

Ordinance 11.3 – Conduct and Disciplinary Proceedings

Part I – Application and scope

This Ordinance shall apply in circumstances where a member of staff's conduct is to be reviewed or where dismissal of the member of staff for 'some other substantial reason' within the meaning of the Employment Rights Act 1996 is contemplated.

1. Where at any stage of proceedings being taken under this ordinance it emerges that the member of staff's performance or capability may have been wholly or partly influenced by a clinical condition, the person(s) or panel dealing with the matter may, at their discretion and if they consider it appropriate, adjourn any meeting or hearing in order to obtain such reports and advice as they may deem necessary. They may also, at their discretion, determine whether:
 - (i) to halt the proceedings under this ordinance and transfer the matter to the appropriate stage of the Rules and ordinance for the review of members of staff demonstrating incapacity on health grounds; or
 - (ii) to continue with the proceedings under this ordinance, taking into account as appropriate the member of staff's clinical condition. In such circumstances, the person(s) or panel dealing with the matter may invite to any meeting or hearing, for the purpose of advising him/her/it, an appropriately clinically qualified person who has had no previous involvement with the case under consideration. Such person shall be appointed by the People Services Director or a member of the People Services Senior Leadership Team, having first consulted an appropriate medical officer, through the Occupational Health Service.
2. Issues of unsatisfactory conduct will normally be dealt with through management and staff review, and this ordinance will be used only where the failure to reach a satisfactory level of conduct has become a disciplinary issue. Investigations into potential disciplinary matters should be conducted in a fair and reasonable manner. The nature and extent of the investigation will depend on the seriousness of the matter. Investigatory meetings should be confined to establishing the facts of the case. Disciplinary action should not be considered at an investigatory meeting. Investigations of potential disciplinary matters should be carried out without unreasonable delay. In some cases this will require the holding of an investigatory meeting with the person concerned or with other members of staff before proceeding to any disciplinary hearing. In others, the investigatory stage will be largely the collation of evidence for use at any disciplinary hearing. Where interviews are held with witnesses, notes should be made and if potentially they are to be used in disciplinary meetings, agreed with the members of staff concerned.

Part II – Informal Procedure

3. When a member of staff's conduct is called into question, his/her line manager or the appropriate member of the Faculty Leadership Team/ Directorate Leadership Team will discuss the problem with the member of staff informally. The discussion shall be informal and constructive to allow the member of staff an opportunity to express his or her opinion and for the line manager or the appropriate member of the Faculty Leadership Team/ Directorate Leadership Team to identify the issue and consider its causes and possible solutions.
4. If the line manager or the appropriate member of the Faculty Leadership Team/ Directorate Leadership Team still has concerns about the member of staff's conduct after such informal discussion, the line manager or the appropriate member of the Faculty Leadership Team/ Directorate Leadership Team shall make a brief note of the discussion and confirm the main points, including future expectations and the potential consequences of a failure to improve.

Part III - Formal Procedure

5. Save as provided otherwise, members of staff who are the subject of a formal meeting or appeal hearing under the procedures that follow have the right to be accompanied at such meeting or hearing by a certified trade union representative or work colleague reasonably chosen by the member of staff. There is no right to legal representation, except in specific exceptional cases (and only at the dismissal stage of proceedings) namely where:
 - i) it is a reasonable adjustment under the Disability Discrimination Act 1995,
 - ii) professional registration might be at risk (for example in the case of medicine or nursing),
 - iii) when the employee is facing a simultaneous criminal charge.

Stage 1 -

6. Where informal discussions have not led to improved conduct, or where there is a prima facie case that alleged misconduct is of such seriousness that informal discussion is considered to be inappropriate, the member of staff's relevant Pro-Vice-Chancellor/Head of School/ Director or other organisational unit, as appropriate, or a manager designated by him/her (the 'Disciplinary Manager') may consider taking formal action under Stage 1 of those procedures. The Disciplinary Manager may, if he or she consider it appropriate, designate another person to investigate the circumstances of the case (the 'Investigating Manager') and shall inform the member of staff accordingly.

For minor corrections and issues – and for most informal investigations and corrections – the Pro-Vice-Chancellor/Head of School/ Director may not need to appoint an Investigating Officer. However in cases where the Pro Vice Chancellor/ Head of School/ Director is involved (e.g. a complaint against him or her) or where the matter may be or become serious, an Investigating Officer should be appointed and the Disciplinary Manager should be a person other than the Pro Vice Chancellor/ Head of School/ Director.

