



# Disciplinary procedure

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Authors:	People and Culture
Publication date:	October 2023
Amended:	October 2023
Review date:	May 2026

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# Disciplinary procedure

## 1. Statement

- 1.1. The University expects all employees to achieve and maintain high standards of behaviour and conduct at all times. All employees have a responsibility for creating and sustaining a working environment in which everyone is treated fairly with dignity and respect. If an employees conduct falls below the standards required, action may be necessary under the Disciplinary Procedure and may result in a formal disciplinary warning being issued, or where necessary in dismissal. The steps outlined in the procedure will ensure matters are always addressed and resolved in a prompt, fair, proportionate, and consistent way.
- 1.2. To ensure consistency of treatment, no formal disciplinary action will be taken without prior discussion with People & Culture. Any potential conflict of interest must be raised with People & Culture. Further guidance for managers is available from People & Culture and line managers should seek advice at an early stage.
- 1.3. The Disciplinary Procedure is used to address misconduct. More serious offences may constitute gross misconduct. Examples are provided in [Appendix 1](#).
- 1.4. The University Disciplinary Procedure is aligned with the expectations set out in the [ACAS Code of Practice on Disciplinary and Grievance Procedures](#).

## 2. Scope and Exclusions

- 2.1. The procedure applies to all permanent and fixed-term employees at the University of Essex, regardless of service. Employees of the [University of Essex Campus Services \(UECS\)](#) or [Wivenhoe House Hotel](#) have their own specific policies and procedures. Academic employees and any Professional Services employees in grades 7 – 11 who joined the University before October 2016 may also use the processes under [Ordinance 41](#) (.pdf). This policy does not form part of your contract of employment, and we reserve the right to amend or withdraw it at any time.
- 2.2. Not all disciplinary matters are covered under this procedure. A different process may be followed if an employee is still in their [Probationary Period](#). There is a separate procedure to deal with [capability issues](#). If these issues arise from a persistent or wilful failure to reach appropriate standards the Disciplinary Procedure may be invoked.
- 2.3. Normal performance standards apply to trade union representatives. However, no action under this procedure shall be taken against an employee who is a recognised trade union representative until the circumstances of the case have been discussed with a full time Trade

Union official. This is to ensure that representatives are treated with fairness and not victimised for their representational activities.

- 2.4. Response times may be extended in exceptional circumstances (e.g. out of term-time or due to an employee's annual leave).

### **3. Confidentiality**

- 3.1. All disciplinary matters will be treated with sensitivity and respect for the privacy of any individuals involved. All individuals must treat any information communicated to them in connection with an investigation or disciplinary matter with appropriate confidentiality. Any breaches of confidentiality will be managed in line with this procedure.
- 3.2. Records will be kept and shared only with those involved in the case. Meetings will be recorded with permission and the recording will be shared with participants as agreed. The manager may arrange for a summary note to be taken at the meeting and shared if the meeting is not recorded.

### **4. Investigations**

- 4.1. Where the evidence of misconduct is not clear it may be necessary to undertake an investigation. This will be led by an Investigating Officer appointed by the line manager or Head of Department/Section in consultation with People & Culture. Investigations must be undertaken promptly and reasonably. The pace of an investigation will be depend on the complexity of the case and the availability of all parties. No formal disciplinary sanction will be imposed without the employee having the opportunity to attend a disciplinary hearing.
- 4.2. Further guidance on Conducting Investigations (.docx) is available and support is available from People & Culture.

### **5. Suspending an employee**

- 5.1. Suspension (or measures short of full suspension) should not be an automatic response but used only if necessary and reasonable. A period of suspension should be as brief as possible and kept under frequent review, by staying in contact with the employee whilst they are suspended. A decision to extend a period of suspension beyond 10 working days can only be taken in consultation with the Director of People & Culture. An employee may be suspended on normal pay (or measures imposed short of full suspension) during an investigation or prior to a disciplinary hearing when:
  - an employee is facing a gross misconduct allegation.
  - if an employee's attendance is detrimental to the conduct of the Investigation.

- there is a risk to themselves, to other employees, property or customers.
  - the employee is the subject of criminal proceedings which may affect whether or not they can do their job.
- 5.2. Suspension (or measures short of full suspension) is not a prejudgement of guilt and is not a disciplinary penalty. The decision to suspend (or impose measures short of suspension) can only be taken by a manager authorised to take action following consultation with People & Culture. The reasons for the suspension or other measures must be stated clearly to the employee in writing.
- 5.3. If the University suspends an employee they must not come into work apart from attending meetings related to the disciplinary action, or unless there is an explicit agreement with their manager. Access to University networks and systems will normally be withdrawn for the period of the suspension; access would be granted to enable the employee to prepare for their hearing subject to conditions as appropriate.
- 5.4. During suspension, or the period of measures short of full suspension, the employee will be provided with a named contact for any queries. They will be required to attend meetings and must ensure availability. Attendance at such meetings on site is deemed to be approved by their line manager.

