearing the case will introduce those present and explain the process that will be undertaken:

- The Investigating Officer will present the findings, call any witnesses and answer questions from the investigation.
- The employee or their representative will be able to ask questions to the Investigating Officer about the findings and to raise points about any information provided by witnesses.
- The employee or their representative) will respond to the allegations, call any witnesses, present their case and answer questions.
- The Investigating Officer will be able to ask questions of the employee about their case and raise points about any information provided by witnesses.
- The Investigating officer will sum up

- The employee or their representative will sum up.
- Reasonable requests for adjournments made by any party will be allowed by the Chair.
- If a witness is to be called s/he will be invited to attend the hearing at an appropriate time.
- The members of the disciplinary panel will be able to question all those involved at any stage in the hearing.

Before a decision is taken an adjournment should occur to allow the panel proper consideration of the available evidence and facts of the case. After hearing the presented evidence, the Chair of the Disciplinary panel may decide to question other witnesses or clarify evidence in order to aid the decision making process. It may be necessary to further adjourn the hearing so that this can take place.

The Disciplinary panel will then consider all representations and decide whether (on the balance of probabilities) there is a genuine belief that the allegation(s) are confirmed, based on reasonable grounds and following a reasonable investigation. If so, they will decide what level of sanction, including and up to dismissal is relevant. In considering this decision, the panel will consider the employee's previous conduct and any mitigating circumstances outlined.

If possible, the outcome of the disciplinary hearing will be given verbally. In all cases it will be confirmed in writing to the employee within 7 working days of it being reached.

The letter will also confirm the employee's right to appeal against any formal sanction.

7.0 Disciplinary Sanctions

The disciplinary hearing may result in a number of possible outcomes or sanctions.

7.1 No Further Action

If there is insufficient evidence to prove the allegation, the case will be dismissed. Additionally, if the offence is of a minor nature it may be decided that no sanction is required. No record of the disciplinary action will be kept on file.

7.2 First Written Warning

If the offence is considered sufficiently serious, or if a further offence occurs following the informal stage of the procedure, a first written warning may be issued to the employee. The written warning will give details of the complaint, the findings of the disciplinary hearing, the action(s) required, any relevant timescales and will be notified of the right of appeal. The letter will also warn that further disciplinary action will be considered if there is further misconduct.

A copy of the warning and associated documents will be retained on the individual's personal record and will normally remain in force for 12 months. The warning will remain permanently on the personnel file but will be disregarded after its expiry if the desired improvement has been made and there has been no further action in respect of this matter.

This letter will also advise the employee that due to unsatisfactory conduct, any automatic increment due on 1st April will be halted whilst the warning remains in force.

7.3 Final Written Warning

If the offence is sufficiently serious or has taken place before a previous warning has expired, then a final written warning may be issued to the employee. The final written warning will give details of the complaint, the findings of the disciplinary hearing, any action(s) required, any relevant timescales and will notify the right of appeal. The letter will also warn that dismissal will be considered if there is further misconduct.

A copy of the warning and associated documents will be retained on the individual's personal record and will normally remain in force for 12 months. The warning will remain permanently on the personnel file but will be disregarded after its expiry if the desired improvement has been made and there has been no further action in respect of this matter.

This letter will also advise the employee that due to unsatisfactory conduct, any automatic increment due on 1st April will be halted whilst the warning remains in force.

7.4 Dismissal or actions short of dismissal

If the matter is considered sufficiently serious to amount to gross misconduct or further misconduct occurs within the period of the written warning, dismissal may result.

In appropriate cases the University may consider some other sanction short of dismissal, such as demotion, a transfer to another department or job, loss of seniority or a reduction in pay. These sanctions may be used in conjunction with a final written warning.

If the disciplinary panel reach a decision to dismiss, this can only occur with the authority of the Director of HR or their designated representative.

The employee will be given written details of the allegations, the findings of the disciplinary hearing, the reason for dismissal, the date on which employment terminates (taking into account appropriate notice periods as per terms and conditions of employment), and will notify the right of appeal.

Dismissal for gross misconduct may be invoked without recourse to any of the stages of disciplinary warnings outlined above. Dismissal for gross misconduct will usually be summary, i.e. without pay in lieu of notice.

8.0 Appeal

There is no right of appeal against the outcome of the informal stage of this procedure.

If the employee wishes to appeal any of the outcomes made at any formal stage of the Disciplinary Procedure they should appeal to the Director of HR in writing, within 10 working days of receiving the written decision, stating the grounds for appeal.

An Appeal Hearing may or may not be a re-hearing of the case depending on the circumstances of the case. The employee must be specific about the grounds of appeal; these will effectively form the agenda for the hearing. Appeals may only be raised on the grounds of:

- Procedure - a failure to follow procedure had a material effect on the decision;
- Decision - the evidence did not support the conclusion reached or is inconsistent with other decisions within the University.
- New evidence - which has genuinely come to light since the first hearing. Where new evidence is raised, further investigations may need to be carried out which may require the Appeal Hearing to be delayed pending the outcome of these investigations and to give the employee an opportunity to consider any new information obtained.