Where the Disciplinary Manager appoints an Investigating Manager, the Investigating Manager shall undertake such enquiries as he or she deem to be appropriate with a view to obtaining information and assembling evidence as to the nature and likely causes of the alleged misconduct. The Investigating Manager shall normally interview the member of staff. The person concerned should be given advance warning of the meeting with

sufficient time to prepare and may be accompanied by a colleague or trade union representative at the meeting.

The Investigating Manager shall report his/her findings to the Disciplinary Manager, who shall determine whether or not there are grounds to indicate that an act of misconduct may have occurred. If not, the Disciplinary Manager shall inform the member of staff, in writing, accordingly.

7. If the Disciplinary Manager decides that there are grounds to indicate that an act of misconduct may have occurred, the Disciplinary Manager shall write to the member of staff to invite them to a formal meeting. The Disciplinary Manager shall inform the member of staff in writing that there is to be a meeting. The letter shall include:
 - (i) a statement of the grounds that have led to the meeting being called including full details of the alleged misconduct;
 - (ii) any supporting information and evidence and notes or report (if any) of the Investigating Manager;
 - (iii) the date, time and location of the meeting;
 - (iv) The name of any person accompanying the Disciplinary Manager (e.g. a member of the People Services Directorate);
 - (v) the fact that the meeting is taking place under Stage 1 of these procedures;
 - (vi) the right of the member of staff to be accompanied by a work colleague or a trade union representative;
 - (vii) a copy of this ordinance.
8. At such meeting, where an Investigating Manager has been appointed, the report of the Investigating Manager shall be made available to the member of staff and if requested to do so either by the Disciplinary Manager or by the member of staff, the Investigating Manager shall explain the substance of the alleged misconduct to the member of staff. The member of staff shall be given a fair opportunity to respond and state his or her case. If, having considered the evidence, the Disciplinary Manager is satisfied that the member of staff has committed an act of misconduct, the Disciplinary Manager shall write to the member of staff informing him/her:-
 - (i) of his/her finding and the basis for such finding;
 - (ii) whether it is appropriate for a formal disciplinary warning to be given (oral or written) under these procedures and, if such warning is given, the period during which the warning will remain active (which will be in accordance with ACAS guidance from time to time);
 - (iii) the standard of conduct expected, the time during which this improvement must be achieved and the consequences of any repetition, or if appropriate, failure to improve, within such timescale (such consequences may include referral to Stage 2 or 3 (as considered appropriate) of these procedures);
 - (iv) whether any further measures designed to assist in resolving the matter should be taken (e.g. any training or support which may be available);
 - (v) of his/her right of appeal against the decision in accordance with paragraph 26 below.
9. If, having considered the evidence, the Disciplinary Manager is satisfied that a formal disciplinary warning is not appropriate; he or she shall so inform the member of staff and shall confirm this by letter.

