



Guidance on using the Disciplinary Procedure

For Heads of Department/Section and Line Managers

This practical guide provides an essential toolkit when dealing with Disciplinary matters.

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Introduction

The University's Disciplinary Procedure sets out the steps to take in dealing with cases of misconduct. This guidance supplements that procedure by offering advice on how to manage different stages so that matters can be dealt with promptly and fairly while keeping stress to a minimum.

Principles

All employees are expected to observe standards of conduct, behaviour, attendance and compliance with other policies and procedures and with the implied terms of their contract of employment, for example acting in good faith. Line managers must take prompt action where these standards are not being maintained. Discussing issues and reminding employees of the expected standards early on can prevent matters worsening and the need for the use of the formal disciplinary procedure.

Employees who are suspected of misconduct have the right to be treated fairly. They must be able to see the case against them and to be given time to respond. They are entitled to a hearing and to be accompanied by a colleague or trade union representative at all formal stages.

Line managers and Heads of Department should seek advice from People and Culture at an early stage to ensure fair treatment.

When would the disciplinary procedure be used?

The disciplinary procedure could be used wherever personal conduct, behaviour or attendance is not being maintained. Annex 1 of the disciplinary procedure gives examples of misconduct, from shortfalls in timekeeping and attendance,

to inappropriate behaviour, to theft or violence. If possible, minor matters should be dealt with informally in the first instance –

for example, attendance – but this will not be possible for more serious or repeated cases of misconduct.

IMPORTANT: If a line manager is unsure whether misconduct has occurred, it may be necessary to arrange for an investigation to be conducted. The investigation will establish whether there is a case for a disciplinary hearing to consider.

Informal Action

Resolving matters informally requires prompt action by line managers. Where standards are not being maintained, line managers need to step in to highlight the standards required and to investigate why this is not happening.

Although the discussion is informal, it is important that the individual understands what is required and how important it is that they meet the required standards. A written record should therefore always be kept.

IMPORTANT: It is always preferable to address promptly any matters of concern. This stops issues escalating and may prevent the need for formal action later on. The ER Advisory Team can advise you on how to handle these discussions.

How to approach an informal meeting to discuss conduct, behaviour or attendance.

Before the meeting:

- Ensure you have evidence and examples of the problem ready to present to the individual.
- Be ready to explain exactly what is required in terms of conduct and behaviour and any monitoring you will be putting in place (for example, attendance or compliance with policies).
- Read the Disciplinary Procedure and this guidance so you know what may happen next through the formal procedure – be ready to explain that and to direct them to the procedure.

At the meeting:

- Explain why you have arranged the meeting.
- Set out the lapses in conduct, behaviour or attendance with some specific examples.
- Invite the individual to explain why this has happened. Check whether there is something happening at home or in their personal life or with their health that may be affecting them. Offer support – if there are health issues, you should take advice on whether this might constitute a disability where reasonable adjustments need to be made.
- Issue an informal warning if necessary (see below).

- Tell the individual what they need to do to improve

e.g. cease particular behaviour, demonstrate particular behaviour (e.g. attending work on time), never repeat particular action (e.g. swearing inappropriately) and over what timescale. Some improvements may be expected to happen immediately.

- Warn them what might happen if they do not improve – that action may be taken under the formal procedure.

IMPORTANT: In approaching a meeting to discuss conduct or behaviour, it is important to:

- Set the standard
- Seek an explanation
- Require improvement
- Warn of the consequences

What if they respond badly?

It is not unusual for someone to be upset or angry when disciplinary matters are raised or discussed. You should allow them time to compose themselves and take care not to become defensive or angry in response. This does not mean that abusive language or conduct should be tolerated.

If the individual denies any wrongdoing or will not engage, it will be important to follow up the meeting in writing.

Depending on the seriousness of the misconduct, you may want to issue an informal warning at this point.

IMPORTANT: Disciplinary matters can generate a lot of emotion – it is important to recognise that this is not unusual while also responding calmly and focussing on addressing the issues. The Employee Assistance Programme (EAP) can provide support in dealing with the emotional impact.

