



DISCIPLINARY POLICY

1. Purpose

The University aims at all times to achieve high standards in individual conduct and behaviour and to ensure consistent and fair treatment for all. It is the University's policy that disciplinary rules and procedures are necessary for promoting fairness and for ensuring all employees maintain the standards expected from them to enable the University to operate more effectively.

Most issues can be dealt with quickly and informally by an individual's line manager who will make the individual aware of the standards expected. However, if an informal approach is inappropriate, either because it has already been ineffective or because the alleged offence is considered to be more serious, it will be necessary to follow the formal policy and procedures set out in this policy and procedural document.

2. Scope

This Policy and supporting procedures apply to all UK based University employees and are designed to ensure that the University's approach to misconduct is fair and consistent.

Employees not based in the UK will normally have a separate policy and process due to differing local Labour laws. This will be explicit in the appropriate contract terms and conditions.

In applying this policy, the University will have regard to the need for safe grounds to enable all staff to raise genuine concerns about unethical conduct or malpractice in connection with or by the University. Any such concern received from an employee will be considered under the University's whistle blowing policy and procedure.

3. Key Principles

The University is committed to ensuring a working and learning environment in which all staff are treated with respect and dignity. No proceedings will be undertaken which would constitute unlawful discrimination of any kind.

This policy promotes fairness, reasonableness and consistency. This is in keeping with the Spirit of Heriot-Watt - valuing and respecting everyone and supporting an environment for creating and sustaining a sense of pride and belonging.

The application of this policy and its supporting procedures recognise the right of academic freedom as set out in the Statutes and Ordinances.

The procedure supporting this policy is intended to establish the facts quickly and to deal consistently with disciplinary matters.

Disciplinary action will not normally be taken until the case has been investigated.

While the alleged offence is being investigated an employee may be suspended with pay. Any decision to suspend must be taken by the Head of School or Section or their appointee in discussion with HR.

Any decision taken to conduct an investigation will be conveyed to the employee as soon as is practical.

All employees have the right to be accompanied to a disciplinary hearing or appeal hearing by a work colleague or Trade Union official.

There is the right of appeal against any disciplinary action.

The procedure may be implemented at any level if the alleged misconduct warrants such action.

Time limits referred to in the course of this procedure may be varied by consent of all appropriate parties.

4. Procedure

Minor disciplinary matters will be dealt with in the first instance on an informal basis, but where the matter recurs or is more serious the formal procedure will be used. Formal disciplinary action will not normally take place until the University has fully investigated the matter. The employee will be notified of any decision taken to conduct an investigation.

All proceedings and records will be treated with discretion and confidentiality, balanced with achieving a fair and thorough investigation.

Where, upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct, the employee will be invited to attend a Disciplinary Hearing. The University reserves the right to dispense with an investigatory interview under some circumstances and to proceed directly to a formal disciplinary hearing – this would only apply however in a minority of cases.

The Procedure will normally be applied to all cases including where the alleged offence is under investigation or is subject to legal proceedings. In all such cases, the advice of HR should be sought.

5. Disciplinary Action

Minor disciplinary matters addressed informally will mostly result with an agreed (between the employee and his/her manager) action plan with appropriate timeline in which the employee has the opportunity to resolve the matter with support if appropriate. Review meetings should be scheduled in order to monitor progress.

Should the matter be more serious or is a repetition of a minor offence previously addressed informally, then following investigation and subsequent disciplinary hearing, the following penalties may apply. It should be noted that matters repeated or not resolved as directed may lead to escalation to a higher disciplinary sanction including dismissal.

5.1. Oral Warning

Issued in the case of a minor offence this will be confirmed in writing and recorded on the employee's central personal file. This warning will be disregarded after up to a maximum of 12 months subject to satisfactory conduct and behaviour.

5.2. Written Warning

Issued in the case of a serious offence or if the conduct or behaviour required from previous warnings was either repeated or not improved upon. The Written Warning will be recorded on the employee's central personal file and will normally be disregarded after 12 months subject to satisfactory conduct and behaviour.

5.3. Final Written Warning

Issued if the offence is of such seriousness that Levels 1 & 2 are not appropriate or where conduct or behaviour required from previous warnings were either repeated or not improved upon. The Final Written Warning will be recorded on the employee's central personal file but disregarded after 24 months subject to satisfactory conduct and behaviour.

