

# Newcastle University disciplinary procedure

## Contents

1. INTRODUCTION .....	1
2. RIGHT OF REPRESENTATION .....	3
3. TRADE UNION REPRESENTATIVES .....	3
4. SCHEDULING OF FORMAL MEETINGS AND APPEALS .....	3
5. INVESTIGATION .....	3
6 FORMAL ACTION .....	5
7. THE DISCIPLINARY HEARING .....	5
8. DISCIPLINARY OUTCOMES .....	5
8.1 First Written Warning .....	6
8.2 Second Written Warning.....	6
8.3 Final Written Warning.....	6
8.4 Dismissal .....	7
8.5 Authority to take Disciplinary Decisions .....	7
8.6 Other Sanctions .....	8
9. APPEAL.....	8
10. NON-ATTENDANCE AT INVESTIGATIVE MEETINGS AND DISCIPLINARY HEARINGS..	10
11. STATUS OF THE PROCEDURE.....	10
12. RELATED DOCUMENTS .....	10
Appendix 1- Examples of Gross Misconduct.....	11

**A Manager’s Code of Practice is available and should be read in conjunction with this procedure before commencing any informal or formal action.**

## 1. INTRODUCTION

The University firmly believes that in most cases, a carefully considered conversation at the right time with the appropriate level of management is all that is necessary and is often a more appropriate way to encourage employees to achieve and maintain required standards of conduct and behaviour than immediate formal disciplinary action. Accordingly, minor

cases of misconduct will, in the first instance, be dealt with informally. This may involve any one of or a combination of counselling, coaching, training and mediation. This informal approach is not part of the formal disciplinary procedure. Further information is provided in the manager's guidelines.

The overall aim of this procedure is to be an aid to good people management and is designed to be:

- An effective and progressive way of dealing with any shortcomings in behaviour/conduct where normal management processes have not been successful in achieving the improvement required or where a first offence is sufficiently serious;
- Clear and simple to operate;
- Fair, impartial, consistent and equitably applied to all;
- Compliant with the ACAS Code of Practice and employment legislation.
- With regard to academic staff, to pay due regard to academic freedom as specified in the University Statutes.

The University has separate policies and procedures for dealing with issues concerning capability (i.e. performance) and sickness absence management. There is also a separate Code of Practice concerning harassment and bullying.

Where, in any matter raised under this procedure, a member of academic staff claims a defence on the grounds of academic freedom (as defined in the University Statutes), the matter should be referred to the Executive Director of Human Resources (HR). The Executive Director of HR (or nominee) will suspend any proceedings and instigate an investigation of the claim. The investigation will be carried out by a panel comprising a senior member of academic staff nominated by senate and a lay member of council, neither of whom will have any connection with the employee concerned.

The panel considering the complaint relating to academic freedom shall take evidence from the parties and from any other sources that it believes necessary and appropriate. The complainant shall be entitled to provide oral and/or written evidence in relation to his/her complaint to the panel, and to call such witnesses as s/he thinks appropriate. The complainant shall also be entitled to be represented by a trade union representative or work colleague who will be allowed to address the panel in the same way as at a disciplinary hearing, as prescribed in section 2. The decision of the panel shall be confirmed in writing giving reasons for reaching the decision. In the event that the complaint is upheld all actions against the complainant shall be withdrawn and the existence of the complaint and any details relating to it or any investigation thereof expunged from HR records. Should the complaint be held to be unfounded then the original disciplinary process should resume.

All information connected to informal measures, investigations and formal action shall as far as practicable be treated as confidential by all parties involved, including witnesses and any union representatives. Information will only be disclosed to appropriate parties involved in the procedures.

## **2. RIGHT OF REPRESENTATION**

Employees are entitled to be accompanied by their trade union representative or a work colleague during any hearings, formal meetings, or appeals relating to this procedure. The trade union representative or work colleague will be allowed to put the employee's case, sum up the employee's case, respond on the employee's behalf to any view expressed at the meeting or appeal hearing, and ask questions on the employee's behalf. However, they will not be allowed to answer questions on behalf of the employee. He/she and the employee will have the right to request reasonable adjournments during any formal meeting to have discussion amongst themselves. No other form of representation is permitted for either party. The employee shall be entitled to provide oral and/or written evidence, and to call such witnesses as s/he thinks appropriate. The trade union representative or work colleague and any witnesses called will be provided with reasonable time off from their normal duties with no loss of pay in order to prepare for and attend the meeting or appeal.

