

Disciplinary Policy and Procedure

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1. Purpose

- 1.1. This disciplinary policy and procedure is designed to ensure that the required standards of conduct at work are adhered to and that any alleged failures to observe these standards are dealt with fairly and equitably. A separate procedure applies to management of underperformance and management of sickness absence.
- 1.2. The purpose of the policy and procedure is to provide a fair and consistent mechanism for disciplinary matters throughout the University; the procedure is not intended to replace or remove a Head of Department/manager's (or nominated representative)¹ right to exercise day-to-day discipline. Formal action under this procedure should be brought into effect only when there is a serious breach of discipline. Examples of misconduct and gross misconduct can be found in section 5.

2. Scope

- 2.1. The disciplinary policy and procedure applies to all employees.

3. Principles

- 3.1. At every stage in the disciplinary policy and procedure, the employee will be advised of the nature of the alleged misconduct together with any evidence and will be given the opportunity to state his/her case before any decision is taken.
- 3.2. No disciplinary action will be taken without thorough consideration of the matter.
- 3.3. The University will make every effort to deal with disciplinary matters as quickly as possible.
- 3.4. The employee will have the right to be accompanied by a work colleague or Trade Union representative at all formal stages of the disciplinary policy and procedure, i.e. a formal investigation meeting or formal disciplinary hearing.
- 3.5. Where the Head of Department is the subject of the formal disciplinary action, the role of the Head shall be taken by a Senior Professor or Senior Officer of the University who shall be appointed by the Registrar in the case of a non-academic member of staff and by the Vice Chancellor in the case of an academic member of staff.
- 3.6. If an employee raises a grievance in the course of a disciplinary process and the University, acting reasonably, considers the matters are related it may be appropriate to deal with both matters concurrently, as part of one process, where the two matters are related. Consideration may also be given to suspending the disciplinary process pending the outcome of the grievance investigation. In such circumstances, the Head of Department (or representative) will seek advice from HR and inform the employee on the process to be followed.
- 3.7. Where a grievance is raised in the midst of a disciplinary process and the two matters are unrelated, it may be appropriate to deal with the two processes concurrently. In such circumstances, the Head of Department (or representative) will seek advice from HR and inform the employee on the process to be followed.

¹ Where denoted, Head of Department (or nominated representative) also refers to line manager, manager etc. i.e. the relevant person immediately responsible for managing disciplinary matters

3.8. Any complaints regarding bullying and/or harassment will be formally investigated under the grievance policy, but may in some cases, dependent on the outcome of the investigation, transfer to be dealt with under the disciplinary policy and procedure.

3.9. Employees may find recourse to the Dignity at Warwick policy helpful in attempting to resolve matters informally.

4. Responsibilities

4.1. Head of Department/manager (or representative):

- addressing issues as they arise under the informal procedure where possible;
- maintaining discipline and setting fair standards of conduct and behaviour;
- consulting their link HR Adviser before taking action under the disciplinary policy and procedure or disciplinary investigation;
- ensuring that their actions are lawful and do not expose the University to legal liability, either by ill-advised action or by negligence;
- conducting themselves with dignity, honesty and integrity to promote an atmosphere of mutual respect, in accordance with the University's Equality and Diversity, Dignity at Warwick, and other HR policies.

4.2. Human Resources (HR) is responsible for:

- Training, guiding and advising managers on all aspects of the disciplinary policy and procedure to ensure that disciplinary matters are resolved appropriately and in a timely manner;
- advising members of staff on the disciplinary policy and procedure;
- monitoring the use of the disciplinary policy and procedure across the University;
- ensuring that the disciplinary policy and procedure is applied consistently throughout the University.

4.3. Employees are responsible for:

- Ensuring that they maintain the standard of integrity and conduct expected by the University;
- Ensuring that all reasonable steps are taken to attend any meetings associated with the disciplinary;
- Ensuring that they conduct themselves with dignity, honesty, and integrity to promote an atmosphere of mutual respect, in accordance with the University's Equality and Diversity, Dignity at Warwick, and other HR policies;

4.4. Employees may seek guidance and advice from a Trade Union representative or a work colleague prior to attending a disciplinary hearing.