If a disciplinary sanction is imposed, the employee will be informed of what improvements are required, the timescale for the improvements to be made and the consequences if the improvements are not met or sustained (specifically that it may lead to dismissal).

5.4. Dismissal

Decision to dismiss will normally be taken where the offence is of such seriousness that previous Levels are not appropriate, where conduct or behaviour required from previous warnings were either repeated or not improved upon or if there is any disciplinary offence during the 24 months following a final written warning.

If this action is taken the employee must be provided with written reasons for dismissal, the date on which employment will be terminated, and the right of appeal. If the dismissal is 'with notice', the period will be as stated in the contract of employment, but the University may deem it appropriate to make a payment in lieu of notice.

Action short of dismissal may be considered. They include:

- Suspension without pay up to a maximum of seven calendar days
- Loss of seniority or increment or honoraria
- Transfer to other premises, department etc.

6. Summary dismissal (Gross Misconduct)

If accused of an act of gross misconduct, the employee may be suspended from work, on full pay for a period, while the alleged offence is investigated. If after investigation the University is satisfied that gross misconduct has not occurred, the employee will be allowed to return to work. If the University reasonably believes that gross misconduct has occurred, the result will normally be dismissal without notice or pay in lieu of notice.

The University's Disciplinary Code, outlining examples of gross misconduct, can be found on the HR website.

7 Appeal

An employee has the right to appeal against any disciplinary decision taken. An appeal must be submitted to the Director of Human Resources in writing within 10

working days of receipt of the written confirmation of disciplinary action, stating the grounds of appeal.

Arrangements will be made for appeals against disciplinary action to be heard normally within 10 working days of receipt of notice of appeal or as soon as reasonably practicable.

The appeal hearing will focus on specific factors arising from the disciplinary meeting which the employee feels have received insufficient consideration or new evidence is produced. The decision of the appeal will be final and will be communicated in writing.

8. Time Limits

If at any stage of the disciplinary procedure it is not possible to meet specific time limits the employee must be given an explanation for the delay and informed when a response can be expected.

9. Representation

An employee may be represented or accompanied at any formal stage of the disciplinary procedure by a work colleague or trade union representative. [Note however that there is no automatic right for an employee to be accompanied by a colleague or a TU representative at Investigation meetings.]

A chosen representative may present all or part of the employee's case at a disciplinary hearing, however the employee should be prepared to answer questions or clarify any points during the hearing.

It is the employee's responsibility to contact and make arrangements with their own representative.

Legal representation is not permitted for any party except where a potential outcome may negate future employment at other Institutions.

10. Role of Human Resources

The role of Human Resources is to advise on adherence with this policy and related procedures and to promptly assist the timely application of the procedure throughout all its stages. This in turn ensures consistency of application. There is no requirement to involve Human Resources if it is a minor disciplinary matter and informal advice, coaching or guidance is appropriate but they can be approached for advice if necessary.

Human Resources must however be notified of all formal disciplinary matters.

Human Resources are also able to supply additional guidance to Investigating Managers, Witnesses etc and can supply letter templates where required.

11. Records

Informal

If minor matters are dealt with on an informal basis a written note of the date and nature of the matter together with any agreed outcome should be kept in confidence by the manager and copied to the employee.

Formal

At the end of each formal stage, a complete record of all appropriate documentation generated during the various stages of the formal procedure must be passed to the Human Resources Partner by the appropriate Manager and/or Head of School/Institute/Section.

These records will be kept confidential, monitored under equality legislation and retained in accordance with the Data Protection Act 1998 and the University's Records Retention Policy.

A summary of all disciplinary hearings, outcomes and actions is maintained and general statistics reported for equal opportunity monitoring and FOI purposes. This summary is kept securely and confidentially with personal data removed in accordance with the Data Protection Act 1998 and the University's Records Retention Policy.

12. Review

This Policy and related Procedure will be reviewed 3 years from the date of implementation and earlier if legislation dictates. Any proposed amendments will be subject to consultation in accordance with Ordinance 53. Such amendments will be notified to employees through the normal communication channels and/or e-mail. The Policy and Procedure will be maintained on the Human Resources Website.



DISCIPLINARY PROCEDURE

Overview

A disciplinary procedure is an essential management tool, permitting the University to deal fairly and consistently with employees who breach the rules or behave in an inappropriate manner at work. It provides a framework and guidelines, helping the University to take the necessary steps to investigate, interview the employee and decide what, if any, disciplinary action to take.