The Director of HR, or their designated representative, will arrange a meeting of the Appeals Committee at the earliest convenient date. This should normally be within one month after the matter has been formally raised with the Director of HR.

The Director of HR, or designated representative, will establish the Appeals Committee which should comprise:

Appeals against a first written warning:

- As Chair, a senior manager independent from the case;
- An HR representative

Appeals against a final written warning or a dismissal (non-academic staff):

- As Chair, a senior manager independent from the case;
- One other senior manager independent from the case.
- An HR representative

Appeals against a final written warning or a dismissal (academic staff):

- As Chair, a senior manager independent from the case;
- A suitably qualified individual, not employed by the University or an external member of Council, selected from a maintained pool of suitably qualified individuals.
- An HR representative

Senior managers are defined as staff at Grade 6 level or above.

The individual raising the appeal will be informed of the composition of the Appeal Committee. Should they have any concerns these should be raised with the Director of HR who will consider the employee's concerns and may reconstitute an agreed panel.

The Appeals Committee will invite the employee in writing to attend an appeal meeting, informing the employee of the entitlement to be accompanied by a colleague or recognised trade union representative.

The decision of the Appeals Committee shall:

- a) confirm the original decision;
- b) revoke the original decision; or
- c) substitute a different decision.

The decision of the Appeal committee shall be final and there shall be no further right of appeal.

For academic staff, the applicable appeals process is set out in *Ordinance 11.2.26 Appeals*.

9.0 Confidentiality

All information relating to the disciplinary case will be treated confidentially and maintained in compliance with the Data Protection Act 1998. Information relating to the complaint will be shared with only those who have a legitimate requirement to see the documentation as part of resolution to the disciplinary or any consequent procedure.

It is expected that all parties will be sensitive to the nature of such proceedings, including matters discussed and any evidence provided. Breach of confidence, on either side, may compromise the integrity of the procedure and may be subject to disciplinary action. This does not preclude individuals from seeking appropriate advice, support and information in relation to the case.

Where the University continues to investigate any matter as a duty of care or a legislative requirement then it may be necessary to share the information with appropriate external authorities.

10.0 Rearranging Hearings

If the employee or their representative cannot attend at the time specified for a hearing, the employee must inform their line manager and/or HR immediately and an alternative time will be arranged. The employee must make every effort to attend a hearing and failure to attend without good reason may be treated as misconduct. If the employee fails to attend without good reason, or persistently is unable to attend, the hearing may be heard in their absence on the available evidence.

11.0 Right to be Accompanied

The employee must tell their line manager who they have chosen to act as their representative in good time before the hearing. The employee may be required to choose an alternative if the chosen representative is unavailable for the scheduled hearing and will not be available for more than five working days after the scheduled date of the hearing.

The representative may make representations, and sum up the employee's case but is not allowed to answer questions on the employee's behalf.

Employees do not normally have the right to bring a representative to an investigative interview, although such requests will be considered provided that timescales for the meetings are not affected.

There is no requirement on a work colleague to accept a request to accompany an employee.

EXAMPLES OF MISCONDUCT

Some examples of misconduct are shown below (these are not exclusive)

- a) Condoning serious actions contrary to the interests of the University;
- b) Breach of safety procedures or regulations;
- c) Unsatisfactory performance of the duties of the post (not due to a capability issue);
- d) Refusing to comply with reasonable instructions;
- e) Unsatisfactory timekeeping;
- f) Unauthorised absence from work;
- g) Breach of confidentiality at work;
- h) Inappropriate use of social media
- i) Breach of University, Faculty or Departmental safety regulations;
- j) Breach of other University, Faculty or Departmental policies, rules or regulations;
- k) Failure to conform to any of the University Rules and Regulations;
- l) Breach of any other condition of employment;
- m) Breach of the Code of Practice on Allegations of Research Misconduct as set out in the Code.

EXAMPLES OF GROSS MISCONDUCT

If an employee acts in a way which is incompatible with the discharge of their duty to the University, they may be dismissed without notice or salary in lieu of notice. Some examples of gross misconduct are shown below (these are not exclusive):

- a) Wilful disobedience of a lawful order;
- b) Theft or unauthorized possession of money or property belonging to any member of the University community, or to any other person legitimately present within the University precincts;
- c) Using threatening/harassing/discriminatory behaviour or physical violence against any member of the University community or any other person legitimately present within the University precincts;
- d) Making false entries in University records or other official documents (including applications for employment);
- e) Wilful damage to University property;
- f) Incapacity to perform the duties of the post in a manner consistent with the University's Health and Safety Policy because of drunkenness and/or illegal drug taking;
- g) Action liable to cause unacceptable damage to the University's reputation or bringing the University into disrepute
- h) Serious breach of confidentiality of work;
- i) Downloading and/or watching and/or distributing illegal, offensive or unsavoury material from the Internet;
- j) A serious breach of health and safety that could endanger self or others;
- k) A serious breach of the Code of Practice on Handling Allegations of Research Misconduct as set out in the document.

Disciplinary Policy Flowchart