5. Definitions of Conduct

5.1. 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 responsibilities of their role in good faith;
- abide by their terms and conditions of employment.

5.2. Misconduct

5.2.1. Disciplinary action would normally be considered in cases of misconduct. There are two levels of misconduct: ordinary and gross. Ordinary misconduct is conduct of such a kind as to warrant disciplinary action rather than instant dismissal for a first offence. However, repeated instances of ordinary misconduct can lead to dismissal.

The following are examples of ordinary misconduct, neither exhaustive nor pre-empting more serious disciplinary action:

- poor timekeeping;
- minor insubordination;
- refusal to obey a reasonable instruction;
- wilful neglect of duties;
- knowingly failing to follow procedure.

5.3. Gross misconduct

5.3.1. Gross misconduct is conduct so serious that it effectively breaches the contract of employment, and may include:

- theft, fraud, deliberate falsification of records;
- physical violence, assault, threatening or intimidating behaviour;
- deliberate damage to University property;
- misuse of University property and services, including inappropriate use of IT facilities;
- being under the influence of alcohol, illegal drugs or other deliberately misused substances (please refer to the University's Alcohol and Drugs Policy);
- an act or omission at work which results in unacceptable loss, damage or injury;
- repeated wilful disobedience or refusal to obey the reasonable and lawful instructions of the manager;
- acts constituting harassment, discrimination or victimisation (including on the grounds of sex, race, disability, sexual orientation, religion and belief, gender reassignment, pregnancy and maternity, marriage and civil partnership, or age);²

² For such occurrences, it may also be appropriate to refer to the University's Dignity at Warwick policy

- offensive language or behaviour of a serious nature, including bullying or harassment;³
- conduct constituting failure or persistent refusal or neglect or inability to perform the duties of, or comply with, the conditions of office;
- act of sexual impropriety;
- serious breach of confidentiality;
- disregard of a safety regulation or requirement;
- improper use of the employee's position for his/her or another's private/business advantage, or an attempt to do so within the UK or abroad;
- deliberate contravention of the University's Financial regulations;
- criminal activities outside work, where such conduct is judged to be incompatible with the individual's employment;
- conduct which could damage the reputation of the University.

This list is illustrative and not exhaustive.

5.3.2. If, on completion of a disciplinary hearing, the University is satisfied that gross misconduct has occurred, the result will normally be summary dismissal, which is the termination of employment without notice or pay in lieu of notice.

6. Informal Procedure

6.1. Minor faults will be dealt with informally by way of advice, coaching, caution or training as appropriate. Examples of such offences may include isolated instances of:

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

6.2. The Head of Department (or representative) has responsibility for bringing the matter to the attention of the employee and discussing it with them. The Head of Department (or representative) should meet with the employee to inform them of the behaviour causing concern and to outline the expected improvements. The employee should be advised clearly of the standard of behaviour expected of them, and should be informed that if they do not improve then they may be subject to formal disciplinary action as set out below.

6.3. The employee and the Head of Department (or representative) should make a note of the meeting, outlining the agreed objectives, expectations and timescales, using the template attached at Appendix 1 and ensuring both parties have a copy of the signed record.

7. Formal Procedure

7.1. In matters that are more serious or in cases of repeated minor breaches the alleged misconduct will be dealt with under the formal disciplinary policy and procedure. The relevant HR Adviser should be consulted by the Head of Department (or representative) at all stages under the formal procedure for advice on managing disciplinary matters.

³ For such occurrences, it may also be appropriate to refer to the University's Dignity at Warwick policy

7.2. The employee must be informed in writing about the details of the alleged misconduct against him/her and the process that will be followed to resolve the matter.