Stage 2

10. If the member of staff does not meet the required standard of conduct set out under Stage 1, or where there is a prima facie case that the alleged misconduct is such that it is appropriate to dispense with Stage 1, the Disciplinary Manager may consider taking formal action under Stage 2 of these procedures.
11. Before any decision is taken to proceed with formal action under Stage 2, the Disciplinary Manager shall designate another person to investigate the circumstances of the case (the 'Investigating Manager') and shall inform the member of staff accordingly.
12. The Investigating Manager shall undertake such enquiries as he or she deems to be appropriate with a view to obtaining information and assembling evidence as to the nature and likely causes of the alleged misconduct. The Investigating Manager shall normally interview the member of staff. The Investigating Manager shall report his/her findings to the Disciplinary Manager, who shall determine whether or not there are grounds to indicate that an act of misconduct may have occurred. If not, the Disciplinary Manager shall inform the member of staff, in writing, accordingly.
13. If the Disciplinary Manager decides that there are grounds to indicate that an act of misconduct may have occurred, the Disciplinary Manager shall write to the member of staff to invite them to a formal meeting. The Disciplinary Manager shall inform the member of staff in writing in advance that there is to be a meeting. The letter shall include:
 - (i) a statement of the grounds that have led to the meeting being called including full details of the alleged misconduct;
 - (ii) any supporting information and evidence and the report of the Investigating Manager;
 - (iii) the date, time and location of the meeting;
 - (iv) the name of any person accompanying the Disciplinary Manager (e.g. a member of the People Services Directorate.)
 - (v) the fact that the meeting is taking place under Stage 2 of these procedures;
 - (vi) the right of the member of staff to be accompanied by a work colleague or a trade union representative;
 - (vii) a copy of this ordinance.
14. Where an Investigating Manager has been appointed, the report of the Investigating Manager shall be made available to the member of staff prior to any disciplinary hearing and if requested to do so either by the Disciplinary Manager or the member of staff the Investigating Manager shall explain the substance of the alleged misconduct to the member of staff. The member of staff shall be given a fair opportunity to respond and state his or her case. If, having considered the evidence, the Disciplinary Manager is satisfied that the member of staff has committed an act of misconduct, the Disciplinary Manager shall write to the member of staff informing him/her:-
 - (i) of his/her finding and the basis for such finding;
 - (ii) that a formal disciplinary warning (written or final written) will be given under these procedures and, if such warning is given, the period during which the warning will remain active (which will be in accordance with ACAS guidance from time to time);
 - (iii) the standard of conduct expected, the time during which this improvement must be achieved and the consequences of any repetition, or if appropriate, failure to improve, within such timescale (such consequences may include referral to Stage 3 of these procedures);

- (iv) whether any further measures designed to assist in resolving the matter should be taken (e.g. any training or support which may be available);
 - (v) information about the member of staff's right of appeal against the decision in accordance with paragraph 26 below.
15. If, having considered the evidence, the Disciplinary Manager is satisfied that a formal disciplinary warning is not appropriate; he or she shall so inform the member of staff and shall confirm this by letter. Alternatively, the Disciplinary Manager may instead issue a disciplinary warning as set out under Stage 1 of these procedures.

Stage 3

16. If the member of staff does not improve as specified in the formal disciplinary warning issued under Stage 2 of these procedures the Pro-Vice-Chancellor/Head of School/ Director will refer the matter for consideration to the Vice-Chancellor or an appropriate senior officer appointed by the Vice-Chancellor. In the case of a member of staff being a Pro-Vice-Chancellor/Head of School/ Director the Vice-Chancellor or an appropriate senior officer appointed by the Vice-Chancellor may themselves institute proceedings set out in Stage 3.

This stage will also apply (i) where there is a prima facie case that the alleged misconduct is such that it is appropriate to dispense with Stages 1 and 2; or (ii) where prima facie evidence of gross misconduct (as defined in Appendix 1) or of termination of employment on grounds of "some other substantial reason" is contemplated by the Vice-Chancellor or an appropriate senior officer appointed by the Vice-Chancellor.

17. Before any decision is taken to proceed with formal action under Stage 3, the Vice-Chancellor or an appropriate senior officer appointed by the Vice-Chancellor (Disciplinary Manager) shall designate another person to review the circumstances of the case and conduct an investigation (the 'Investigating Manager') and shall inform the member of staff accordingly. The Investigating Manager may be a member of staff, a lay member of Council or a person external to the University with no previous involvement with the issue and no personal links to the parties involved.
18. The Investigating Manager shall undertake such enquiries as he or she deems to be appropriate with a view to obtaining information and assembling evidence as to the nature and likely causes of the alleged misconduct or in relation to the alleged "some other substantial reason" for termination. The Investigating Manager shall normally interview the member of staff. The Investigating Manager shall report his/her findings to the appropriate Disciplinary Manager who shall determine whether or not there are grounds to indicate that an act of misconduct may have occurred or to indicate that there is "some other substantial reason" to terminate the employment. If not, the Disciplinary Manager shall inform the member of staff, in writing, accordingly and may if appropriate refer the matter to the relevant Pro-Vice-Chancellor/Head of School/ Director to be progressed under Stage 2 of these procedures.

