

Disciplinary Procedures for Support Staff (covering unsatisfactory performance and misconduct)

1. Introduction

It is important that all members of staff are aware of the standards required of them at work and the potential consequences if those standards are not met.

The purpose of this procedure is to help and encourage members of staff to achieve and maintain acceptable standards of conduct, attendance, and job performance, enable managers to manage the working standards of their staff, and to ensure consistent and fair treatment.

All disciplinary action will be conducted in an objective and factual manner. All staff will be treated with dignity and respect.

For OU staff working in Wales, the University welcomes complaints submitted in Welsh or English, these staff may also choose to respond to complaints in Welsh or English.

This procedure complies with legislation and is based on good practice.

2. Scope

This procedure applies to all internal staff on Support Staff Terms and Conditions of Service who work in the United Kingdom.¹

This procedure covers unsatisfactory performance and misconduct, including:

- Unsatisfactory performance where this relates to lack of competency/skills;
- Absenteeism or lateness;
- Neglect of duty;
- Abusive or offensive behaviour
- Frequent intermittent sickness absence;
- Poor performance due to lack of application or negligence;
- Disregard of University regulations or guidelines.

This procedure does not cover:

¹ In Northern Ireland there is a Code of Practice on Disciplinary and Grievance Procedures (effective April 2011). For further advice please contact the People Hub.

- Employees during their probationary period (the relevant procedures are outlined in Terms and Conditions of Service), except in cases of gross misconduct where this procedure may be appropriate;
- Long-term sickness absence, including sporadic absences relating to a long-term health condition (see the Capability Procedure);
- Unsatisfactory performance due to a long-term health condition (see the Capability Procedure);
- Termination of employment at the expiry of a fixed-term contract;
- Termination of employment on grounds of redundancy or for any other reason apart from poor performance and lack of capability on which the University may rely to justify such action.

3. Informal Discussion

Minor shortcomings in conduct or performance should first be dealt with informally by the immediate line manager. It is important to try to establish the underlying reasons for any unacceptable behaviour or unsatisfactory performance as this will help in identifying the actions that should be taken to address the issue. Where, during informal discussions, it is established that the problem relates to a long-term health condition it may be appropriate to use the Capability Procedure (see References section) rather than proceed through the disciplinary route.

Misconduct

Minor cases of misconduct will be dealt with by informal advice, coaching and support. This will involve discussion with the member of staff about which areas are causing concern, with the objective of encouraging and helping them to improve. It is important that staff understand the actions necessary for sustained improvement, how conduct will be reviewed and the timescale. Staff should also be made aware of what action may be taken if they fail to improve their conduct.

Unsatisfactory Performance

Members of staff have a responsibility to perform their role to a satisfactory level and will be given reasonable help, encouragement and an appropriate period of time to improve. Line managers are responsible for setting the standards of performance and ensuring that members of staff understand what is required of them. In some cases additional training, coaching and advice may be required. A Personal Improvement Plan (see Managing Performance guide in References section) should be used as part of the informal process to set out what the individual needs to do and the consequences of failure to improve. Where an individual has been given reasonable support and time to meet the required standard, or where poor performance is due to negligence or lack of application on the part of the individual, formal disciplinary action may be taken.

During any informal discussions about conduct or performance, the member of staff should have the opportunity to comment, offer an explanation or bring any mitigating circumstances to the attention of the line manager, where appropriate.

During informal discussions it is not normally necessary for a member of the People Hub or a union representative to be present. However, in exceptional circumstances and at the discretion of the line manager, the attendance of a member of the People Hub and a union

representative may be deemed appropriate. Where this occurs it will have no impact on the status of the meeting and will not have the effect of creating a formal process.

Further guidance on the informal management of performance issues and frequent intermittent sickness absence is available - see 'References' section.

Informal discussion does not form part of the formal disciplinary/unsatisfactory performance procedure and will not necessarily result in any further action. If informal discussion does not result in the required improvement or the misconduct or unsatisfactory performance is considered too serious to be minor, formal action may be taken under the following procedure.

4. Formal Disciplinary/Unsatisfactory Performance Procedure

Investigation

It is important to carry out an investigation of potential disciplinary or performance matters without unreasonable delay to establish the facts. Sometimes this will mean holding an investigatory meeting with the member of staff before proceeding to a formal hearing. In other cases it will involve the investigating officer collating evidence for use at the hearing. An investigatory meeting will not by itself result in any disciplinary action.

In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing. The manager may ask an appropriate member of staff (normally within the Unit) to gather the facts before deciding what action, if any, should be taken.