8. Investigation

8.1. The extent of an investigation prior to a disciplinary hearing, may depend on the seriousness and complexity of the case. In some cases this will require the holding of an investigatory meeting, however, in others, the investigatory stage will be the collation of evidence for use at a disciplinary hearing.

8.2. The Head of Department (or nominated representative) may complete the investigation; however, generally, in complex or potentially serious cases, it will be appropriate for an Investigating Officer to be appointed by the Head of Department (or nominated representative) in liaison with the relevant HR Adviser.

8.3. 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 alleged misconduct;
- to decide which witnesses are necessary to interview and, accordingly, to invite them to participate in an investigatory interview;
- to conduct the investigation in a confidential manner, and complete the investigation without undue delay wherever possible;
- to provide a written report outlining the findings of the investigation to the Head of Department (or nominated representative).

8.4. Following receipt of the report from the Investigating Officer, the Head of Department will inform the individual of the outcome and advise on any next steps.

8.5. The Head of Department (or nominated representative) will provide the individual with a copy of the Investigating Officer's report for information. In exceptional circumstances, for example where it is deemed that the release of the report may be damaging to other parties, the report may be withheld or redacted.

8.6. Where it is deemed appropriate by the Chair/Panel, the Investigating Officer may be invited to attend a disciplinary hearing.

9. Criminal/external investigations

9.1. 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 alleged conduct requires prompt attention, the University is not restricted by awaiting the outcome of any prosecution before taking action.

10. Suspension

- 10.1. A Head of Department (or nominated representative) may, after consultation with HR, suspend a non academic employee for the minimum period possible, while an alleged offence is investigated or pending the outcome of an investigation or a disciplinary hearing. In cases of possible suspension of academic employees, the suspension must be authorised by the Provost, in consultation with HR.
- 10.2. Suspension shall be on base salary (i.e., that which the employee would have normally received, excluding overtime). The individual will be given formal written notification of the reasons for the suspension and, where possible, an indication of the likely length of the suspension.
- 10.3. Suspension with pay is not a disciplinary sanction and is considered to be a neutral act.
- 10.4. Suspension may be appropriate in the following circumstances:
 - 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 his or her job;
 - where the presence of the employee on site is unacceptable to others and/or 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.

11. Representation

- 11.1. At each stage of the formal disciplinary policy and procedure, the employee has the right to be accompanied by a work colleague or Trade Union representative. When arrangements for meetings are confirmed, it will be the employee's responsibility to notify their chosen representative of the arrangements and to provide their representative with any relevant paperwork. The representative may address the meeting/hearing at which they are present, sum up the employee's case and confer with the employee. The representative shall not answer questions on the employee's behalf, nor address the meeting/hearing if the employee does not wish them to do so.
- 11.2. The employee will be responsible for notifying, the Chair/Panel or the relevant HR Adviser in advance of the meeting the name of the person accompanying them.
- 11.3. Availability of a work colleague or Trade Union representative should not prohibit the expedience of the process and the employee may be asked to identify alternative representation in the event of delay, of more than five working days.
- 11.4. There is no requirement on a work colleague to accept a request to accompany an employee.

- 11.5. In cases where the University feels that the choice of representative might affect the integrity of the process, this will be discussed with the employee and the University may request that the employee nominates an alternative representative.

