

# UNIVERSITY OF ULSTER

## DISCIPLINARY PROCEDURE

### 1 Part I – General Principles and Interpretation

- 1.1 This procedure has been drawn up to establish the appropriate steps to be followed when pursuing and dealing with Discipline and applies to all members of staff of the University, regardless of length of service with the exception of academic and academic-related staff.
- 1.2 This Procedure shall not apply to:
- (a) the proposed dismissal of a member of staff for redundancy reasons;
  - (b) subject to the provisions of paragraph 1.12 below, the proposed dismissal of a member of staff due to ill health;
  - (c) the proposed dismissal of a member of staff where that dismissal would arise as a consequence of the expiry without renewal of a contract of limited duration;
  - (d) the proposed non-confirmation in post of a member of staff in probation
- 1.3 Good conduct is essential for the efficient and orderly operation of the University's activities and to ensure the safety and well-being of members of the University. The purpose of this Procedure is to provide a constructive framework for dealing with staff conduct, to encourage improvement and to ensure that disciplinary action, where necessary, is taken fairly and consistently. All steps under this Procedure will be taken, by all parties, without undue delay. Any time limits in this Procedure may be extended by the University if it is reasonable to do so.
- 1.4 At any hearing or meeting convened under Parts 2 or 3 of this Procedure the member of staff has the right to be accompanied by a work colleague or by a trade union representative, but no right to be accompanied by a legal representative. The member of staff's chosen work colleague or trade union representative may make representations on behalf of the member of staff at the meeting or hearing and may ask questions, but may not answer questions on behalf of the member of staff.

- 1.5 At any stage of this Procedure should an employee raise a grievance about an issue which is related to the case the Relevant Manager (as defined in 2.1) may decide to run both issues concurrently, or if appropriate may decide to suspend the disciplinary procedure for a short period.
- 1.6 If the employee concerned in a disciplinary issue is a Union Representative, no disciplinary action will be taken until an appropriate senior lay trade union representative in the University or an appropriate full time union official has been notified and has been given the opportunity to discuss the circumstances of the case.
- 1.7 Prior to the initiation of Part 2 of this Procedure, it may be appropriate to seek to address concerns regarding minor misconduct through informal discussion. Such discussions will be initiated by the member of staff's line manager and should be held in private and without undue delay whenever there is cause for concern. If such informal discussion does not lead to an improvement in conduct or if informal discussion is not appropriate (for example, because of the seriousness of the alleged misconduct), the formal part of this Procedure (contained in Part 2) may be invoked.

#### *Investigations and Suspensions*

- 1.8 Where the University becomes aware of a potential issue of misconduct it will carry out an investigation to establish whether it is appropriate to take further action under this Procedure. The investigation will be carried out by the member of staff's line manager or an alternative manager, as appropriate and as determined by the University's Human Resources Department; the investigating officer will decide if formal proceedings under Part 2 of this Procedure should commence.
- 1.9 Investigative interviews are solely for the purpose of fact finding and do not constitute formal action under Part 2 of this Procedure. A member of staff has the right to be accompanied by a work colleague or a trade union representative at an investigative interview, but no right to be accompanied by a legal representative.
- 1.10 In circumstances where the alleged offence is of a serious nature or where the member of staff's continued presence at the University would or is likely to hinder an investigation or the smooth running of the disciplinary process, the member of staff may be precautionarily suspended from work with full pay while an investigation or disciplinary procedure is ongoing. The suspension

will be for no longer than necessary and the member of staff will be informed of the appropriate arrangements. While suspended, the member of staff must not visit University premises or contact any of the University's members of staff, unless expressly authorised in writing. The Director of Human Resources will have responsibility for issuing a precautionary suspension.

### *Examples of Misconduct*

1.11 The following list gives examples of behaviour which may constitute misconduct and which may lead to disciplinary action under this Procedure, including, where appropriate, dismissal (with or without notice). This list is not intended to be exhaustive; the circumstances of each case should be taken into account:

#### **Minor Misconduct**

- unauthorised absence or poor timekeeping;
- failure to comply with a reasonable request or instruction
- failure to maintain a tidy and safe working environment

#### **Major Misconduct**

- failure, refusal, neglect to perform some or all of the duties of the member of staff's job, and/or to comply with his or her terms and conditions of employment;
- neglect causing damage to University facilities/premises or damage/loss of property or equipment
- repeated or serious failure to follow instructions
- mis-use of University facilities e.g. e-mail, internet

#### **Gross Misconduct**

- failure to adhere to all aspects of the University's Bullying and Harassment and Equal Opportunities policies, including discrimination or harassment on the basis of gender, sexual orientation, marital or civil partner status, gender reassignment, race, religion or belief, colour, nationality, ethnic or national origin, disability or age, pregnancy, part-time or a fixed-term status;