## **3. TRADE UNION REPRESENTATIVES**

No formal action under this procedure will be taken against an employee who is a recognised trade union representative until the circumstances of the case have been discussed with a full-time trade union officer or their nominee of the trade union concerned.

## **4. SCHEDULING OF FORMAL MEETINGS AND APPEALS**

Managers will make every effort to provide as much notice as possible to allow an employee and where appropriate their representative sufficient time to prepare for the meeting, which should be arranged at a mutually convenient time for all parties with a minimum period of notification of 5 working days. Notification of meetings must be provided in writing, at which time the employee will be given a copy of the relevant procedure, written details of the matter to be considered at the meeting, any supporting documentation that will be relied upon by the employer's side during the meeting/appeal, and the names of any witnesses that the employer's side may call. In the event that one of the parties is unexpectedly unable to attend the meeting at the notified time, the meeting will be postponed and rescheduled to an alternative time within 5 working days after the date initially proposed. The employee in turn must submit any documentation they wish to be considered at the meeting, and the names of any witnesses they wish to call, at least 3 working days before the meeting. Written notes of meetings will be taken by a non-participating individual [usually a representative of HR] and agreed with the employee wherever possible. They will be made available to the employee and where the employee was accompanied during the hearing by a trade union representative also made available to that representative, but otherwise treated as confidential. If an employee disagrees with the notes then s/he shall set out their disagreement to the relevant HR representative and the manager or panel as appropriate.

Where specific timetables are given in this procedure, they must be subject to reasonable arrangements.

## **5. INVESTIGATION**

It is very important that any instances of potential misconduct are investigated before any decision is made about progressing to a disciplinary hearing. There may be certain

instances when an investigation may not be necessary and the matter can proceed directly to a disciplinary hearing e.g. where an employee admits committing misconduct. In such circumstances the manager must consult HR before proceeding to a hearing.

There may also be instances where an anonymous complaint is made against an employee. In this circumstance, it is very important that an investigation is carried out to determine whether there are any grounds to progress to a disciplinary hearing.

Investigations should be confined to ascertaining the facts through the collation of evidence including statements from interviews with witnesses. Although there is no statutory entitlement to representation at investigatory interviews, employees can choose to be accompanied by a trade union representative or work colleague so long as this does not delay the investigation unduly.

If an investigation is required, HR will appoint an investigating officer who is from outside the immediate working group/area in question and who does not have any connection with the employee.

Statements given at investigatory interviews will be confidential during the course of an investigation but can be disclosed to appropriate parties if the matter proceeds to a disciplinary hearing.

The report of the investigating officer will contain a recommendation as to whether or not there are grounds to progress to a disciplinary hearing. Further recommendations can also be made regarding the types of action that may be considered.

Where there is an allegation of very serious misconduct or one that involves risk to property or persons or where suspension is considered necessary to enable an investigation to take place, a period of suspension from work with pay may be considered by the manager while the case is being investigated and during any subsequent disciplinary process. The manager shall consult HR before reaching any decision on suspension. Suspension of this kind is not a disciplinary sanction and does not imply that any decision has been made about the case. Where suspension is used, the manager should confirm the reasons for the suspension in writing to the employee and outline the next steps. A Head of academic/service unit or nominee will have the authority to suspend. Suspension will be for no longer than is necessary and should not exceed 15 working days to allow an investigation to take place. If the suspension exceeds 15 days the employee has the right to appeal against their continued suspension. Any appeal will be heard by the Registrar for non-academic staff or a Dean from another faculty for academic staff.

The person hearing the appeal against suspension shall take evidence from the parties and from any other sources that he/she believes necessary and appropriate, taking account of the right of representation as set out in section 2. The decision of the person hearing the appeal shall be confirmed in writing giving reasons for reaching the decision. If it is decided that continued suspension of the appellant is justified, the length of time for which the period of suspension will continue shall be specified. In the event that the appeal is upheld the period of suspension of the appellant shall be immediately terminated.

Upon receipt of the investigation report, the manager will review the evidence obtained and the recommendation(s) and will consult with HR before deciding what action, if any, to take. The manager will inform the employee of his/her decision in writing within 15 working days or as soon as is reasonably practicable.

## **6 FORMAL ACTION**

The manager will arrange a meeting with the employee taking account of the requirements set out in section 4 on scheduling of meetings and the rights of representation set out in section 2.