12. Disciplinary Hearing

- 12.1. If it is deemed appropriate and that potential disciplinary action might ensue, a disciplinary hearing should be convened, following consultation with HR. The individual should be notified of the date of the hearing, with a minimum of two weeks' notice of the hearing date, unless an earlier date is otherwise mutually agreed. The employee will be notified of the allegations against them and the potential consequences if the allegations are well founded. Where it has not already been released, the employee will normally be provided with a copy of the Investigating Officer's report (where an investigation has taken place) and any evidence at the same time that she/he is invited to attend the hearing. The employee will be given a deadline of five working days (unless otherwise mutually agreed) prior to the disciplinary hearing to make any submission to the panel, including notification of the intention to call witnesses and the reasons why.
- 12.2. The hearing will normally be chaired by the Head of Department (or nominated representative) for non-academic employees. For cases of misconduct of academic employees, the hearing will normally be chaired by the Head of Department (or nominated representative) and for cases of gross misconduct the hearing will normally be chaired by the Faculty Board Chair or Pro-Vice-Chancellor. Where the Head of Department is the subject of the disciplinary action or is involved in a personal capacity, their role in the process will be undertaken by a senior Professor or Senior Officer nominated by the Registrar or the Vice Chancellor.
- 12.3. The Chair will be accompanied by a minimum of one other appropriate manager.
- 12.4. The detailed procedure for the hearing will be determined by the Chair and the disciplinary panel and notified to those present at the commencement of the hearing. A guide as to the normal order of proceedings at a disciplinary hearing is available at Appendix 2.
- 12.5. The Chair of the disciplinary hearing, in consultation with the other panel members will consider any requests for witnesses to be called by either party and will determine whether the panel wishes to hear from any witnesses, or the Investigating Officer.
- 12.6. In all disciplinary hearings, a HR representative will be present and will advise on process. The employee is responsible for taking his or her own record of the meeting, and both parties should be aware that recording devices will not be permitted, except in exceptional circumstances and following agreement in advance by all parties.
- 12.7. Where an employee fails to attend a disciplinary hearing without reasonable cause, the meeting may either be reconvened or the hearing may proceed in the employee's absence and a decision taken based on the information available to the Chair/Panel.
- 12.8. The disciplinary Chair may adjourn the disciplinary hearing at any time, such as to allow for further investigations or re-interviews of witnesses in light of any matters raised at the disciplinary hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is recommenced.

12.9. The outcome of the disciplinary hearing will be confirmed by the disciplinary Chair in writing to the employee within 5 working days.

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

12.10.1. No Further Action

If there is insufficient evidence to support the allegations of misconduct, the case will be dismissed. Additionally, if the offence is of a minor nature it may be decided that no sanction is required.

12.10.2. First Written Warning

If the offence is of a serious nature, or if a further offence occurs following an informal caution, a written warning may be issued to the employee. The written warning will give details of the misconduct, the findings of the disciplinary hearing, the action(s) required and any relevant timescales. The letter will also warn that further disciplinary action will be considered if there is no satisfactory improvement, and it will advise of the right of appeal. A copy of the warning and associated documents will be kept on file and will normally remain in force for 12 months. It will normally be disregarded for the purposes of any further disciplinary action thereafter, provided there has been no further misconduct of any description during the period of the warning.

12.10.3. Final Written Warning

If there is a failure to improve and conduct remains unsatisfactory, or if the misconduct is sufficiently serious, then a final written warning may be issued to the employee. The final written warning will give details of the misconduct, the findings of the disciplinary hearing, the action(s) required and any relevant timescales. The letter will also warn that dismissal will be considered if there is no satisfactory improvement or further misconduct, and it will advise of the right of appeal. A copy of the warning and associated documents will be kept on file and will normally remain in force for 24 months. It will normally be disregarded for the purposes of any further disciplinary action thereafter provided there has been no further misconduct of any description during the period of the warning.

12.10.4. Possible sanctions, other than dismissal, under the formal disciplinary procedure may include one or more of the following:

- redeploying the party from the department or away from an employee in harassment and bullying cases, where it has been determined that misconduct, harassment or bullying has occurred;
- modification of duties;
- requirement to participate in training;
- withholding increments.

12.10.5. Dismissal

If conduct remains unsatisfactory and the employee fails to meet the prescribed

standards, or in cases of gross misconduct, dismissal may result. Only a Head of Department (or nominated representative) can take the decision to dismiss a non-academic employee. Only a Faculty Board Chair/Pro-Vice-Chancellor, as Chair of a disciplinary panel, in consultation with the Provost, can take the decision to recommend the dismissal of an academic employee.