When to issue an informal warning

An informal warning may be issued as part of the process of seeking improvement. It may be issued:

- During the first discussion, if the manager feels that the individual is not taking the allegations seriously or if it is necessary for quick improvement.
- After the first or a subsequent informal discussion if insufficient improvement is being made.
- There should always be a warning that formal action may follow.

What is an informal warning?

The warning should be confirmed in writing and must set out:

- The nature of the misconduct.
- What improvement is expected and over what timescale.
- That formal disciplinary action may be undertaken if improvement is not made.

IMPORTANT: All warnings will be kept on an individual's personal file, even informal warnings and even where there has been a successful appeal at a formal stage, because this is part of the record of employment.

Formal Action

When to take formal action.

Formal action should be taken where informal action has not been successful or where the matter is so serious that formal action is necessary.

IMPORTANT: Advice must be sought from a member of the ER Advisory Team before you start formal disciplinary action. People and Culture will be able to advise you on when it is appropriate to take formal action and on the procedure itself.

Suspension

Suspending an employee from work

An employee may be suspended from work where the allegations are so serious that they constitute gross misconduct or where there is a significant risk to the individual themselves, the University or to others from the individual being on site.

Suspension is a very serious step. Although it is not a pre-judgement of guilt, many employees who are suspended feel that it is and can find it very stressful. It is important to emphasise to the employee why they have been suspended and that a full investigation and hearing will take place. Anyone suspended should be given information about the Employee Assistance Programme.

Any proposal to suspend must be discussed with a member of the ER Advisory Team. The proposal is put to the Director of People and Culture, who will take the final decision.

How long can an employee be suspended for?

Suspension should be kept as brief as possible. This is a very difficult time for the individual and can be a significant cause of stress. The longer a suspension goes on, the more difficult it can be for the individual to settle back into work.

Suspensions should last no longer than the timeframe set out in the Disciplinary Procedure. Any extension to this must be agreed with the Director of People and Culture. This timeframe should be borne in mind when setting up an investigation, where necessary (see section on investigations below). When appointing and briefing the investigating officer, make sure they can conduct the investigation in this timeframe and understand the need to move as quickly as possible.

IMPORTANT: Communication before and during suspension is key – you must ensure that the person suspended knows exactly what will happen and when, is offered support, and has a contact for questions.

Keep in regular touch about progress.

What steps should I take to suspend an employee from work?

- Meet with a member of the ER Advisory Team.
- If suspension is agreed by the Director of People and Culture, meet with the employee.

At the suspension meeting:

- Set out details of the incident/conduct that has led to the suspension.
- Give the employee an opportunity to explain what happened in case there has been a misunderstanding.
- e.g. the wrong person (bearing in mind that there will be a full investigation – so do not get into a detailed discussion and give your views).
- Explain that this is not a pre-judgement of guilt.
- Offer support including the Employee Assistance Programme and let them know who the named contact will be at the University.
- Set out what they must not do during suspension: come onto campus, contact anyone at the University apart from their named contact and trade union representative, or discuss the case with anyone other than immediate family.

- Discuss management of their work and explain who knows about the suspension and what will be said to their colleagues.

After the meeting:

- Follow up the meeting with a letter setting out details of the suspension, including support, contacts, and a reminder of what they must not do during suspension.

Investigations

Investigations may not always need to take place – for example where a manager saw someone hit a colleague. Where they are necessary, they should take place without unreasonable delay.

This is important so that the matter is dealt with promptly but also to ensure that events are still fresh in the mind of witnesses and the person facing the allegations.

Appointing an investigation officer.

The line manager decides on the investigating officer in consultation with the ER Advisory Team. It should be someone more senior than the individual being investigated but not their line manager. They may be from the same Department but not directly working with the individual concerned. They must have time to start and complete the investigation promptly and be told about timescales.

IMPORTANT: The investigating officer must be able to conclude the investigation promptly – and should be given all the background information and contacts without delay.

What should happen during an investigation?

The investigator would normally:

- Establish the details of the incident/conduct issue and any policies that have been breached.
- Identify and interview any witnesses and the individual concerned.
- Collate any documentary evidence or other relevant evidence e.g. CCTV footage.
- Produce an investigation report.

Detailed guidance on conducting an investigation is available.

What does an investigation report cover?