The Disciplinary Policy and Procedure should be viewed constructively – it is preferable to encourage employees whose conduct or behaviour is in some way unsatisfactory to improve. In keeping with the Spirit of Heriot-Watt, staff should feel valued and respected at all times.

This Procedure should be used for all staff employed in the UK. Staff not working in the UK will normally have a separate policy and process due to differing local Labour laws. This will be explicit in the appropriate terms and conditions.

Dealing with Issues promptly

When an issue arises with an individual employee's conduct, it is important for the employer to take prompt steps to investigate the misconduct.

Dealing promptly with misconduct does not mean dealing with it in haste, but tackling it without unnecessary delay. The effects of a delay could be that:

- the employee concludes that his or her conduct is acceptable;
- the conduct in question develops into a habit;
- a precedent is set;
- other employees begin to display the same type of behaviour;
- the relevant manager's credibility and authority are damaged.

None of these outcomes is desirable. A delay in dealing with misconduct can ultimately mean that the University has to deal with a matter that has escalated from a minor issue into a major problem. A much better approach is to seek an early resolution.

It is important that issues relating to an employee's performance, conduct or behaviour are not saved up until the annual PDR meeting or the interim review meeting. The employee will develop an understandable sense of grievance that issues have been allowed to fester, and that he or she was not given an opportunity to understand the issue at the time and provide his or her account of the matter. Saving up concerns in this way will discredit the formal PDR process, subverting its purpose of being a forward-looking, positive and motivational process, and changing it into one that solely looks backward and is seen as punitive.

Matters that can be viewed as amounting to disciplinary offences can be found in the Discipline Code, please note however that this list is not exhaustive – there will be matters amounting to disciplinary offences that may not be listed.

Step One: Dealing with problems informally

A.

Many disciplinary matters can be effectively dealt with informally, provided that the relevant manager does not delay in speaking to the employee. The manager should ask the employee to come to his or her office (or another private place), explaining that an issue has arisen that needs face-to-face discussion or clarification. The purpose of the meeting will be three-fold, namely to:

- make the employee aware of how and why his or her conduct is unacceptable or the precise way in which the employee's behaviour has fallen short of what is required;
- establish the reason for the particular conduct or behaviour; and
- seek agreement on how to ensure that the misconduct or inappropriate behaviour does not continue or recur.

Because this type of meeting is informal and is part of normal good management practice, there will be no right for the employee to be accompanied by a colleague or trade union official.

Despite the informality, managers are required to set a date to review the employee's progress. This will communicate to the employee that the manager is serious about what he or she has said and increase the likelihood that the employee will pay heed to it. For the same reason, it is advisable for a record of the meeting to be kept. The record should show:

- the date, time and place of the meeting;
- the key points discussed;
- any action points agreed; and
- the fact that there was no formal outcome, ie that the meeting was informal and no warning was issued.

B:

There will be times when a potential disciplinary matter does not fit well with the above informal approach. This is usually when an allegation or complaint is made against a member of staff. The employee should still be informed by their manager in line with the above informal process. At the meeting, the allegation and facts that the manager has will be presented to the employee.

All such situations are different and it would be prudent to approach the relevant HR Partner for guidance on how to proceed. It may be possible for the manager to resolve the issue informally or it may be necessary to appoint an Investigation Manager (see below for more detail on this).

Step Two: Formal Procedure and Investigation:

If an informal approach is not appropriate or if it has not achieved the desired outcome then the process below should be followed.

Establish the facts of each case –

The aim of an investigation is to establish the relevant factual information, including all relevant documentation and recognition of any points of disputed facts by the parties.

Suspension from duty:

In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible, should be kept under review and it should be made clear that this suspension is not considered a disciplinary action. Decision to suspend is normally taken in the interests of the employee. During any period of suspension the employee will not normally be entitled to access the University's premises.

Investigation:- Steps to take:

1. An Investigating Manager should be appointed to establish the facts. This needs to be someone other than the person who would Chair any disciplinary hearing (who would normally be the manager). The Investigating Manager may be required to present his/her findings at a disciplinary hearing.
2. Any decision taken to conduct an investigation will be communicated to the employee as soon as possible. The employee will be informed of the complaint against them, the reasons for the investigation and an indication of the disciplinary action that may be taken.
3. It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In some cases the investigatory stage will be the collation of evidence by the University for use at any disciplinary hearing.
4. An investigatory meeting should not itself result in any disciplinary action.
5. An investigation will normally include meetings with the employee, the complainant and any other witnesses or members of staff with relevant information. The employee is entitled to suggest to the Investigating Manager witnesses he/she believes may assist the investigation.
6. Any witnesses will be invited to attend a meeting with the Investigating Manager and an HR Partner (and in most cases a note taker). A note of the meeting will be used as that individual's 'statement'. In rare cases where a meeting is not possible, the employee may be asked to submit a statement directly to the Investigating Manager (although they may be required to attend part of any subsequent disciplinary hearing). There is no automatic right for an employee to be accompanied by a colleague or a TU representative at Investigation meetings.