- conduct amounting to a criminal offence, even where the member of staff has not been charged or convicted of any such criminal offence and whether committed on University premises or elsewhere;
- breach of any of the provisions of the University policies, codes or procedures with which the member of staff is to comply, such as those dealing with financial matters, Public Interest Disclosure, Data Protection, smoking in the workplace, and other such policies, codes and procedures;
- action likely to cause injury (to self or others) or impair safety on University premises, or infringement of the University's Health and Safety policy;
- wilful damage to, or improper or unauthorised use of, University facilities, premises, property or equipment;
- violent, indecent, sectarian, disorderly, threatening, abusive, behaviour or language (whether in written or verbal form, or any other such form);
- working in the University or on University business whilst under the influence of alcohol or non-prescription substances;
- any form of dishonesty, deception, misappropriation of University monies, fraud or any other form of dishonesty in relation to the University or any related activity.
- behaving in a negligent manner which causes or might cause unacceptable loss, damage or injury to self or others;
- theft, misappropriation or misuse of University property, or the property of the University's staff, students or visitors.

### *Medical Incapacity*

1.12 Where it emerges that a member of staff's conduct may have been wholly or partly attributable to a medical condition, the University may postpone or adjourn any hearing or meeting under Parts 2 and 3 of this Procedure to allow investigation of the member of staff's condition and/or may:

- (a) decide that no further action should be taken under this Procedure; or
- (b) decide that it is appropriate to continue to address the matter under this Procedure, taking into account the member of staff's medical condition as appropriate.

## 2 Part II – Formal Procedure

### *General Principles*

- 2.1 Where disciplinary proceedings are commenced against a member of staff under this Part 2, the University's Human Resources Department will determine an appropriate manager to conduct the disciplinary hearing (**Disciplinary Chair**) according to the level of the potential disciplinary sanction. The identity of the Disciplinary Chair will be dependent on the member of staff's level of seniority. The Disciplinary Chair will not have been involved in the disciplinary matter to date. The Disciplinary Chair will be accompanied at any disciplinary hearing by a member of the University's Human Resources Department, to service the disciplinary process.
- 2.2 Where disciplinary proceedings are commenced against a member of staff under Part 2 of this Procedure, the member of staff will be informed in writing at least 5 working days in advance of the hearing of the following:
- (a) the nature of the alleged misconduct including the charges to be answered, the possible sanction which could be imposed and that the member of staff is required to attend a disciplinary hearing to discuss the alleged misconduct;
  - (b) the proposed date on which the hearing will take place and the identity of the Disciplinary Chair; and
  - (c) that the member of staff has the right to be accompanied to the hearing in accordance with paragraph 1.4 above.

Where a member of staff has already received a final written warning which is not spent and which relates to conduct, or where the alleged misconduct is of a very serious nature, the member of staff will also be informed in writing that dismissal is a possible outcome of the hearing.

- 2.3 Prior to the hearing, the member of staff will also be provided with:
- (a) copies of any documents which will be referred to at the disciplinary hearing by the University; and
  - (b) where appropriate, any witness statements which will be used at the hearing, except where a witness's identity is to be kept confidential, in which case the member of staff will receive as much information as possible whilst maintaining that confidentiality.

2.4 The member of staff must, at least 3 working days before the disciplinary hearing, provide to the University's Human Resources Department any evidence to which the member of staff intends to refer in his or her defence or mitigation, including the names of any witnesses and copies of their witness statements.

2.5 The member of staff must take all reasonable steps to attend any disciplinary hearings arranged under Part 2 of this Procedure and/or any adjournment or postponement of such hearings. If the member of staff or the member of staff's chosen work colleague or trade union representative cannot attend at the time specified for a hearing, the member of staff must inform the University's Human Resources Department immediately, and the University will make reasonable efforts to arrange an alternative time. Normally only one postponement will be granted in line with LRA guidance / Code of Practice. Members of staff should be made aware that, where it is reasonable to do so, decisions may be taken in their absence if they fail to attend re-arranged hearings without good reason.

#### *The Disciplinary Hearing*

2.6 The purpose of the disciplinary hearing is to present the evidence and to enable the member of staff to respond to the allegations that have been made against him or her.

2.7 The procedure to be followed at the disciplinary hearing shall be at the discretion of the Disciplinary Chair, but shall include:

- (a) the allegations of misconduct being put to the member of staff;
- (b) the member of staff having an opportunity to respond to the allegations and set out his or her case;
- (c) an opportunity to allow the Disciplinary Chair to question any witness who is providing information on behalf of either the University or the member of staff; and
- (d) an opportunity to allow the member of staff (and/or his or her representative in line with paragraph 1.4 to respond to the Disciplinary Chair in respect of any evidence given by witnesses on behalf of the University and to question witnesses through the Disciplinary Chair

2.8 The disciplinary hearing may be adjourned and reconvened at a later date if the Disciplinary Chair needs to carry out additional investigations.

### *Confirmation of Outcome of Disciplinary Hearing*

2.9 The Disciplinary Chair will confirm the outcome of the disciplinary hearing to the member of staff in writing, normally within 10 working days following the disciplinary hearing, or, where the disciplinary hearing has been adjourned and reconvened, normally within 10 working days following the final reconvened disciplinary hearing. The Disciplinary Chair will also provide the member of staff with the reasons for the decision that he or she has reached. If a disciplinary sanction has been imposed (in accordance with paragraph 2.10 below) the member of staff will be informed of the period that the warning will remain active and the consequences of further misconduct, and will be informed of his or her right of appeal in accordance with Part 3 of this Procedure.

