

Newcastle University disciplinary procedure

Manager's code of practice

1. Introduction

This code of practice supplements the disciplinary procedure, providing managers with practical guidance on its application and managers should follow this code in all cases.

A general point to note is that failure to follow the University's Procedures could render any subsequent action against the employee to be considered unfair, and to action being taken against the University. Therefore, it is essential that the procedure is followed

It is very important that academic freedom is protected from inappropriate infringement or restriction and if an employee claims this is occurring it is better that this issue is thoroughly considered early in the procedure. Therefore, if an employee claims a defence on the grounds of academic freedom, the matter should be referred immediately to the Executive Director of Human Resources (HR) who will suspend any proceedings and instigate an investigation as set out in the disciplinary procedure.

2. Informal measures outside the formal disciplinary process.

It is generally considered to be good practice for managers to try to deal with issues concerning conduct and behaviour as early as possible and certainly at the time they occur. Typically, this will be done through an informal discussion with the employee. These discussions can sometimes identify supportive measures which, if used at such an early stage, can help achieve the required improvement in conduct or behaviour. Such measures can include:

- Counselling typically a confidential one to one interaction that provides direction or advice as to a decision or course of action. This can be with the line manager, a manager or senior colleague from outside the work area or some other appropriate person.
- Coaching this is a type of personal training which typically occurs in a totally confidential environment
- Training this can include use of bespoke training delivered through a number of different media such as mentoring, work shadowing, workshops (internal or external) and/or off the shelf training such as the SDU open programme
- Mediation a voluntary process whereby a neutral third party intervenes to assist the parties concerned to reach a satisfactory outcome

Managers contemplating using any of the above measures should contact their HR Manager who can advise on practical experience in using these approaches and where to source specialists in these areas if required. Typically, the academic/service unit concerned will fund the use of such specialists. It can often be helpful to utilise other staff within an academic/service unit who have not had any involvement in a particular case to provide support and guidance to employees over whom there are concerns about conduct.

Managers should also consider contacting Occupational Health when they consider that there may be a connection between concerns over conduct or behaviour and an employee's health.

Managers are encouraged to make a brief note of any conversations they have and they should provide a copy to the employee.

It should be remembered that in cases of more serious misconduct managers may invoke an investigation without having gone through any of the informal measures above.

3. Formal measures

Investigation

In most cases of potential misconduct, it is essential that an investigation is carried out before any further action is taken.

Managers need to consider the effect of any alleged misconduct and any ensuing investigation on the employee's work colleagues, particularly those in the immediate work area and should consult with HR on any measures they may take to manage this recognising the need to maintain confidentiality.

The employee should be advised about the alleged misconduct as soon as possible and certainly before commencement of any investigation.

Investigations will be carried out by individuals appointed by HR. Typically, the investigating officer will be supported by someone from HR whose role will be to provide advice and guidance on procedural matters; to act as an independent witness to what is said at interviews; to produce notes of interviews.

Notes of interviews with witnesses will be treated as confidential until such time as a decision is made as to whether the matter will proceed to a disciplinary hearing. At that point the investigation report and any supporting documentation, including interview notes, will be provided to the employee. Witnesses should be advised of this at the investigatory interview.

Notes will not represent verbatim records of interviews and the University will not allow audio recording of any interviews.

There may also be some types of potential misconduct where it is necessary to secure pieces of equipment such as personal computers for scrutiny. It is important that HR is contacted in such cases as certain other legal requirements may come into play requiring guidance from other services eg Information Systems & Services

When the manager receives the investigation report, he/she will consult HR before deciding what action, if any, to take. If the investigating officer recommends that no further action is taken and the manager concurs with that recommendation, all records of the investigation will be destroyed.

Suspension

It is very important that suspension with pay is only used in a manner that is proportionate to the alleged misconduct. Typically this will be where there is an allegation of very serious

misconduct or risk to property or persons. Sometimes an alternative to suspension could be remote working.

HR must be consulted where practicable before a decision on whether or not to suspend is reached.

If suspension is likely to extend beyond the 15 days set out in the disciplinary procedure, the employee should be advised of this and given an estimate of the likely duration of the extended period of suspension. If the employee is unhappy with any extension they can appeal to the Registrar for non-academic staff and a Dean from another faculty for academic staff.

The disciplinary hearing

The disciplinary hearing will normally be chaired by the manager. Where there is a conflict of interest, such as where a family member or friend is involved or where the employee has raised a substantive grievance against the manager prior to initiation of the disciplinary procedure, HR will identify an alternative person to chair the hearing.

The manager should advise the employee of the arrangements for the hearing as early as possible and must take account of the requirements set out in section 4 on scheduling of formal meetings and appeals and the right of representation in section 2 of the procedure.

An outline of how a disciplinary hearing should be conducted is set out in the disciplinary procedure. Some additional key points are:

- The manager should arrange for a private room to be available where the employee can confer with his/her trade union representative or work colleague.
- The manager should make allowances for the employee to be concerned and anxious.
- The manager should plan breaks and be prepared to adjourn the meeting if necessary.
- It is important that the employee is made aware in advance of any disciplinary hearing of the importance of the hearing and the possible outcomes. For example, if there is a possibility that the employee is dismissed, then that should be made clear in the letter inviting the employee to the hearing. A copy of the Disciplinary Procedure should also be provided.
- The employee plus any representative should be present during questioning of all witnesses and will be able to ask questions of witnesses and the investigating officer (where appropriate).
- The manager should ensure that the employee has every opportunity to state his/her view.
- Notes of any hearings will be shared with the employee. They do not represent a verbatim record. The University will not allow audio recording of any hearings.
- It is important to remember that the whole disciplinary procedure and related documentation should be treated as confidential.

Disciplinary outcomes

One of the common questions asked is whether spent warnings can be taken into account if there has been a pattern of misconduct over a prolonged period. The answer is that spent warnings cannot be taken into account and should be expunged from the record once they expire along with any related material. This is very important given the potential access to personal data through Freedom of Information requests or requests for access to personal information from data subjects.

Another commonly asked question is whether a current warning for one type of misconduct can be taken into account when determining any sanction applied for some other type of misconduct. The answer is that it can, because together they demonstrate a general pattern of misconduct.

It is important to remember that when considering whether a breach amounts to gross misconduct, even where there is a clear breach of the disciplinary policy, managers need to ask themselves whether the conduct involves either deliberate wrongdoing or gross negligence.

Should a manager consider transfer as an appropriate sanction, care should be taken to ensure the position into which the employee transfers is appropriate to the skills and experience of the employee and any consequential impact on salary is proportionate to the misconduct.

Appeals

If employees wish to contest the outcome of a disciplinary hearing they should raise an appeal under the disciplinary procedure. The disciplinary procedure contains detailed guidelines on how an appeal hearing will be conducted.

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