Where there is an allegation of serious misconduct or the individual's presence could hinder an investigation, at the Group People Director's discretion, the member of staff may be suspended on full pay so that a proper investigation may be carried out. Where this is the case, the manager should first discuss the circumstances with the People Hub. Any period of suspension should be as brief as possible; it is a neutral act not a disciplinary penalty, and does not imply guilt. Any period of suspension will be confirmed in writing, including the reasons for the decision, the period of suspension, and any restrictions on access to the University site.

Where disciplinary action is being considered against a member of staff who is a trade union representative, the normal procedure applies. However, with the individual's agreement, the matter should be discussed at an early stage with an official employed by the union.

Written notification

If it is decided that there is a case to answer, the member of staff should be given at least 5 working days notice in writing of a formal meeting.

This notification should include:

- The time and place of the formal meeting and who will chair it;
- Sufficient information about the alleged misconduct or performance issue and its possible consequences to enable the member of staff to prepare to answer the case at the meeting;
- Details of the evidence supporting the allegations or the reasons why the University is considering dismissal. Copies of any written evidence (e.g. witness statements) may also be included.
- Reference to the member of staff's right to be accompanied at the meeting by a trade union representative or work colleague (see Section 7).

Disciplinary/Unsatisfactory Performance Meeting

Meetings up to final written warning stage will normally be conducted by the line manager. Decisions to dismiss will normally be taken by a more senior manager (i.e. Head of Unit). A member of the People Hub should normally be in attendance at any formal meeting, and always at any meeting where dismissal is one of the potential outcomes.

The manager will explain the complaint against the member of staff and go through the evidence that has been gathered. The member of staff will have the opportunity to set out their case, respond to any allegations that have been made, ask questions, present evidence, call relevant witnesses², and outline any mitigating circumstances they wish to be considered.

The meeting will be adjourned to enable all relevant facts to be considered.

Members of staff have the right to be accompanied at the meeting by a trade union representative or work colleague (see section 7).

Decision

After the meeting the manager will consider all relevant facts and decide whether disciplinary or any other action is justified, and if so what is appropriate (see section 5 for possible sanctions).

As a guide, where misconduct or unsatisfactory performance is confirmed, it is usual to give the member of staff a first written warning. A further act of misconduct or failure to improve performance within a set period would normally result in a final written warning. However, if a first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning.

No member of staff will be dismissed for a first breach of performance or conduct except for gross misconduct (see section 6).

The member of staff will be informed of the decision in writing within 5 working days of the meeting, unless further investigation is required (in which case notification of when the outcome will be known will be given to all parties). Section 5 gives details of the information to be included in the written decision notice.

Appeal

A member of staff has the right to appeal against any formal sanction imposed (including any decision to dismiss) where he/she feels the disciplinary or other action is wrong or unjust.

Any appeal must be made in writing to the Head of Unit (except where the appeal is against a decision to dismiss, in which case it should be made to the Group People Director) within 10 working days of receiving written confirmation of the decision, and must state the grounds on which the appeal is made.

An appeal hearing will normally be set up within 10 working days of receiving the written request, and the appeal will normally be heard by a more senior person in the University who has not directly been involved with the original procedure.

The member of staff will be notified in writing of the time, date and place of the appeal hearing and who will be in attendance, and informed of their right to be accompanied by a trade union representative or work colleague (see section 7).

² where either party intends to call witnesses to the formal meeting they should give advance notice that they intend to do this.

The member of staff will be informed in writing of the outcome of the appeal hearing as soon as possible after the meeting. The outcome will be one of the following:

- The original decision is upheld and the penalty is therefore confirmed.
- The original decision is overruled and the allegations are therefore withdrawn.
- The original decision is upheld but the original sanction considered too severe and is therefore substituted for another one.

There is no further right of appeal to the University.

5. Sanctions

Where action is considered necessary following a formal disciplinary/unsatisfactory performance meeting, the measures taken will depend on the seriousness of the matter and the particular circumstances. In most cases, the following measures will occur sequentially but the procedure may be initiated at any stage if the individual's alleged misconduct or poor performance warrants it.

Written warning

If following the disciplinary meeting the individual's conduct or performance is not considered satisfactory, a first written warning will be given which includes:

- A description of the misconduct or performance problem.
- A description of the improvement required (with timescale, including review dates), how the member of staff is to achieve this, and any other support to be provided or constructive steps that can be taken, where appropriate.
- The term of the warning, which will be for a period of up to 12 months.
- The possible consequences of further misconduct or failure to improve and maintain performance within the set period (i.e. a final written warning and ultimately dismissal).
- Notice of the right to appeal against the decision (see section 4).

