

# **DISCIPLINARY POLICY & GUIDANCE FOR MANAGERS**

## **1. POLICY STATEMENT**

The University expects all its employees to behave and interact appropriately in the course of their work and to treat all colleagues, students and contacts with dignity and respect. Should your behaviour fall short of the standards expected of you or you are in breach of University policy, we will take action to help you to achieve and maintain the required standards and/or to protect the safety and wellbeing of others.

This policy explains the action we will take to investigate and address any concerns regarding your conduct. This might be your behaviour at work.

The University has a zero-tolerance stance on bullying and harassment. This means we will never ignore any allegations which could amount to bullying and harassment.

## **2. SCOPE**

This policy applies to all employees of the University of Suffolk who have completed their probationary period and relates to conduct in all work- and work-related settings. It covers one-off incidents if sufficiently serious and repeated inappropriate/unacceptable behaviour.

Issues relating to conduct during an employee's probationary period will be managed in line with the Guidance for Managing Probation. Issues relating to absence at work will be managed in line with the Absence Management Policy. Issues relating to performance will be managed in line with the Managing Capability Policy.

## **3. PRINCIPLES**

This policy is underpinned by the following principles:

- Everyone involved in the process will be treated fairly, consistently and with dignity and respect.
- Any concerns relating to your conduct will be raised with you at the earliest opportunity. Unless the misconduct is sufficiently serious you will be given time to address any concerns before any formal action is taken.
- The aim of the process is to improve behaviour or to protect the safety and wellbeing of others and is not primarily about imposing a punishment.
- Any employee subject to disciplinary proceedings will have the right to be accompanied by their trade union representative or work colleague.
- If an employee has difficulty with any stage of this process due to a disability, it is their responsibility to discuss this with their manager or People and Organisational Development (POD) as soon as possible.
- The process will be kept as confidential as possible and information about a case will only be shared with those directly involved or affected. This means that if you are the subject of disciplinary proceedings you must not talk about it with anyone else at work other than those people dealing with your disciplinary case and your chosen companion.
- Audio/ Visual recordings of the proceedings by the employee or their companion are not acceptable at any stage of this process.
- Where it is not possible to hold a face-to-face meeting, we will conduct the disciplinary hearing remotely. Your rights will not be affected, and we will ensure that the procedure remains fair and reasonable.
- Different procedures apply to absence, grievance etc. The University may commence the process using one procedure but continue the process using a different procedure if it is more appropriate and reasonable to do so.
- At all formal stages of this policy the employee has the right to appeal. The appeals will be heard in an appeal hearing by a senior manager or panel that has previously not been involved with the case.

#### **4. DEFINITIONS AND TERMINOLOGY**

##### **Companion**

A companion person who can attend meetings/hearings with you. They are a work colleague or trade union representative. If you have a disability and need additional support, please let the relevant manager or member of POD know. Your companion is also someone you can talk to about your case outside of disciplinary meetings/hearings. A companion cannot be a witness in your case.

##### **Conduct**

Conduct is how you behave at work. It includes how you interact with and treat others and what is expected of you as described in University policies.

##### **Investigating Officer**

This is the person appointed to investigate concerns or complaints about your behavior or an alleged breach of University policy. This may be the employee's immediate line manager, or it could be another University of Suffolk manager. Only in exceptional circumstances might an independent investigator be appointed.

##### **Misconduct**

This is behaviour that is considered unacceptable or inappropriate by the University or is a breach of University policy.

##### **Gross Misconduct**

Gross misconduct is behaviour that is considered unacceptable or inappropriate or is a breach of University policy and has a serious and/or harmful impact. Such acts cause damage to the University, harm to others or result in a break down in trust. Examples of misconduct and gross misconduct can be found in **Appendix I**.

## **5. LINKS TO OTHER RELEVANT POLICIES**

You may find it useful to refer to other relevant University policies and guidance which you can find on the intranet:

Probation Policy

Absence Management Policy

Grievance Policy

Managing Capability Policy

Appeal Procedure (Dismissal)

## **DISCIPLINARY PROCEDURES**

### **6. GENERAL PRINCIPLES**

The University is committed to developing and maintaining constructive relations with its employees in order to promote an environment where colleagues can perform at their best. It is recognised that concerns regarding conduct do arise from time to time and that these may come to light in different ways and/or via different formal processes, such as the University's Grievance procedure. This procedure provides a framework for dealing with misconduct situations.