## **7. THE DISCIPLINARY HEARING**

The hearing will normally be chaired by the line manager. The aim of the hearing is to review the findings in the investigatory report and establish the facts, taking into account any additional evidence, in order to determine what, if any, disciplinary action is appropriate. In circumstances where it is inappropriate for the line manager to chair the hearing, HR will identify an alternative manager to chair the hearing. It is good practice to:

- introduce those present to the employee and explain why they are there
- introduce and explain the role of the accompanying person if present
- explain that the purpose of the meeting is to consider whether disciplinary action should be taken in accordance with the University's disciplinary procedure
- explain how the meeting will be conducted.

The employee and any companion/union representative will be present throughout the hearing.

The manager chairing the hearing (the manager) will advise the employee of the complaint against them, reaffirming the allegation(s) and the evidence that has been gathered.

It is generally expected that the investigating officer will attend the hearing to present their findings and answer questions. The manager will determine whether this is appropriate.

The employee will be allowed to state their case and answer any allegations that have been made. The employee will also be able to ask questions, present evidence, call witnesses and be given the opportunity to raise points about any information provided by witnesses.

A member of the HR Section may attend disciplinary hearings as appropriate in an advisory capacity. Where the outcome could be final written warning, dismissal, suspension without pay or transfer, they must attend the hearing.

Witnesses can be called by the manager chairing the hearing and the employee. Witnesses are expected to attend a disciplinary hearing where clarification is necessary regarding evidence the witness has already provided, or in light of further information becoming available.

## **8. DISCIPLINARY OUTCOMES**

Following the disciplinary hearing, an adjournment will normally take place to allow the manager to consider all of the information and circumstances before reaching a decision as to whether or not disciplinary action is to be taken and if so, which of the actions listed below is appropriate. The manager will normally inform the employee of the decision or the need to

make further investigations by reconvening the hearing. Should the manager require a longer period to reach a decision, the hearing will be reconvened within 5 working days. If further investigations are undertaken the employee will have the opportunity to consider any new information before the hearing is reconvened. Oral announcement of the decision will be followed up in writing as soon as possible and no longer than 2 working days from the date of the hearing or reconvened hearing.

Account will be taken of the employee's disciplinary and general employment record, depth of experience, actions taken in any previous similar cases and explanations given by the employee and, whether the intended disciplinary action is reasonable in all the circumstances.

Where the manager does not propose to take any further action, this will be confirmed in writing.

Where a warning or some other sanction is applied, the following details should be given in writing:

- Details of the complaint;
- The disciplinary decision together with the supporting reasons;
- The improvement or change in behaviour that is required;
- The timescales for achieving this improvement or change in behaviour;
- A review date and any support provided to assist the employee;
- Any warning will confirm that further misconduct may result in further disciplinary action, or where a final written warning is issued, dismissal;
- The right to appeal. The employee should submit his/her appeal in writing to the Executive Director of Human Resources within 10 working days of the formal meeting or hearing.

### **8.1 First Written Warning**

In the event that action outside the formal disciplinary procedure has failed to bring about the required standard of conduct or behaviour, or the misconduct is sufficiently serious, the manager will consider, at the conclusion of the hearing, the issuing of a first written warning which is valid up to a maximum of 26 weeks from the date of the hearing. A copy of the warning will be placed on the employee's personal file.

### **8.2 Second Written Warning**

Where a first written warning fails to bring about the required standard of conduct or behaviour; or any other act of misconduct occurs; or the situation is so serious as to warrant stronger action than a first written warning; the employee may be issued, at the conclusion of a hearing, with a second written warning to be held on file for a designated period. A second written warning should be effective for a minimum period of 26 weeks and up to a maximum of 52 weeks, effective from the date of the hearing. A copy of the warning will be placed on the employee's personal file.

### **8.3 Final Written Warning**

Where a second written warning fails to bring about the required standard of conduct or behaviour, or any other act of misconduct occurs, or the situation is so serious as to warrant

stronger action than a first or second written warning, the employee may be issued, at the conclusion of a hearing, with a final written warning.

The final written warning will be valid for a period of not less than 52 weeks and up to 104 weeks from the date of the hearing and will be placed on the employee's personal file.

#### **8.4 Dismissal**

Where a final written warning fails to bring about the required standard of conduct or behaviour, or the misconduct is repeated, or the situation constitutes gross misconduct (examples contained in appendix 1), the employee may be dismissed by a manager of appropriate authority (see section 8.5).