The investigation report sets out:

- The nature of the misconduct and a description of the allegations.
- The approach taken during the investigation.
- The evidence and the investigator's assessment of this, including any inconsistencies, mitigating circumstances.
- Conclusion - whether there a case to answer.
- Appendices - all witness statements/notes from meetings, copies of correspondence, or policies cited during the report

How should line managers consider an investigation report?

The investigation report is presented to the line manager who will take a decision on next steps.

The line manager can:

- Ask the investigating officer questions about the evidence.
- Ask for a meeting with the investigating officer for them to present the report.
- If the manager determines on advice that there is no case to answer, they will still need to meet with the individual to explain the outcome and discuss any changes to conduct / behaviour that may need to be made
- If it is determined that there is a case to answer, the manager should discuss this with the ER Advisory Team to consider at what level disciplinary action might be taken, depending on the seriousness of the misconduct.
- If it is decided that there will be a hearing, this should be communicated to the employee promptly and they should be given a copy of the investigation report with a chance to respond before the hearing.

Disciplinary Hearings

The employee must be invited to the hearing and given reasonable notice as outlined in the Disciplinary Procedure to give them and their representative time to prepare.

The invitation letter should set out the time and place of the hearing, who will be present and why, a brief statement of the misconduct, and that the individual is entitled to be represented. With the invitation letter, a disciplinary hearing pack should be provided. This would usually consist of:

A statement of case e.g. a report setting out the alleged incident, the results of the investigation, the testament of witnesses and appendices to include the following:

- All relevant correspondence.
- The investigation report including any annexes.
- Copies of any relevant policies or procedures.
- A copy of the Disciplinary Procedure, if this has not already been provided.

IMPORTANT: The key principle for disciplinary hearings is that the employee hears the full case against them and is given a chance to respond. This is why the hearing pack must contain all relevant evidence.

Who attends a disciplinary hearing?

Attendees at a disciplinary hearing would normally be:

- The person hearing the case (the Chair).
- Employee facing the allegations.
- Employee's trade union representative or colleague. [Please see guide to workplace representatives](#)
- The investigating officer, to present their report.
- The ER Advisory Team, supporting the Chair.

Who can accompany the employee to the hearing?

The employee can be accompanied by a workplace colleague, trade union representative (if they are a member of a trade union) or an official employed by a trade union (if they are a member of a trade union). Please see [guide to workplace representatives](#).

If the companion is not available on the date proposed, the meeting should be rearranged in line with the University's procedure.

What if the employee wants to rearrange the hearing but cannot find a suitable time?

Meetings should be rearranged to take account of authorised leave or absence e.g. attending a conference.

The employee is entitled to offer an alternative date. If the employee fails to come up with an alternative date, line managers can either insist that the original date stands or set a new date, ensuring notice is given. If the employee does not attend this rearranged date, the case may be heard, and a decision made in the employee's absence.

What if the employee fails to attend the hearing?

The reason must be ascertained if possible. If the circumstances were beyond the employee's control, e.g. illness, another meeting should be rearranged. If the meeting is rearranged and the employee fails to attend for a second time, without good reason, the case may be heard, and a decision made in the employee's absence.

If the employee is unwell, is the disciplinary hearing put off indefinitely?

Some accommodation can be made for illness and the hearing can be rearranged. If there is uncertainty about when and whether someone will return to work, the line manager may seek a medical opinion on whether the employee is fit to attend a hearing. This medical opinion should be sought through the ER Advisory Team and Occupational Health – and in the context of the sickness absence management policy and the capability procedure. If the employee is not fit to attend, the hearing may go ahead in their absence. Action may also be necessary under the capability procedure.

IMPORTANT: If an employee is persistently unwilling or unable to attend a hearing without good cause, a decision can be made in their absence and on the evidence available.

What happens at a disciplinary hearing?

A disciplinary hearing would usually run as following but this will depend on the circumstances:

- Introductions
- Summary of the procedure

- Outline of how the hearing will be conducted.
- Presentation of the evidence, which may involve calling witnesses. Questions from all parties.
- Employee is asked if they are prepared to accept, they have done something wrong.
- Employee response to the evidence, which may involve calling witnesses. Questions from all parties.
- Chair sums up and employee asked if they have anything further to say.