The University will act fairly and consistently when dealing with cases under the Disciplinary Procedure.

The University will seek to resolve employment issues promptly and transparently at the lowest possible level and, where appropriate, on an informal basis.

Managers should consult with People & Organisational Development (POD) Department prior to embarking on any formal disciplinary action. A member of POD will be present at formal disciplinary hearings to provide advice and guidance.

In the event of a Trade Union representative being the subject of a disciplinary investigation, the Director of People & OD and the regional office of the relevant trade union will be notified. A brief outline of the matter to be investigated will normally be given.

### **7. DISCIPLINARY PROCEDURE - CONDUCT**

#### **Steps in the Investigation Process**

- The University will investigate the alleged misconduct, without unreasonable delay, carrying out any necessary investigations to establish the facts in any case.
- The individual will be advised in appropriate detail of the allegations that are being investigated.
- The person who conducts the disciplinary meeting will be different from the person(s) who carries out the investigation.
- This may be the employee's immediate line manager, or it could be another University of Suffolk manager.
- In exceptional circumstances an independent investigator maybe appointed.
- The Investigating Officer will write up the investigation.
- The report will include written statements, interview notes, and any other relevant documentary evidence.
- This should be submitted to the Line Manager or Head of Department who will decide whether there is a case to answer and if this should be addressed through a formal disciplinary hearing

The purpose of a disciplinary investigation is to establish the relevant facts where there is an allegation of misconduct. The investigation is not a hearing to decide about a disciplinary sanction.

### **Informal Disciplinary Action**

Informal disciplinary action may be taken in appropriate cases. This involves informally discussing the matter with the employee, ensuring they understand the reason for the meeting, clearly defining the conduct that is unacceptable and identifying any remedial action. Meetings of this kind are usually conducted on a one-to-one basis. There is no necessity for managers to be accompanied by a member from POD or for the employee to be accompanied by a work colleague or trade union representative. An accurate record of the meeting and any action plan for improvement should be made and shared with the employee. Employees should be given reasonable time to reach the improvement outlined in the action plan agreed by both parties. The employee should be made aware that if informal attempts to obtain improvement are unsuccessful or the misconduct or poor performance re-occurs then formal action may be taken. A review meeting must be held even if the employee has sufficiently improved so that the process can be concluded. This is the informal stage with no formal outcome.

If during the course of the informal meeting it becomes apparent that the situation is more serious than first thought and the informal approach is no longer appropriate, the employee should be made aware of this and the formal disciplinary process instigated as set out below.

### **Suspension**

If serious or gross misconduct is alleged the employee may be suspended on full pay and benefits or temporarily deployed on alternative duties. The period of suspension will be as brief as possible in the circumstances and should be kept under review. Suspensions will be agreed in advance with a relevant member of the POD department.

Suspension is a precautionary measure, without prejudice to the outcome of any investigation or subsequent hearing.

As a rule, the line manager will meet with the employee to tell them they are suspended and will write to suspended employee to confirm the terms of the suspension.

### **Formal Disciplinary Meeting**

If informal action does not resolve matters or if following investigation, the alleged misconduct is considered sufficiently serious to potentially merit formal disciplinary action, the steps outlined below will be taken.

### **Inform the Employee in Writing**

The University will inform the employee in writing of the allegations. The letter will contain sufficient information about the allegations and the possible consequences to enable the employee to respond to these at the disciplinary meeting.

The letter will normally enclose copies of any documents that have been gathered during the investigation process to allow for adequate preparation by the employee.

Possible consequences up to and including dismissal, will be outlined in the letter. The letter will also advise the employee of their right to be accompanied by a work colleague or Trade Union representative.

Employees who are unsure of their representation rights are encouraged to contact either their line manager or POD in advance of a hearing.