If the Disciplinary Manager decides that there are grounds to indicate that an act of misconduct may have occurred, or that there may be a case to terminate on grounds of "some other substantial reason", the Disciplinary Manager shall pass the matter to the People Services Director, who shall write to the member of staff and invite them to a formal meeting of the Disciplinary Panel (if in a case where the Disciplinary Manager is the People Services Director the matter shall be passed to the Head of Employment Relations and Reward, who shall write to the member of staff). The letter shall include:

- (i) a statement of the grounds that have led to the meeting being called including full details of the alleged misconduct or alleged “substantial reason” for termination of employment;
 - (ii) the report of the Investigating Manager and any supporting information and evidence;
 - (iii) the date, time and location of the meeting;
 - (iv) the fact that the meeting is taking place under Stage 3 of these procedures;
 - (v) the right of the member of staff to be accompanied by a work colleague or a trade union representative;
 - (vi) a copy of this ordinance.
20. The Disciplinary Panel shall consist of up to three members, including a senior officer as Chair, who shall be nominated by the Disciplinary Manager and up to two other members nominated by the Chair, who may be members of staff, members of Council or external members.
21. The Disciplinary Manager and/or the Investigating Manager will be asked to attend the Disciplinary Panel to explain why s/he has recommended that the matter be referred for consideration by a Disciplinary Panel. The member of staff will be given the opportunity to state his or her case and raise any factors which he/she wishes to have considered.
22. Subject to the above, the conduct of the hearing before the Disciplinary Panel and any adjournments will be at the discretion of the Chair of the Disciplinary Panel.
23. The Disciplinary Panel will deliberate in private. Normally a unanimous decision will be expected, but if the members of the Disciplinary Panel cannot agree, the decision of the Panel shall be that of the majority of its members. The Disciplinary Panel shall give a reasoned decision in writing, which shall be sent to the member of staff as soon as possible and within 14 days or otherwise as soon as is reasonably practical.
24. The Disciplinary Panel may impose the following sanctions (and in relation to (i) to (v) below, in any combination):
- (i) a written warning or final written warning: if such warning is given, the period during which the warning will remain active shall be determined at the time of the hearing and shall be notified in writing to the member of staff;
 - (ii) as an agreed alternative to dismissal, the award of a reasonable sum by way of compensation, either to the University or to an individual, in respect of identified and quantified loss;
 - (iii) withholding any forthcoming increment of salary;
 - (iv) the demotion to a post of lower grading;
 - (v) the removal of any title or office held in addition to the substantive appointment;
 - (vi) a discussion between the Investigation Authorising Officer or other appropriate person and the member of staff concerned in order to give advice as to future conduct
 - (vii) dismissal (without notice in the case of gross misconduct).

The decision and sanction of the Disciplinary Panel will be communicated by letter from the Disciplinary Manager to the member of staff. The Disciplinary Manager shall append to its letter notification to the member of staff of his/her right of appeal.

25. If, having considered the evidence, the Disciplinary Panel is satisfied that no action is appropriate; the Chair shall so inform the member of staff and shall confirm this by letter.

Stage 3 as applicable to Senior Members of staff

26. This section shall apply where the dismissal of a member of staff, within the meaning of the Employment Rights Act 1996, is contemplated and where the member of staff holds a senior position in the University, normally at grade 11. **For the purposes of this section if the Grade 11 member of staff is a member of the University Senior Leadership Team then either the Provost, Vice Chancellor or Chair of Council will determine the Disciplinary Manager as appropriate..**

27. The Disciplinary Manager is accountable to the Council for deciding whether or not dismissal is being contemplated.

Where the Disciplinary Manager makes such a decision to proceed with formal action he or she will inform the member of staff concerned.

28. The Disciplinary Manager will appoint an Investigation Manager who may be a member of staff, a Council member or an external person, to undertake such enquiries as s/he deem to be appropriate with a view to obtaining information and assembling evidence. The Disciplinary Manager will inform the member of staff of that appointment.

The Investigating Manager will report findings to the Disciplinary Manager who shall decide whether or not a Disciplinary Panel shall be convened. If not, the Disciplinary Manager shall inform the member of staff, in writing, accordingly and may if appropriate refer the matter to the relevant Pro-Vice-Chancellor/Head of School/ Director to be progressed under Stage 2 of these procedures.

29. The Disciplinary Manager will inform the member of staff of that decision and shall write to the member of staff and invite them to a formal meeting of the Disciplinary Panel. The letter shall include:

- (i) a statement of the grounds that have led to the meeting being called including full details of the alleged misconduct or alleged "substantial reason" for termination of employment;
- (ii) the report of the Investigating Manager and any supporting information and evidence;
- (iii) the date, time and location of the meeting;
- (iv) the fact that the meeting is taking place under Stage 3 of these procedures;
- (v) the right of the member of staff to be accompanied by a work colleague or a trade union representative;
- (vi) a copy of this ordinance.