Please see Annex 4 for a checklist.

Who presents the evidence?

The Chair should provide a summary of the allegation and the investigating officer should be asked to present the evidence. If it is not possible for the investigating officer to attend, the Chair can summarise the evidence.

IMPORTANT: Whichever side decides to call witnesses is responsible for arranging their attendance. The employee facing the allegation of misconduct cannot compel colleagues to attend as witnesses in support of their case.

When would witnesses be called?

Witnesses may be called if the person presenting the case, or the employee feel it is useful.

It is usually more useful to call witnesses where the case relies on their evidence and where there is no or limited documentary supporting evidence. This is especially important where gross misconduct is considered.

It is not always possible or appropriate to call someone as a witness, for example where this would cause too much distress to the individual concerned, where the witness is vulnerable (e.g. a student going through exams), or where they may have left the country since the incident concerned. In these cases, the Chair will need to rely on the investigation report in coming to a view “on balance of probabilities”.

IMPORTANT: A decision must be made on ‘balance of probabilities’ and not ‘beyond reasonable doubt’.

What if the decision maker finds it difficult to come to a decision?

The Chair will need to come to a decision as to whether misconduct occurred and whether to impose a disciplinary penalty or not and at what level.

It is important to remember that the Chair must come to a decision based on “balance of probabilities” and not “beyond reasonable doubt” i.e. it is reasonable to believe x did or didn’t happen on the balance of probability and cite why this is so e.g. the evidence of X or Y is preferred.

How does the Chair decide on the appropriate level of penalty?

Some assessment should already have been given to the level of penalty before the hearing, depending on:

- Whether there is another live disciplinary warning in place for a similar misconduct.
- How the misconduct/behaviour compares to the examples in the University’s Disciplinary procedure (see Annex 1).

During the hearing, the Chair may have discovered:

- That the misconduct was not as serious as previously thought.
- Mitigating circumstances that make it appropriate to adjust the level of penalty e.g. deficiency in training, difficult personal circumstances, health issues.

A decision should be made in consultation with the ER Advisory Team.

IMPORTANT: Formal warnings will be live for 12 months, which means the next stage of action can be taken if further misconduct occurs in this time. After this time, the warning will remain on the file as part of the overall record of employment but have no cumulative effect.

Dismissals

Dismissal may be considered where:

- The employee has already been given a warning under Stage 2 and the conduct/behaviour has not improved.
- The conduct/behaviour is so serious so as to be considered ‘gross misconduct’.

Where dismissal is being considered, advice must be sought from the ER Advisory Team.

Where a dismissal hearing is to take place, the employee should be encouraged to have a representative present, either a colleague or a trade union representative.

Support while dismissal is considered.

A dismissal hearing is obviously more stressful for the individual than other stages, so it is especially important that support is provided to the individual.

- Ensure that they are directed to the Employee Assistance Programme.
- Their manager should be providing support if they feel uncomfortable with their manager providing support, another manager in the area could be asked to provide it.
- Strongly encourage them to have representation at the hearing.

IMPORTANT: However serious the misconduct, employees must be treated fairly and offered support – they have the right to hear the case against them, to respond, and to be accompanied to all formal meetings.

Dismissal without notice

Where someone has committed gross misconduct, it is possible to dismiss without notice – but not without a hearing.

Where gross misconduct is suspected, action would be taken under Stage 3 of the procedure and a dismissal hearing convened. Advice must be taken from the ER Advisory Team.

IMPORTANT: Following the hearing, the pack and any correspondence must be placed on the employee's personal file.

Getting back to work after a disciplinary process.

Once an employee has been informed of the results of the hearing and where the outcome is not dismissal, it is important that all parties get back to a good working relationship.

Line managers should:

- Ensure the employee knows what is expected of them.
- Schedule regular review meetings to ensure they are keeping on track, especially where there has been a warning.

- Adopt a supportive and friendly approach – the warning has been given (or not given) and it is now time to move on and make a fresh start. Even if there has been misconduct, this should not be allowed to affect future relationships.