Only one representative may attend a hearing. Employees accompanying colleagues during disciplinary interviews and/or hearings, will be given reasonable paid time away from their work to fulfil that responsibility.

### **The Meeting**

Disciplinary meetings to hear cases will normally be convened by the manager of the member of staff under investigation. For more complex cases an additional manager will join the chair to form a panel. The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case. The disciplinary manager will write to you normally with 48 hours' notice, to confirm the date for the meeting.

At the meeting the Hearing manager will explain the allegations against the employee and go through the evidence that has been gathered. The employee will be allowed to set out their case and answer any allegations that have been made. They will also be given the opportunity to ask questions and present evidence.

It may be appropriate for relevant witnesses to attend the disciplinary meeting and the employee will be given the opportunity to raise points at the meeting about any information provided by witnesses. Where an employee or the University intends to call a witness, they should notify the other party of this in writing in advance of the meeting and ensure that they attend at the appropriate time. No individual can be compelled to attend a disciplinary meeting as a witness.

The manager convening the disciplinary meeting will decide on the outcome, where appropriate, seeking advice from the relevant POD representative. You will find guidance for holding investigation & disciplinary meetings, at the end of this policy.

After the meeting, the University will notify the employee of its decision in writing. This will normally be done within 5 working days of the meeting. If disciplinary action is taken the employee will be advised of the right to appeal.

### **Disciplinary Outcomes**

The University has discretion to determine the appropriate disciplinary outcome to apply to an employee who it concluded has committed an act of misconduct. These outcomes (or sanctions) include:

#### **Formal Verbal Warning**

This will usually be appropriate for a first act of misconduct where conduct falls below an acceptable level, or a minor offence has been committed and there are no live written warnings. This warning will normally apply for 6 months.

#### **Written Warning**

This will usually be appropriate for misconduct where there is already a live formal oral warning on the employee's record or where the misconduct is considered sufficiently serious to warrant a written warning even although the employee has no live warnings. A written warning will normally apply for 12 months after which time it will be disregarded.

#### **Final Written Warning**

This will usually be appropriate for misconduct where there is already a live written warning on the employee's record or where the misconduct is considered sufficiently serious to warrant a final written warning even although the employee has no live warnings. A final written warning will usually apply for no longer than 24 months after which time it will be disregarded.

### **Dismissal**

Dismissal will usually be appropriate in respect of the following:

- Repeated or serious misconduct during the first 12 months of an employee's employment.
- Further misconduct where there is a live written warning.
- Any gross misconduct regardless of whether there are live warnings.

Gross misconduct will usually result in dismissal with payment in lieu of notice.

In extreme cases of gross misconduct, the University reserves the right to summarily dismiss an employee without a prior investigation and without recourse to a formal hearing.

Examples of conduct which are likely to amount to gross misconduct can be found under **Appendix 1**.

If the University decides that dismissal is the appropriate sanction, the employee will be informed of the reasons for the dismissal and the date on which employment will end.

An employee will not normally be dismissed for a first act of misconduct unless the University concludes that it amounts to gross misconduct.

### **Alternative Formal Outcomes**

In appropriate cases the University may consider some other sanction short of dismissal e.g., Transfer or demotion to another job, or withholding an annual increment for a specified period.

### **Warning to Employee**

For both formal verbal, first and final written warnings the University will inform the employee of the nature of the misconduct, the change in behaviour required, the likely consequences of further misconduct and the period the warning will remain live for.

### **Appealing the Outcome**

If an employee wishes to appeal the outcome of a decision made at any hearing held under the disciplinary procedure, they should submit an appeal in writing outlining their full grounds for appeal, within 5 working days of receipt of the University's decision to the dismissing manager. Late submissions will be deemed to be out of time.

Employees will be notified that their appeal has been received within 5 working days. The appeal stage is not intended to be a rehearing of the original case. Hence the grounds for appeal should typically fall within one of the following:

- Procedural error.
- The outcome and recommendations are unreasonable and significantly out of line with the issues considered.
- New information is now available which could not have reasonably been provided when the original outcome was communicated.

Where the appeal relates to new evidence there should be a clear statement provided outlining the reason why this was not available for consideration at the previous stage.