## **6. The disciplinary procedure**

- 6.1. There are three formal stages of the Disciplinary Procedure. Before formal action is taken, there may be an informal discussion and informal oral warning.
- first formal written or oral warning
  - final formal written warning
  - dismissal

The manager in consultation with People & Culture is responsible for deciding at what stage within the procedure action should be taken. For minor matters, disciplinary action may commence informally. Where there is failure to respond, each stage may be implemented in turn, leading ultimately to dismissal. Dependent upon individual circumstances, more serious cases may warrant a formal written warning or dismissal on the first occasion.

## **7. Discussion and informal oral warning**

- 7.1. This is not a stage in the formal Disciplinary Procedure.
- 7.2. Where there have been minor breaches of discipline (e.g. lateness for work,), the line manager should discuss the matter informally with the employee. Appropriate action at this stage may include support and training, and advice and guidance.

- 7.3. This is an informal discussion but it is important that the individual is given a clear indication of the breach and the next steps. The purpose of this discussion is to ensure that the employee:
- is aware of the concerns and any rules, procedures or standards that apply
  - knows what is required to meet expected standards of conduct
  - is made aware of the timescale over which an improvement is required
  - understands the consequences of not achieving the required standard, including that formal action may be taken under the disciplinary procedure
- 7.4. Should this discussion not improve the situation and further breaches occur or standards remain low, it will be appropriate for the line manager to issue the employee with an informal oral warning that formal disciplinary action may follow if no improvement occurs. This should be done as soon as it is clear that the required improvements are not being made. The warning will be active for 12 months from the date of the warning. Once expired, the warning will remain on the personal file as part of the employee's overall record of employment but will not be taken into account when determining the level of any sanction for subsequent misconduct.

## **8. Stage one: first formal written or oral warning (referred to as oral warning within Ordinance 41)**

- 8.1. Where informal action has failed to bring about the necessary change in behaviour or where the breach is more serious, it may be appropriate to take action at the first stage of the formal disciplinary procedure. Before any sanction is applied, the employee will have the opportunity to attend a disciplinary hearing and will be provided in advance with information about the alleged misconduct and the possible outcome of the hearing.
- 8.2. The purpose of the formal warning is to advise the employee that their conduct is a matter of concern meriting a reprimand and that any continued breach of discipline or failure to adhere to standards will result in further disciplinary action.
- 8.3. The line manager will ensure that the following procedure is observed:
- the matter is discussed with People & Culture to ensure consistency of approach
  - the line manager must give notice (of at least 5 working days) of a disciplinary hearing date in writing to the employee to take place promptly, covering:
    - the date, time and venue of the disciplinary hearing
    - the allegations including the date, time and details of relevant incidents and copies of any statements from witnesses and other relevant evidence including investigation reports

- the right to call witnesses where relevant and appropriate (and the employee is to let the University know as early as possible if there are any relevant witnesses they would like to attend or if there is any other evidence the employee would like considered)
- the right to be accompanied at formal disciplinary hearings. Please see [Guide to Workplace Representatives](#)
- the possible outcomes under the disciplinary procedure
- A copy of the Disciplinary Procedure

Hearings should be arranged or rearranged to take account of authorised leave or absence e.g. attendance at a conference. The employee is entitled to offer an alternative time and date so long as it is reasonable and has regard for the availability of the manager hearing the case. It must fall before the end of the fifth working day following the day originally proposed.

- A disciplinary hearing is held which allows the employee to hear the charges against them, cross examine witnesses and present any mitigating circumstances or evidence. Normally the hearing will be conducted by the line manager with support from a representative from People & Culture.
- If the employee does not attend the disciplinary hearing, the reason must be ascertained, if possible. If the circumstances were beyond the employee's control e.g. illness, another hearing should be rearranged and the employee should be informed that if they fail to attend on a second occasion, the meeting may go ahead in their absence. 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.

#### 8.4. A disciplinary hearing will usually involve:

- setting out the relevant required and expected standards of conduct and explaining why it is considered that the employee has not met these standards, giving examples
- allowing the employee to ask questions, present evidence, call relevant and appropriate witnesses, and respond to the concerns
- discussing any particular reasons for the employee's poor conduct, including any reasons why any measures taken so far have not led to the required improvement
- identifying whether there are further measures, such as additional training or supervision, which may improve the employee's conduct
- where appropriate, discussing targets for improvement and a timescale for review
- if dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment.