The relevant HR Partner can help identify appropriate personnel to take the roles of Investigatory Manager and chair of Disciplinary Hearing should the matter go to that stage of the process. (Bear in mind that a more senior manager may be required to Chair an appeal hearing at a later date). **Respecting the right to conserve Academic Freedom, the role of investigatory Manager and/or Disciplinary Chair will be given to an individual with appropriate Technical Knowledge. Such appointments will be made subject to avoiding current and potential conflicts of interest.**

Where specialist technical knowledge is identified as required by the Investigating Manager or the Chair, an independent arbitrator may be called upon in instances where no appropriate internal expert is available. The relevant Human Resources Partner can help identify an appropriate representative to take this role. In most cases it will be possible for the Head of School, in discussion with HR to determine such appointments. In more complex cases, either a Dean of the University or the Vice Principal or delegated nominee will be consulted to make an appropriate appointment. Where an issue relating to Academic Freedom exists or has been raised by the individual, then a Dean or the Vice Principal or delegated nominee must be consulted and it may be appropriate that a lay member of Court hears any case that proceeds to a Disciplinary Hearing.

After the Investigation is complete, the Investigating Manager should produce a report outlining his/her findings and giving a recommendation for next steps. If the case proceeds to a Disciplinary Hearing, the Investigating Manager may be called to present his/her report at the Hearing although the written report in itself may be sufficient in some cases. Adherence to issues of confidentiality and data protection related to employees forming part of the investigation is required and the HR Partner can offer guidance on this.

Normally the employee's manager, with advice from the HR Partner, will make the ultimate decision, based on the outcome of the investigation whether there is a disciplinary case to answer or not. If there is no case, the employee should be informed in writing with a copy kept on file.

Quite often following an investigation where it is decided not to progress to a disciplinary hearing, there will be some recommendations arising. These may relate specifically to the individual and/or may relate to reviewing processes/procedures within the relevant area.

Inform the Employee:

If it is decided after investigation that there is a disciplinary case to answer, the employee should be notified of this in writing (letter templates are available from HR). The notification should contain sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at a disciplinary hearing.

The notification should also give details of the time and venue for the Hearing and advise the employee of their right to be accompanied at the meeting. The chosen companion may be a fellow worker or a trade union representative.

To exercise the statutory right to be accompanied, employees must make a “reasonable” request. What is reasonable will depend on the circumstances of each individual case. However, it would not normally be reasonable for an employee to insist on being accompanied by a companion whose presence would prejudice the hearing nor would it be reasonable for an employee to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site. It is up to the employee to arrange their own companion.

The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case.

Hold the Disciplinary Hearing:

Following an investigation into the circumstances surrounding an employee's alleged misconduct, if it is decided that there is a case to answer, a disciplinary hearing needs to be arranged (normally by the Chair of the hearing).

The hearing should be held without unreasonable delay. However, the employee must be given reasonable notice of it, so that the employee can prepare his or her case. What is reasonable will depend on the seriousness and degree of complexity of the alleged misconduct. In the case of a single, simple mistake, a day's notice would probably be reasonable, while an allegation of theft might render it appropriate to give the employee up to a week's notice to allow him or her to prepare properly.

The letter inviting the employee to the disciplinary hearing should:

- state that the hearing will be held under the University's disciplinary procedure;
- list the matters that will be discussed;
- provide reasonable detail of the specific incidents that are thought to have occurred, or of any allegations or accusations;
- provide details of any accusations or information provided by witnesses (copies of witness statements should be included);
- inform the employee that he or she has the right to be accompanied at the hearing
- inform the employee that they may invite relevant witnesses and it is their responsibility to arrange them and inform the Chair of the Hearing in advance
- inform the employee that if they have any documentation they wish to use or rely upon during the hearing, they should submit this, prior to the hearing, to HR. A final submission date for such evidence will be stated in the letter.
- state that the outcome could be: no disciplinary action to be taken, disciplinary action or dismissal, as appropriate.