Appeals against dismissal will be conducted in accordance with the University of Suffolk's Appeal Procedure (Dismissal).

### **The Appeal Meeting**

The University will invite the employee in writing to attend an appeal hearing, no less than 48 hours' notice of the date of the Hearing will be given. The employee may be accompanied by a Trade Union representative or work colleague.

Appeals will be heard by an independent and normally more senior manager who will consider the hearing outcome with an open mind.

If the employee or their Trade Union representative is unable to attend the appeal meeting, steps will be taken to rearrange this within 5 working days of the original date. However, if the employee is persistently unable or unwilling to attend a meeting, the Appeal Manager may review the available materials and reach an outcome based on the information available to them. A decision to proceed in this way will be communicated in writing to the employee in advance.

Appropriate training/guidance will be provided to Appeal Managers and members of Appeal Panels by POD. Further information and guidance on the appeal process is contained in the University of Suffolk's Appeal Procedure.

### **The Appeal Outcome**

Once the Appeal Manager has considered all the points raised, they will normally provide a response, in writing, within 10 working days.

The decision of the Appeal Manager is final and there is no further right of Appeal.

## **8. OTHER CONSIDERATIONS**

### **Protection of Children**

Allegations concerning the possible abuse of children by University staff must be reported immediately to the Director of POD and to the Academic Registrar, who is the designated Safeguarding Officer.

The Safeguarding Officer may consult with the County Council's Social Care Department to decide whether a referral should be under the local Area Child Protection Committee (ACPC). Such processes may take precedence over the University's disciplinary procedures.

### **Matters requiring Specialist Advice**

University of Suffolk reserves the right to engage additional support for investigators and/or those hearing cases involving complex matters of a specialist nature. For example, in a case involving alleged financial irregularities, the assistance of the University's Auditors may be appropriate during the investigation.

### **Students as Witnesses**

It is the policy of the University not to call students as witnesses at internal hearings if possible. In the event an investigating officer, an employee or their representative(s) wishes to approach a student with a view to securing a witness statement or other testimonial, permission must be sought in writing from the Dean of School.

### **Professional Bodies**

Where applicable, the University will notify any professional bodies (e.g. NMC) of any relevant outcomes.

## **APPENDIX 1: Definitions of Gross Misconduct**

**The list is not exhaustive and should only be used as a guide.**

The following are examples of matters that are normally regarded as gross misconduct:

- Theft or fraud.
- Physical violence (actual or threatened).
- Deliberate and serious damage to property.
- Unlawful discrimination, harassment, bullying or intimidation against employees, contractors, students or members of the public on the grounds of sex, sexual orientation, marital or civil partner status, pregnancy and maternity, gender reassignment, race, disability, religion or belief, or age which contravenes the University's Equality Policy e.g. sexual violence, anti-Semitism etc.
- Deliberately accessing internet sites containing pornographic, offensive or obscene material.
- Defamatory and /or abusive comments regarding the University or its staff through the inappropriate use of social networking technology, electronic web logs (blogs) or another internet sites.
- Intentional or malicious refusal to comply with reasonable instructions or requests made by a line manager within the workplace.
- Bringing the University into serious disrepute such as serious misuse of University property, name or reputation.
- Giving false information as to qualifications or entitlement to work (including immigration status); using fraudulent identity or withholding information that would be relevant.
- Incapability to work due to being under the influence of alcohol, illegal drugs or other substances during working hours.
- Serious or repeated breach of health and safety rules or serious misuse of safety equipment.
- Conviction for a criminal offence that in the University's opinion may affect the University's reputation or its relationships with staff, students or the public, or otherwise affects the employee's suitability to continue to work for the University.
- Possession, use, supply or attempted supply of illegal drugs.
- Serious neglect of duties, or deliberate breach of the University's procedures.
- Deliberate or malicious unauthorised use, processing or disclosure of personal data which contravenes the University's Data Protection Policy.
- Making untrue/vexatious allegations in bad faith against a colleague.
- Serious misuse of the University's information technology systems (including misuse of developed or licensed software, use of unauthorised software and serious misuse of e-mail and the internet).