Employees that have gone through a disciplinary process should:

- Ensure they understand what is expected of them – and ask questions where they do not.
- Seek support and guidance where they need it.
- Accept that their line manager was performing their role in taking forward the disciplinary process – it is important not to hold a grudge in the future

IMPORTANT: Once a disciplinary process has concluded, it is important to look forward and make a fresh start.

Annex 1: Examples of Misconduct and Gross Misconduct

The following lists are not comprehensive or exhaustive but indicate the kind of misconduct that might result in formal disciplinary action, including summary dismissal, in certain circumstances, following application of the procedure above and applying the test of reasonableness and subject, where appropriate, to specific University policies including the principle of academic freedom. Advice from the ER Advisory Team should be taken as they will have knowledge of how similar cases have been dealt with to ensure consistency across the University.

Examples of misconduct

The following examples of behaviour may, within this procedure, lead to a formal written warning where the level of misconduct is minor or less serious:

- shortfalls in timekeeping and attendance
- non-compliance with the University's Health and Safety Policy and standards
- misuse of University property
- inappropriate behaviour
- failing to inform the University of a criminal conviction

The following examples of behaviour may, within this procedure, lead to a final written warning where the level of misconduct is more serious:

- inappropriate behaviour
- breach of confidence
- refusal to follow reasonable instructions
- failure to comply with University policies
- behaviour bringing disrepute to the University
- repeated failure to comply with the University's Health and Safety Policy and standards

Examples of gross misconduct

The following examples of behaviour at work may be regarded as gross misconduct and, if judged as such within this procedure, may lead to summary dismissal:

- dishonesty, theft, fraud, or serious misuse of University property including malicious damage to University property
- theft from or violence to other members of the University or members of the public, including malicious damage to their property
- obscene or indecent behaviour or sexual misconduct or the circulation of offensive material
- serious bullying or harassment
- serious breach of security or of financial procedures
- serious breach of confidence
- serious incapability whilst at work brought on by misuse of substances e.g. alcohol or drugs
- being in the possession of illegal drugs
- serious breach of health and safety, fire or environmental legislation, or acting in a manner dangerous to themselves or others (whether intentionally or through neglect)
- behaviour bringing the University into serious disrepute
- serious insubordination
- professional incompetence or gross negligence
- serious intentional unlawful discrimination
- serious breaches of the University's Guidelines for the use of IT facilities
- serious breach of the University's Information Security Policy, in particular any breach that also constitutes breach of relevant data protection legislation.
- where the employee has stopped attending work without authority and reasonable explanation

Serious misconduct outside of work or through personal use of social media may need to be dealt with under the formal disciplinary procedure where it is considered there is an effect upon the employment relationship and may be, in appropriate circumstances, regarded as gross misconduct.

Annex 2: Checklist for meetings to discuss conduct, behaviour or attendance

Before the meeting

- Ensure you have evidence and examples of the problem ready to present to the individual.
- Be ready to explain exactly what is required in terms of conduct and behaviour and any monitoring you will be putting in place (for example, attendance or compliance with policies).
- Read the Disciplinary Procedure and this guidance so you know what may happen next through the formal procedure – be ready to explain that and to direct them to the procedure.

At the meeting

- Explain why you have arranged the meeting.
- Set out the lapses in conduct, behaviour or attendance with some specific examples.
- Invite the individual to explain why this has happened. Check whether there is something happening at home or in their personal life or with their health that may be affecting them. Offer support – if there are health issues, you should take advice on whether this might constitute a disability where reasonable adjustments need to be made (see guidance).
- Issue an informal warning if necessary.
- Tell the individual what they need to do to improve e.g. cease particular behaviour, demonstrate particular behaviour (e.g. attending work on time), never repeat particular action (e.g. swearing inappropriately) and over what timescale.
- Some improvements may be expected to happen immediately.
- Warn them what might happen if they do not improve – that action may be taken under the formal procedure.

After the meeting

- Make a note of the meeting and share it with the individual, giving them an opportunity to raise concerns or to check their understanding.

- Keep it as a record. If the individual does not agree with the record, amend it if you agree with their point or if you don't, leave your notes as they are and add their notes to the file.
- If improvement is expected over time, put in place regular review meetings to ensure that progress is maintained.