Arrange to hold the hearing in a private room/area. In attendance will be the Chair of the Disciplinary Hearing, a representative from HR, a note taker (usually organised by the Chair), the employee and their chosen companion. In some cases the Investigation Manager will attend the start of the hearing to outline his/her findings.

All parties should make every attempt to attend the meeting. If for any reason the employee's chosen representative cannot attend a formal hearing date the employee has the right to ask for a postponement of the hearing for up to 5 working days.

If the employee persistently asks for the meeting time to be postponed (more than twice would normally be considered unreasonable), the University reserves the right to hold the hearing in his/her absence, informing him/her that this is the case and then following up with the conclusion of the disciplinary hearing.

There may be occasions when the employee in question is absent from work due to illness. If this is likely to be a medium/long term absence it may still be possible to hold a disciplinary hearing before they return to work. Occupational Health guidance will be required in any such cases.

At the meeting the Chair will explain the complaint against the employee and go through the evidence that has been gathered during the investigation.

The employee will be allowed to set out their case and answer any allegations that have been made. The employee will also be given a reasonable opportunity to raise points about any information provided by witnesses.

Where the Chair or the employee intends to call relevant witnesses, they should give advance notice that they intend to do this (about a week would seem reasonable).

The employee's companion is allowed to address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the Chair from explaining the case.

On conclusion of the hearing, the Chair should inform the employee when he/she might receive an outcome. This outcome would normally be given in person and confirmed by letter.

The Chair may decide that a disciplinary action is appropriate and this can be discussed with the relevant HR Partner. The Chair may alternatively decide he/she does not have enough information to make a robust decision and may seek further information – if this is the case, the employee should be notified in writing as soon as possible. It may be apparent during the meeting itself that further investigation is required.

The note taker should type up the notes and allow the Chair and the HR Partner to review the document prior to it being sent to the employee and his/her companion. The employee will be asked to check if the document is an accurate summary of the discussion and then sign it.

After the Hearing

The Chair, in consultation with the HR Partner, will decide whether or not disciplinary or any other action is justified. The employee must be informed of this decision in writing. Good practice suggests that it is preferable to inform the employee face to face and hand the letter over confirming what has been relayed verbally.

A verbal, first or final written warning should set out the nature of the misconduct and the desired change in behaviour along with a timescale. The employee should be told how long the warning will remain current. The employee should be informed of the consequences of further misconduct within the set period following the warning.

A decision to dismiss can only be taken by a Head of School or Section and in discussion with the HR Partner. If this person is not the Chair of the Hearing then his report and advised outcome should be purveyed to the Head of School/Section.

Some acts, termed as gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. But a fair disciplinary process should always be followed before dismissing for gross misconduct.

In all cases, the employee should be advised that they have a right to appeal, they should be informed how long they have to decide whether or not to appeal (normally 10 days is enough but circumstances may require the timescale to be slightly longer) and to whom to appeal (if different from Director of Human Resources). The employee should submit their grounds for appeal in writing.

Right of Appeal

An appeal should be heard without unreasonable delay and at an agreed time and place. The appeal should be dealt with impartially and wherever possible, by a manager who has not previously been involved in the case and who will normally be senior to the Chair of the disciplinary hearing. The Director of Human Resources will appoint an appropriate person to deal with the appeal. The person appointed will normally be senior to the original management representative and will be presented with all the material available at the original hearing. Where specialist technical knowledge is identified as required by the appointed Chair of the Appeal Panel, an independent arbitrator may be called upon in instances where no appropriate internal expert is available. Where the appeal relates to Academic Freedom, a Dean or the Vice/Deputy Principal must be consulted and it may be appropriate that a lay member of Court hears the appeal.

An HR Partner and note taker will normally be present.

Employees have a right to be accompanied by a work colleague or a TU representative at appeal hearings. Employees should be informed in writing of the results of the appeal hearing as soon as possible.

The decision of the appeal panel will be final.

Summary:

Managers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions. Managers should act consistently. Necessary investigations are required to establish the facts of the case. The employee should be informed of the basis of the problem and allowed the opportunity to put their case in response prior to any decisions being made. Employees need to be informed that they have the right to be accompanied to any formal disciplinary meetings and they also need to be informed of their right of appeal.

Further and related documents, including the Disciplinary Code can be found at http://www.hw.ac.uk/hr/p_disciplinary_procedures.php