### **Misconduct**

Examples of misconduct for which disciplinary action is appropriate include (but are not limited to):

- persistent poor timekeeping;
- breach of our absence reporting procedures;
- refusal to follow a legitimate management instruction;
- negligence in performance of duties
- breach of health and safety rules
- careless work;
- time-wasting;
- disruptive behaviour; and
- insulting or offensive behaviour towards others, not amounting to serious harassment or bullying.

### **Actions outside Work**

Actions outside work (including use of social media) may be considered to be gross misconduct, or misconduct, if they affect the employee's ability to carry out their job or have a negative effect on the University's reputation.



## **APPENDIX 2: Guidance for managers conducting disciplinary investigations & meetings**

When undertaking a disciplinary investigation, it is important that you keep an open mind regarding the outcome and ensure impartiality, fairness and confidentiality throughout the process.

It is also important to ensure that you stay focussed on investigating the specific allegations of misconduct.

Exploring how best to support the employee's wellbeing with them at this stage and throughout the process to follow is important. Giving the employee an indication on timescale of when they are likely to hear about next steps is helpful, along with supporting them with any concerns and where to access help.

### **1. Planning an informal meeting to discuss conduct or behaviour causing concern**

Start by bringing this to their attention at the earliest opportunity.

Arrange a one-to-one meeting to:

- Explain the nature of the concern to the employee.
- Allow the employee to respond.
- Set out clear standards of behaviour required.
- Set a follow-up date to review the matter with the employee.
- Inform the employee what will happen if they do not achieve the required standard.
- Write a brief note of the meeting and give a copy to the employee.

### **2. Planning an Investigation**

Start by deciding what evidence you will require to establish the facts.

- Think about whom you need to interview, what questions you want to ask them and in what order you wish to see individuals. Also consider what other evidence or documentation you might require.
- Try to see people as quickly as reasonably possible before their recollection of events fade.
- You should ensure that interviews take place in a venue that provides appropriate privacy and allows them to take place without interruptions.
- Arrange for administrative support to take notes of any meetings to allow you to focus on conducting the interviews.
- Where significant delays in concluding the investigation are anticipated this should be notified to the affected employee and where possible a timescale for completion given.
- Interview the employee accused of misconduct to understand their version of events. Ensure that you give them advanced warning of the meeting and time to prepare.
- The employee should be made aware of the allegations against them and be provided with any documentation that you would want to speak to them about.

### **3. Witnesses**

When questioning witnesses care should be taken to maintain confidentiality. The full circumstances regarding the allegations should only be revealed if required.

Witnesses are not normally expected to be accompanied at investigatory interviews.

You cannot insist that individuals participate as witnesses. If a potential witness raises concerns you should seek to address these. In some circumstances witness statements may be anonymised to protect the witness. If a witness wishes to remain anonymous you should discuss this with POD.

### **4. Undertaking investigatory Interviews**

The following list provides suggested areas to cover when undertaking interviews.

## Opening

- Explain who you are and the other people in the room.
- Outline the format of the meeting.
- Advise that adjournments may be requested if required.
- Highlight an expectation of honesty and confidentiality.
- Explain why you are carrying out the investigation.
- Clarify that your role is to establish what happened and not to make a judgement about what to do.
- Advise that a note of the meeting will be provided, and the interviewee will be asked to confirm that they are accurate.
- For witnesses - advise that the notes of the meeting will normally be shared with the employee accused of misconduct.

## Questioning

- Ask the interviewee to tell you what happened in their own words.
- Let the individual speak even if they are not describing things in order.
- Focus questioning on the allegations and the facts relating to these.
- Only explore issues in more detail that are relevant to the case.
- Do not make assumptions and interpret what they are saying.

## Rounding Up

- Summarise back to the witness what you have understood / written.
- Ask if there is anything else relevant that they wish to add or any additional witnesses that may be relevant
- Explain what will happen next.
- Confirm if the employee is aware of any other witnesses to the incident and any other relevant documents that may be relevant.