30. The Disciplinary Panel shall consist of up to three members, including a senior member of staff (Grade 11) or a lay member of Council nominated by the Disciplinary Manager as Chair, and up to two other members nominated by the Chair, who shall normally be senior members of staff, lay members of Council or external members

31. The Disciplinary Manager and/or the Investigating Manager will be asked to attend the Disciplinary Panel to explain why s/he has recommended that the matter be referred for consideration by a Disciplinary Panel. The member of staff will be given the opportunity to state his or her case and raise any factors which he/she wishes to have considered.
32. Subject to the above, the conduct of the hearing before the Disciplinary Panel and any adjournments will be at the discretion of the Chair of the Disciplinary Panel.
33. The Disciplinary Panel will deliberate in private. The Disciplinary Panel shall recommend to the Disciplinary Manager what sanction(s) if any the Disciplinary Manager should impose on the member of staff. The sanctions may include those set out in paragraph 24 above.
34. The Disciplinary Manager will be accountable to Council for any decision under this section.
35. The decision and sanction of the Disciplinary Manager will be communicated by letter from the Disciplinary Manager to the member of staff. The Disciplinary Manager shall append to its letter notification to the member of staff of his/her right of appeal.

Part IV - Appeals

36. The member of staff will have the right to appeal against any decision made under this ordinance. The grounds for appeal must be in writing and must be sent to the Vice-Chancellor's Office. All appeals shall be lodged and conducted in accordance with the University's ordinance for appeals.

Part V - Suspension

37. At any stage in the disciplinary process, where there may be a prima facie case for action under stages 2 or 3, if appropriate, the member of staff may be suspended from work on full pay by the Vice-Chancellor or an appropriate senior officer appointed by Vice-Chancellor (the Suspension Officer). Suspension is not a disciplinary penalty and is not an indication of culpability. The suspension shall be reviewed regularly by the acting Suspension Officer and/or in conjunction with People Services as appropriate, regularly thereafter. The member of staff shall be given the opportunity to make representations in writing to the acting Suspension Officer before any such review takes place.
38. During any period of suspension, the member of staff will be required to co-operate fully with any investigation and to be available for interview during normal office hours. During such period of suspension, the member of staff will not be entitled to access any University premises (except to attend meetings at the University's request or with the University's expressed permission accompanied by his/her trade union representative or other approved member of staff). The member of staff shall not be entitled to use part or all of the University's internet/intranet.
39. As an alternative to suspension to facilitate the proper investigation of a complaint and to avoid the possibility of further exacerbation of the situation, the University may require, without prejudice, one or more parties to work in or from a different location during the period of investigation, where this is practical. It may not be possible for all of the duties of the post to be performed.
40. Where there is a prima facie case of alleged serious misconduct under Stage 3 of the Procedures, the Vice-Chancellor or an appropriate senior officer appointed by the Vice-Chancellor must give consideration to, and decide, whether or not the member of staff shall be suspended. The Vice-Chancellor or an appropriate senior officer appointed by the Vice-Chancellor shall inform the member of staff of the decision and will set out the terms of any suspension in writing to the member of staff. Such terms may include, but are not limited to:
- a. Limits of access by the member of staff to the University's premises, employees, and intranet/internet facilities
 - b. A statement of explanation for colleagues which shall be confidential to those members of staff
 - c. A statement of explanation relevant third parties,
 - d. Initial term for suspension and review arrangements.

Appendix 1 - Gross Misconduct

Employment may be terminated without notice in the event of a finding of gross misconduct. Examples of behaviour which may constitute gross misconduct include (but are not limited to):-

- theft or fraud
- physical violence or bullying
- deliberate damage to property
- criminal acts
- misuse of the University's property or name
- deliberately accessing internet sites containing pornographic, offensive or obscene material
- serious insubordination
- unlawful discrimination or harassment
- bringing the organisation into serious disrepute
- incapability at work brought on by alcohol or illegal drugs
- causing loss, damage or injury through negligence
- a serious breach of health and safety rules
- a fundamental breach in the relationship of trust and confidence
- a serious breach of the University's codes of conduct, regulations, rules, policies and ordinances.