The employee will be given written details of the misconduct, 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 be notified of the right of appeal.

12.11. Movement through the stages of the disciplinary procedure will not necessarily be in relation to the same offence. The cumulative progress of the process will be determined by the nature and seriousness of the offences.

13. Appeal

13.1. Individuals have the right to appeal against any formal disciplinary decision. The appeal should be made in writing by the employee, setting out the grounds for appeal, with any appropriate supporting evidence addressed to the relevant HR Manager who will forward a copy to the Head of Employee Relations. Any appeal must be lodged within two weeks of receipt of written notification of the decision. The appeal will be heard as soon as practicable and normally no later than four weeks after the appeal has been lodged, except where it is mutually agreed that this time limit be extended.

13.2. Where possible, the appeal will be heard by an individual more senior than the person who determined the original disciplinary sanction, although there may be circumstances where it may be appropriate for an individual at the same grade to chair an appeal. The individual hearing the appeal will be accompanied by a minimum of one other senior member of staff independent of the allegation. A member of HR will be present and will advise on procedure. The individuals on the appeal panel should not have been involved in any of the prior stages of the disciplinary procedure.

13.3. The appeal Chair will write to the employee with notice of the membership of the appeal committee and a date for the appeal hearing.

13.4. Grounds of Appeal:

Grounds of appeal against a decision of the disciplinary panel will normally come under one or more of the following headings:

13.4.1. Further evidence not previously considered at an earlier stage

The employee can demonstrate that relevant evidence was not included in the original investigation or was not available to the disciplinary hearing when reaching the decision.

13.4.2. Process or Procedural aspects

The employee can identify areas of the procedure which were not operated correctly or appropriately and as a result could have influenced the final outcome or decision.

13.4.3. Final Decision not appropriate

The employee considers that the decision cannot be sustained on the basis of the findings of the disciplinary investigation and/or the penalty imposed is too severe taking into account the seriousness of the offence and any mitigating factors.

- 13.5. The appeal Chair/Panel will be asked to consider if the original decision was inappropriate on the grounds of appeal specified by the individual. The appeal hearing is not normally a re-hearing of the case put before the disciplinary panel, but the grounds for the appeal will be considered when deciding the necessity for, or extent of, any new investigation or re-hearing.
- 13.6. The appeal Chair may adjourn the appeal hearing at any time to allow for further investigations in light of any matters raised at the appeal hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is re-commenced.
- 13.7. The appeal Chair/Panel have a number of powers in relation to the action they can take including:
 - confirm the decision of the original disciplinary panel;
 - reduce the sanction originally imposed;
 - re-instate following dismissal;
 - overturn the disciplinary action taken where it is considered just to do so, in particular in light of new evidence or where the disciplinary decision was unreasonable in light of the findings of fact;
 - refer the matter back for a re-hearing where the fairness of the process/procedure was the stated grounds for appeal and this is upheld.
- 13.8. The decision of the Chair/Panel will be confirmed in writing to the employee normally within two weeks.
- 13.9. The decision of the appeal Chair/Panel is final and there will be no further right of appeal against this decision.
- 13.10. In cases of dismissal, where a member of Academic Staff asserts that the issue of academic freedom is invoked under Part 1(1)(a) of Statute 24 the appeal procedure contained within Part 2 of Statute 24 will apply.

14. Confidentiality

- 14.1. All information relating to a disciplinary case will be treated confidentially and maintained in compliance with the Data Protection Act 1998. Information relating to the alleged misconduct 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.
- 14.2. Employees will normally be informed of the names of any witnesses whose evidence is relevant to disciplinary proceedings, unless the University believes that the identity of witnesses should remain confidential.

- 14.3. 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 itself be subject to disciplinary action. This does not preclude individuals from seeking appropriate advice, support and information in relation to the case.
- 14.4. 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.