## 5. Investigation Outcome

After completing the investigation, the evidence should be collated together, to form the basis of a report. It is important consider all the evidence and to take care to view the matter objectively. The relevance and validity of information collected should also be considered. The report would normally provide a summary of your investigation findings and a recommendation on whether the case should proceed to a disciplinary hearing. You should not recommend what level of penalty is warranted.

Decisions should be based on the principle of the balance of probabilities rather than beyond reasonable doubt. Your recommendations can include:

- No further action is appropriate.
- Informal action, such as coaching.
- That you consider appropriate evidence in support of the allegations to warrant the case proceeding to disciplinary hearing.

There is a template for an investigatory report under **Appendix 3**.

## 6. Preparing for a Disciplinary Hearing

### • Appointment of the Chair

The Chair must have played no part in the factual matters giving rise to the hearing and must not have been involved in the investigation. A People Business Partner will assist the Chair in matters of process and available options; the PBP will not be part of the decision making.

- **Planning a Hearing**

All parties will be informed of the arrangement for the Hearing, consideration will be given to secure a date that is convenient to the parties. In the event of the first date not being convenient for the employee, or their companion, an alternative date will normally be offered within 5 working days of the original date (unless otherwise agreed by all parties).

- **Written Evidence**

The Investigation Report shall form part of the case file, together with all associated statements and other written evidence. The employee shall be invited to submit written evidence, which must be received by the POD Department no later than 24 hours prior to the date of the hearing.

- **Failure to attend a Hearing**

In the event of the subject of a hearing failing to attend a rearranged hearing without good reason, a decision may be made in their absence on the evidence available. It is expected that those who anticipated difficulties in attending such a hearing will have discussed the matter with the disciplinary manager in advance, at the invitation stage.

## **7. Record of Meetings**

Notes of any interviews should be taken. These should capture the responses to questions. While it is important to capture key points reflecting the interviewee's words, the notes are not intended to be a verbatim record of the interview. You should ensure that notes are agreed as an accurate record of the meeting and that these are signed and dated.

Any witness statements provided should also be signed and dated as accurate.

## **8. Guidance on Disciplinary Suspension**

In cases regarding allegations of serious or gross misconduct employees may be suspended on full pay or temporarily deployed to alternative duties. The decision to suspend a member of staff is not taken lightly and this must be discussed in advance with the People Business Partner.

Suspension is not a disciplinary action nor does it infer any guilt. Where an employee is suspended, care should be taken as to how this is communicated to other staff. As far as reasonably possible the suspension and the reason for it should be kept confidential to minimise any risk to the employee's reputation.

The period of suspension should be kept as brief as possible and kept under review. This means that the investigation process should be carried out as quickly as possible while ensuring that the process is sufficiently thorough and fair.

When an employee is suspended, they should be kept updated with progress on the investigation and notified of any significant delays in concluding the investigation.

## APPENDIX 3: Investigation Meeting Template

INVESTIGATION REPORT
<p><b>Purpose of the Investigation</b> Outline what the alleged discipline issue is and its consequences and who has made the allegations and against whom. Detail what issues need to have been clarified and evidenced by the end of the investigation.</p>
<p><b>Surrounding Circumstances</b> Where and when the alleged incident took place and any other relevant issues which may affect the case.</p>
<p><b>Background Information</b> You may seek advice from the PBP supporting the IO on any information held on the employee's personal file, held by POD, which may be applicable to the case. Give a brief outline of the employee's current job, their employment history and disciplinary record, if any. In addition, you will need to explore if there have been any previous incidents or issues that may relate to this case or any mitigating circumstances e.g., health, domestic problems, or provocation.</p>
<p><b>Conduct of the Investigation</b> Give a summary of the people interviewed, including their name, their role, and their status in the investigation (e.g., subject, person making the allegation, witness). List any other sources of information. Attach witness statements, interview notes and other documentary evidence as appendices.</p>
<p><b>Evidence Summary</b> Provide a summary of the evidence collected and relate this to the allegation(s). Make sure this is a balanced summary.</p>
<p><b>Conclusion</b> The Investigating Officer should indicate whether, in their view, there is a case to answer.</p>