In cases of gross misconduct, dismissal will be without notice. In circumstances where a dismissal is overturned on appeal and a lesser sanction is applied, that sanction will normally be valid from the date of the original disciplinary hearing, but may be valid from the date of the dismissal where this is appropriate in the circumstances.

#### **8.5 Authority to take Disciplinary Decisions**

##### Non-academic staff

Supervisors and managers in grades D and above have the authority to take disciplinary action up to and including second written warning for employees in grades A to C.

Managers in grade G and above have the authority to take disciplinary action up to and including dismissal of employees on grades A to F.

Heads of Service/Academic unit and other senior managers in grade I have the authority to take disciplinary action up to and including dismissal of employees on grades G and H.

For Heads of Service and other senior employees on grade I, the Registrar or the Head of Unit (who must be on grade I) will have the authority to take disciplinary action up to and including dismissal.

##### Academic staff (as defined in the University Statutes)

In this context 'academic staff' is normally regarded as including research staff, who are also covered by the University Statutes. Where separate arrangements apply to research staff, they are defined as those members of academic staff who are in employee sub-group 'Research' or 'Clinical Research' and who are returned to HESA with Academic Employment Function 'Research only'.

Principal investigators will have the authority to take disciplinary action up to and including final written warning, suspension without pay and transfer for researchers in grades F and G. Heads of academic unit will have the authority to take disciplinary action up to and including dismissal for researchers in grades F and G.

Heads of academic unit will have authority to take disciplinary action up to and including final written warning, suspension without pay or transfer for all academic staff up to grade H.

For Heads of academic unit and academic staff up to and including grade I, the Faculty Pro-Vice-Chancellor will have the authority to take disciplinary action up to and including dismissal.

The Vice-Chancellor will have the authority to take disciplinary action up to and including dismissal for members of the University Executive Board.

In all cases the manager taking the decision as set out above will chair the disciplinary hearing.

## **8.6 Other Sanctions**

These sanctions will normally be applied when the misconduct is more serious or continues or is repeated.

### Suspension without pay

The manager may consider suspension without pay for up to a maximum of one working week. A record of the sanction will remain on the employee's personal file for 52 weeks from the date of the disciplinary hearing.

### Transfer

The duration of the transfer and what will happen at the end of the period must be made clear to the employee. This option may involve demotion and/or change in salary. The employee will not be eligible to apply for any promotion for a period of 52 weeks from the commencement of the transfer. This sanction would be dependent on operational business requirements/availability.

## **9. APPEAL**

An employee who wishes to appeal against any formal warning or action (including dismissal) under this Procedure shall submit notice of appeal in writing to the Executive Director of Human Resources within 10 working days of a formal meeting or hearing, setting out the particular grounds for the appeal.

An appeal hearing will be held within 15 working days of the appeal being requested and account will be taken of the requirements set out in section 4 on scheduling of meetings and the right of representation set out in section 2. The appeal will be heard by a single person (adjudicator) nominated by the Executive Director of Human Resources (or an Assistant Director of Human Resources) who will be a manager senior in authority to, or at the same level as, the manager who applied the sanction and will not have been previously involved in the case. In the case of academic staff, as defined in the University Statutes, any appeal against dismissal will be heard by a panel comprising a lay member of council and a senior academic nominated by senate, neither of whom will have any connection with the employee concerned.

A member of the Human Resources Section shall attend the appeal hearing in an advisory and secretarial capacity.

The adjudicator/panel shall determine the conduct of the hearing and shall ensure that both sides of the case are fully considered, and that the employee and/or representative and the manager are given full opportunity to put their case and to put questions to any witnesses.

The following procedural guidelines shall apply during the hearing, which may be adjourned at any time at the discretion of the adjudicator/panel:

- There will be no legal representation at an appeal hearing.
- The adjudicator/panel shall review both the proceedings to date and the evidence relied upon together with any further evidence submitted and may put questions to the employee and any representative and/or call witnesses, and shall allow the employee and any representative to put questions to witnesses.
- Normally, the employee will open the appeal hearing by way of representations in support of his or her appeal, and shall be entitled to provide written and oral evidence in relation to his/her appeal and to call such witnesses as s/he thinks appropriate.
- The manager who took the formal decision will, if requested by the adjudicator/panel, be available to attend the appeal hearing and will outline at the hearing, in the presence of the employee and his or her representative, the reasoning behind his or her original decision.
- Where an investigation was carried out, the person who carried out the investigation which led to the formal decision may also be required to attend the appeal hearing and will make representations, in the presence of the employee and his or her representative, in relation to the investigation undertaken.
- The manager and the person who carried out the investigation will have the opportunity to put questions to the employee (or his/her representative) and his/her witnesses.
- The employee (or his/her representative) will have the opportunity to put questions to the manager and the person who carried out the investigation and any of their witnesses.
- The adjudicator/panel will have the opportunity to put questions to all those present at the hearing as appropriate.
- The employee (or his/her representative) and the Manager will have the opportunity to sum up their case.
- All of the parties will withdraw, with the exception of the HR representative. The adjudicator/panel will deliberate in private, accompanied by the HR representative but may recall any of the parties to clarify points of uncertainty. If recall is necessary, both parties are to return.
- The decision of the adjudicator/panel shall be confirmed in writing within 2 working days giving the reasons for reaching the decision. In the event that the appeal is upheld all actions against the appellant shall be withdrawn and the existence of the action taken and any details relating to it or any investigation thereof expunged from HR records. If pay has been withheld this should be made up to the member of staff at the earliest opportunity.
- Where the adjudicator/panel is satisfied that any action or formal warning imposed by the manager was within the band of reasonable responses which the manager could have selected, the original decision will be upheld. In other cases, the adjudicator/panel may substitute a different decision which may include the imposition of some other lesser penalty.
- Actions put in place before submission of an appeal, including notice of dismissal, remain in effect pending the outcome of the appeal.
- The appeal decision will be final.
- The employee will be entitled to receive written notes of the appeal proceedings and of the reasons for the decision of the person/panel hearing the appeal. Where the employee was accompanied during the hearing by a trade union representative, this document will also be provided, on a confidential basis, to that representative.

Where the employee (and/or his/her representative) fails to attend the appeal hearing without good reason which has been notified to the Human Resources representative by the

start of the hearing, the hearing will proceed in his/her absence.

## **10. NON-ATTENDANCE AT INVESTIGATIVE MEETINGS AND DISCIPLINARY HEARINGS**

If an employee fails to attend a disciplinary interview, the interview may be adjourned and the employee will be given another date and time. The employee will be informed that should he/she fail to attend the re-arranged interview, the interview will be held in their absence.

If an employee is absent from work due to sickness or injury, he/she will attend a disciplinary hearing unless there is a risk that this would have a serious adverse effect on the employee's mental or physical health or if they are physically unable to attend. If the employee is unable to agree another date within 15 working days the University will ask the employee to attend Occupational Health as soon as possible and within one month for an assessment of the risk/timeframe for recovery.

## **11. STATUS OF THE PROCEDURE**

The employment relationship between the University and each of its employees is set out in the contract of employment. This procedure does not form part of the contract of employment but it shall apply both to the University and to all of its employees.

## **12. RELATED DOCUMENTS**

Appendix One – Examples of Gross Misconduct  
Disciplinary Procedure – Manager's code of practice  
Capability Policy  
Sickness Absence Management Policy  
Dignity at Work Code of Practice  
Smoke Free Policy

Effective Date	3 May 2011
Approval	Staff Committee 21.06.10 Senate 05.10.10 Council 13.12.10
Policy/Procedure Owner	Garry Coupland
Last Reviewed	

## **Appendix 1- Examples of Gross Misconduct**

Acts which constitute gross misconduct must be very serious and should involve either deliberate wrongdoing or gross negligence. Examples of gross misconduct are given below:

- Failure to follow safety procedures, and/or rules, thereby putting at risk, the safety of the employee or others, including students, other employees, contractors or members of the public;
- Deliberate or negligent contravention of the University's policies, procedures and/or local procedures, leading to serious breaches;
- Violent, abusive or indecent behaviour;
- Very serious or persistent harassment, bullying or discrimination;
- Serious failure to follow rules or procedures on the handling of or accounting for the University's cash, goods or assets;
- Refusal to obey a legitimate instruction or series of instructions potentially resulting in serious harm, loss, injury or damage (physical or reputational);
- Criminal convictions which render the employee unsuitable for the type of work they are employed to carry out; regardless of whether the offence was committed inside or outside work;
- Theft, fraud or deliberate falsification of records or claims;
- Deliberate damage to University property;
- Serious misuse of computers, as set out in the Statement on Internet use and Guidelines for the Responsible use of Computing Facilities;
- Misrepresentation of previous experience, qualifications or other relevant information required on application for employment.

This list is not exhaustive