Annex 3: Checklist for suspension meeting

Before the meeting

- Ensure you are prepared – in particular, that you are familiar with the disciplinary procedure.
- Have evidence of the misconduct / behaviour to hand.
- Remember that this is a procedure that you are following in your role as line manager – this is not your personal judgement on the individual.
- Arrange for a member of the ER Advisory Team to attend the meeting with you.

During the meeting

- Treat the individual with respect and courtesy. Give them time to take in what you are saying and allow them to show some emotion (although you should not accept any aggressive behaviour).
- Explain why suspension necessary. For example, that is for their safety or to ensure the safety of others, or to take the heat out of the moment.
- Set out the allegations and evidence clearly and allow questions.
- Give the employee a chance to explain what happened. This should not turn into a hearing and you must not be tempted to give your judgement – but you need to check there has not been a misunderstanding.
- Explain that suspension is not a pre-judgement of guilt even if it feels like it.
- Discuss what will happen to their work.
- Inform the individual who knows about the case and what will be said to their colleagues.
- Tell them what the next stages are and when they can expect to hear more.
- Offer support – for example the Employee Assistance Programme.

After the meeting

- Provide the information given during the meeting in a letter, with a copy of the Disciplinary Procedure attached.
- Ensure they have a named contact that they can ring with any concerns or questions.
- Keep in regular touch with them to ensure they are ok. If you have concerns, speak to a member of the ER Advisory Team .

Annex 4: Checklist for those chairing Disciplinary hearings

Introductions

- Welcome attendees.
- Invite those present to introduce themselves and their role at the hearing.
- Representation of employee – if accompanied, confirm the role of the companion, i.e. that they will be able to address the hearing in order to: put the employee's case forward; sum up the case; respond on the employee's behalf to any view expressed at the hearing; and confer with the employee. However, the representative will not usually answer questions on behalf of the employee.
- If not accompanied, note that the employee has been advised of their right to be accompanied but has chosen to attend unaccompanied.
- Confirm with the employee that they have received the letter notifying them of the hearing and the associated documentation providing advanced disclosure of the case.
- Confirm with the employee that they understand that it is a formal disciplinary hearing which will be conducted in line with the University of Essex's Disciplinary procedure.
- Set out what the outcome of the hearing could be e.g. first (written) warning.

Procedure

- Advise of the procedure or if appropriate invite the member of the ER Advisory Team to outline the procedure.
- Confirm documentation provided.
- Confirm how notes or recordings will be taken and shared.

Respond to any procedural concerns/queries that may arise.

If any witnesses will be called, they must be treated with courtesy and respect – any questions should be put through the chair

After the meeting

The investigating officer will present the allegation(s) against the employee and the evidence upon which this is based, which may include calling witnesses.

The employee should be asked if they are prepared to accept they have done something wrong.

The employee and their representative, if applicable, will be given the opportunity to ask questions of any witnesses, and to query the evidence provided.

The employee and their representative are then invited to present their case, which again may rely on witnesses.

The chair will ask questions of the employee and any witnesses.

The chair/member of the ER Advisory Team will have the ability to ask questions for clarification at any point during the hearing.

The employee will be asked to provide a brief concluding statement.

When closing the hearing, ensure that everyone understands what is going to happen.

Advise that the outcome of the hearing should be confirmed to the employee in writing

Annex 5: Guidance for witnesses

“Witness” is a term used to describe someone who has witnessed an event or is able to provide information about an issue or event.

Witnesses will usually be asked to give evidence to an investigating officer, which is recorded in a formal note. They may also be asked to attend a hearing to provide evidence in person. Witnesses attend a hearing to provide factual evidence and not to provide their opinion on whether someone should be given a disciplinary sanction or not. Remember, the conduct of the witness is not in question.

At a hearing, all attendees should be asked to treat witnesses with respect and courtesy. All questions should be put through the chair.

Points for witnesses to remember:

- Listen carefully to the question.
- Take time to consider, do not rush.
- If you are unable to remember, say so.
- You may take notes also to help your recollection.
- You may be accompanied to the hearing by a trade union representative or colleague.

Further information and contacts

Support and advice can be obtained from the ER Advisory Team [Disciplinary Procedure](#)

[Grievance Procedure](#) and guidance [Capability Procedure](#) and guidance