15. Recording and Monitoring

- 15.1. The Head of Department (or nominated representative) and employee should keep written records during the disciplinary process. These records are confidential and will be kept no longer than necessary in accordance with the Data Protection Act. It is the appropriate line manager's responsibility to monitor the employee's conduct during the life of warnings and to ensure that the employee is achieving the desired objectives. HR will monitor all formal complaints and sanctions imposed and informal cautions will be monitored by departments.
- 15.2. Where issues related to protected characteristics are identified, they will be brought to the attention of the Equality and Diversity Team by the relevant HR Adviser.

16. Equality Impact Assessment

- 16.1 The University of Warwick recognises its responsibility to ensure that no-one is discriminated against or disadvantaged in relation to a protected characteristic which include: age, disability, sex, trans & gender reassignment, maternity, paternity and adoption, marriage and civil partnership, race, religion or belief, or sexual orientation. For further information, please refer to the University's Diversity and Inclusion website:

<http://www2.warwick.ac.uk/services/humanresources/workinghere/equality/>

- 16.2 The Disciplinary policy and procedure has been assessed as being of high relevance to our duties under equality legislation and the University will review its impact on equality and diversity, identify any inequalities by regular monitoring, and take action where necessary.

17. Trade Union Officials

- 17.1. Normal disciplinary standards will apply to their conduct as employees. However, no disciplinary action will be taken until the circumstances of the case have been notified to a full time official of the relevant Trade Union.

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Appendix 1

Record of informal discussion

Name:		Discussion conducted with:	
Department:		Date:	
Areas of concern (as identified by manager)			
Individual's comments			
Agreed objectives			
Timescale			

Date of next review:		Date:	
Signature:		Date:	
Line manager's signature:		Date:	

Appendix 2

Template Disciplinary Hearing framework

The detailed procedure for the disciplinary hearing shall be determined by the Chair in conjunction with the other panel members and therefore the below is given as a guide only as to the likely order of events.

Introduce Attendees / Clarify Roles

- 1 [Name and title] - Chair of the Disciplinary hearing
- 2 [Name and title] and [Name and title] – Panel Members
- 3 [Name], Secretary
- 4 [Name and title] – Presenting the management case for the University, and supported by [insert name if relevant]
- 5 [Name and title] – [Name], Individual presenting the case, and supported by [insert name if relevant]
- 6 [Insert Name] - Note taker

Process

- 1 A note taker will be present to make a record of the meeting.
- 2 Any party to the Disciplinary hearing may request an adjournment at any time.
- 3 At the commencement of the Disciplinary hearing, the Chair/Panel will notify the procedure to be followed.

Procedure

1. If the employee attends the Disciplinary Hearing without a representative, the Chair/Panel should ensure the employee is aware of their right to be represented and has waived that right.
2. **Summary of the alleged complaint** – The allegations that are being considered at the Disciplinary Hearing should be outlined by the Chair/Panel.
3. **Management case** – The University representative will have the opportunity to present their case
4. **Questions** can then be asked by members of the panel. Any questions the employee wishes to ask of the management case should be directed to the panel.
5. **Employee case** – The employee will have an opportunity to respond to the management case and present any additional information they consider relevant to the case.
6. **Questions** can then be asked by members of the panel. Any questions the University representative wishes to ask of the submission by the employee should be directed to the panel.
7. **The Chair/Panel** will ask the employee/representative:
 - if there is any further evidence/information they would like to provide to help the case
 - if there are any mitigating factors which have not been mentioned so far that should be considered?
8. **Management case summing up** – the University representative will sum up the management case
9. **Employee summing up** - Employee/representative will sum up the employee's case.

10. **Making the decision** – The Disciplinary Hearing panel will adjourn to make the decision on whether the alleged disciplinary misconduct is or is not well found. This may then be confirmed in person on the day, or in writing within 5 working days.
11. **Notification to employee and University representative** – The employee and the University representative will receive written confirmation by the Chair of the Disciplinary hearing of the outcome of the hearing.

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