The member of staff should be informed that the written warning represents the first stage of the formal procedure. A record of this warning and related discussions will be placed on the personal file.

Final written warning

For more serious matters or where the member of staff has failed to meet the required standards after receiving a written warning and following a subsequent meeting where conduct or performance is not considered satisfactory, a final written warning will be given. This final written warning will include the same information listed under 'written warning' above. A record of this warning and related discussions will be placed on the personal file.

Dismissal

Where the member of staff has failed to meet the required standard after due warning(s) have been given and a further meeting has established that conduct or performance is not considered satisfactory, the member of staff may be dismissed.

The individual will receive pay in lieu of notice and any accrued but untaken holiday entitlement. He/she will be informed in writing as soon as possible of the reasons for the

dismissal, the date of termination of employment, the appropriate period of notice and the right of appeal (see section 4).

6. Gross Misconduct

Some issues are regarded by the University as so serious that they warrant summary dismissal without prior warning. The following is a non-exhaustive list of matters which may justify summary dismissal (i.e. without notice and without payment in lieu of notice);

- Theft, fraud, deliberate falsification of records;
- Violent, abusive or intimidating behaviour;
- Deliberate damage to University property;
- Serious incapability through alcohol or being under the influence of illegal drugs;
- Serious negligence which causes unacceptable loss, damage or injury;
- Flagrant breach of any of the University's policies, codes of practice or procedures or instructions;
- Serious act of insubordination;
- Unauthorised entry to computer records, misuse of computer, e-mail and internet systems;
- Serious cases of bullying and harassment;
- Unauthorised absence;
- Conduct which is deliberately prejudicial to the work and the integrity of the University;
- Bringing the University into serious disrepute;
- Serious breach of Health and Safety rules.

If after investigation a member of staff is considered to have committed gross misconduct, he/she will still be subject to the formal procedure and will be called to a meeting (unless there is considered to be a risk to the manager's wellbeing) as outlined under section 4 above. If, following the meeting, gross misconduct is confirmed, the member of staff will be dismissed without notice and without payment in lieu of notice. The member of staff will be informed in writing as soon as possible of the reasons for the dismissal, the date on which the employment contract ended and the right of appeal. Payment will be made for any accrued but untaken holiday entitlement.

7. Right to be Accompanied

At all stages of the formal procedure, including appeals, members of staff have a statutory right to be accompanied by a companion (a trade union representative or work colleague). The companion is allowed to address the hearing in order to put and sum up the worker's case, respond on behalf of the member of staff to any views expressed at the meeting and confer with him/her during the hearing. The companion does not have the right to answer questions on behalf of the member of staff, address the hearing if the member of staff does not wish it, or prevent the employer from explaining their case.

8. Delayed or Re-arranged Meetings

Where the member of staff (or their companion) is unable to attend an arranged meeting, an alternative date will be arranged following consultations. No further re-arrangement will be made unless the individual requesting the change is certified as medically unfit to attend the meeting. If the member of staff fails to attend the re-arranged meeting it can take place in their absence (in consultation with their trade union representative or work colleague if appropriate) and the manager will make a decision on the evidence available.

9. Overlapping Grievance and Disciplinary cases

Any grievance raised during a disciplinary process will normally be heard as part of the disciplinary process. In certain exceptional situations it may be appropriate for the disciplinary process to be temporarily suspended in order to deal with the grievance.

10. Confidentiality and Records

Details of any disciplinary action will remain confidential to the parties involved and their representatives. Any breach of confidentiality may result in disciplinary action.

Records should be kept no longer than necessary in accordance with data protection principles.

In the following circumstances records will be held for two years and then destroyed:

- Where disciplinary action results in a formal warning.
Note: For cases of unsatisfactory performance, if performance is satisfactory for the term of the warning then such records will be disregarded for disciplinary purposes once the warning is spent. For misconduct cases, if conduct is satisfactory for the term of the warning then such records will be disregarded for disciplinary purposes one year after the warning is spent.
- Where an investigation results in no disciplinary action because the allegations are found to be without substance.

Records of formal disciplinary action will be held for 6 years following a dismissal.

11. References

Disciplinary Policy

Capability Procedure for Support Staff (covering longer-term absence through ill-health)

Sickness Absence Procedures

Sickness Absence Management, a Guide for Managers

Helping to Manage Under Performance – A Management Guide

ACAS Code of Practice on Disciplinary and grievance procedures and Discipline and grievances at work: The ACAS guide

Labour Relations Agency Code of Practice on Disciplinary and Grievance Procedures (Northern Ireland)