2.10 If the Disciplinary Chair concludes, following the hearing (including any reconvened hearings following any adjournments, as necessary), that misconduct has occurred, the Disciplinary Chair will impose an appropriate sanction. The Disciplinary Chair may:

- (a) where the misconduct is of a less serious nature, impose a first written warning or depending on the severity of the misconduct a final written warning and, as appropriate, the currency of the member of staff's previous disciplinary record should be taken into account. For the avoidance of doubt, a member of staff may be issued with a final written warning even though he or she has not previously received any disciplinary warnings; or
- (b) where the misconduct is sufficiently serious reasonably to warrant such action, dismiss the member of staff with notice or, in the case of summary dismissal without notice;
- (c) **in exceptional circumstances**, dismissal may be set aside and replaced by a final written warning and one of the sanctions below (such decision to be at the discretion of the Disciplinary Chair):
  - (i) demotion
  - (ii) placing restrictions on the member of staff's employment, for example a period of supervision and/or training;
  - (iii) withholding a pending salary increase; or
  - (iv) temporarily withholding salary due to the member of staff.

- 2.11 If the Disciplinary Chair considers a warning to be appropriate, confirmation of the warning will be placed on a member of staff's personnel file and will remain active for the period specified in the warning, 6 or 12 months, after which time it will be disregarded in deciding the outcome of any future disciplinary proceedings.
- 2.12 If the Disciplinary Chair considers that a sanction under paragraph 2.10(c) is appropriate, confirmation of the sanction will be placed on a member of staff's personnel file and will remain active for the period specified by the Disciplinary Chair, after which time it will be disregarded in deciding the outcome of any future disciplinary proceedings.

### 3 Part III – Appeals

#### *General Principles*

- 3.1 If the member of staff is dissatisfied with any sanction imposed under Part 2 of this Procedure and wishes to appeal, he or she must do so in writing to the University's Human Resources Department within 10 working days following the date on which the member of staff was informed of the relevant decision. The member of staff must set out his or her grounds of appeal in writing and refer to the initiation of the appeals part of this Procedure.
- 3.2 The University's Human Resources Department will determine appropriate personnel to conduct the appeal.
- (a) In cases where the appeal is against a warning that has been imposed by the Disciplinary Chair under paragraph 2.10(a), or where the appeal is against a sanction that has been imposed by the Disciplinary Chair under paragraph 2.10(c), the appeal will be considered by an appropriate person (the **Appeal Chair**).
- (b) In cases where the appeal is against a dismissal imposed by the Disciplinary Chair under paragraph 2.10(b) the appeal will be considered by an appeal panel, comprising of a senior member of University staff, a lay member of Council and an elected member of Senate (the **Appeal Panel**).

The identity of the Appeal Chair or the composition of the Appeal Panel (as appropriate) will be dependent on the member of staff's level of seniority. The Appeal Chair or the members of the Appeal Panel (as appropriate) will not have had any previous material involvement with the action which is the

subject of the member of staff's appeal and will be senior to the manager who conducted the disciplinary hearing. The Appeal Chair or the Appeal Panel (as appropriate) will be accompanied at the appeal hearing by a member of the University's Human Resources Department to service the appeals process.

3.3 The member of staff will be invited to attend an appeal meeting, which will normally take place within 10 working days of receipt by the University of the appeal. The member of staff will be informed of the identity of the Appeal Chair [or composition of the Appeal Panel (as appropriate)] and of his or her right to be accompanied to the meeting in accordance with paragraph 1.4 above.

3.4 The member of staff must take all reasonable steps to attend the appeal meeting and/or any adjournment or postponement of such meeting. If the member of staff or the member of staff's chosen work colleague or trade union representative cannot attend at the time specified for the meeting, the member of staff must inform the University's Human Resources Department immediately, and the University will make reasonable efforts to arrange an alternative time. Normally only one postponement will be granted in line with LRA guidelines / Code of Practice.

#### *The Appeal Meeting*

3.5 The appeal should be heard on the specific grounds of appeal identified by the appellant and may include procedural issues and/or, should circumstances dictate, take the form of a re-hearing of the matter.

3.6 The appeal hearing may be adjourned and reconvened at a later date if the Appeal Chair / Appeal Panel needs to carry out additional investigations.

#### *Confirmation of Outcome of Appeal Meeting*

3.7 The Appeal Chair [or Appeal Panel (as appropriate)] will notify the member of staff of its decision in writing, normally within 10 working days of the appeal meeting, or, where the appeal hearing has been adjourned and reconvened, normally within 10 working days of the final reconvened appeal hearing. The Appeal Chair [or Appeal Panel (as appropriate)] will also provide the member of staff with the reasons for the decision that it has reached. The decision of the Appeal Chair [or Appeal Panel (as appropriate)] will be final.