- 8.5. Following the disciplinary hearing one of the following courses of action will be taken, and confirmed in writing to the employee, according to the circumstances of the case:
- take no formal disciplinary action
  - give a first formal written warning if there has been either a repeated minor breach in conduct following informal disciplinary discussions, or a first but more serious breach of discipline. Employees covered by Ordinance 41 would receive a first formal oral warning which would also be put in writing
  - give a final formal written warning in the case of serious misconduct or where the individual's behaviour during the hearing requires this to warrant a final written warning
  - in some cases, it may be appropriate to give an informal oral warning if the manager moved to the first stage of the disciplinary process without taking informal action, perhaps believing the breach to be more serious
- 8.6. Where a formal warning is issued, confirmation of the outcome of the disciplinary hearing will be given in writing normally within 10 working days of the disciplinary hearing. The letter should cover:
- the level of action taken and the reasons for that action
  - any remedial action required by the employee and the consequences of any recurrence of misconduct, including any dates for review in the case of first or final warning.
  - that the employee has a right of appeal and how to exercise that right
  - that the warning will be active for disciplinary purposes for 12 months, but will be disregarded after this time unless any further action is taken. Once expired, the warning will remain on the personal file as part of the employee's overall record of employment but will not be taken into account when determining the level of any sanction for subsequent misconduct

## **9. Stage two: final formal written warning**

- 9.1. A final written warning may be given where there is:
- a) misconduct which occurs when the employee is subject to an active written warning; or
  - b) misconduct that is considered sufficiently serious to merit a final written warning, in the absence of an active written warning
- 9.2. The same procedure is followed as for a formal written or oral warning (Stage 1). A hearing should take place promptly and at least 5 working days notice should be given of the hearing date. At this stage, the case will be heard by the line manager or, for academic employees

covered by Ordinance 41, the Executive Dean; for professional services employees covered by Ordinance 41, it would be the Head of Section.

- 9.3. Following the disciplinary hearing one of the following courses of action will be taken, according to the circumstances of the case. Where appropriate, training and support should be identified and arranged to assist the employee to meet the necessary standards.
- take no formal disciplinary action.
  - give a final formal written warning if there has been an insufficient response to previous warnings and conduct is still unsatisfactory, or in the case of a first but sufficiently serious breach of discipline (Examples: [Appendix 1](#)).
  - give a first formal written warning (or a first formal oral warning to those employees covered by Ordinance 41) This may be the case if the line manager moved to the final stage of the disciplinary process without taking previous stages, perhaps believing the breach to be more serious, or having taken mitigating circumstances into consideration a lower sanction would be more appropriate
- 9.4. A decision will be communicated in writing to the employee normally within 10 working days of the hearing or the re-convened hearing date. The letter should cover:
- the level of action taken (or the fact that no formal action was taken) and the reasons for that action
  - any remedial action required by the employee and the consequences of any recurrence of misconduct, including any dates for review (in the case of first or final warning)
  - that the employee has a right of appeal and how to exercise that right.
  - in the case of a first or final warning, that the warning will be active for disciplinary purposes for 12 months but will be disregarded after this time. Once expired, the warning will remain on the personal file as part of the employee's overall record of employment, but will not be taken into account when determining the level of any sanction for subsequent misconduct.
  - The confirmation of the final warning will refer to previous warnings (if applicable) and will state that any further misconduct or failure to improve standards may lead to dismissal

## **10. Stage three: dismissal (excluding Ordinance 41)**

- 10.1. Where there is further misconduct (which occurs when the employee is subject to an active final written warning), any gross misconduct (regardless of whether there are active warnings on the employee's record), or any misconduct during a probationary period after the first formal warning, the employee may be dismissed. In exceptional circumstances, it may be possible to consider redeployment or demotion, rather than dismissal, but only where a suitable opportunity exists at that time, and it is considered an appropriate alternative with clear reasons why.

- 10.2. A case for dismissal should be considered by a Head of Department/Section, with support from People and Culture.
- 10.3. In cases where dismissal is contemplated, the line manager will send the employee written notice of a disciplinary hearing at which they will be advised of their right to be represented. The meeting should take place promptly giving at least 5 working days notice of the hearing date. The employee will also be told in the letter that the outcome of the hearing could be dismissal. The letter will refer to the reasons for the hearing and the procedure for arranging the hearing will be the same as those for a final formal written warning.
- 10.4. If, in the opinion of the dismissing officer with the advice of People & Culture, any mitigating circumstances put forward at the hearing are not sufficient to warrant reconsideration, the employee will be informed that they have been dismissed with contractual notice or payment in lieu of notice (other than in cases of summary dismissal).
- 10.5. The dismissing officer will confirm, in writing, the dismissal to the employee and send it by recorded delivery.
- 10.6. If the employee is dismissed, they will be dismissed with contractual notice, or with payment in lieu of notice, unless the employee's performance has been so negligent as to amount to gross negligence, in which case the employee may be dismissed without notice or pay in lieu of notice.

## **11. Stage three: dismissals under Ordinance 41**

- 11.1. Where an employee comes under the remit of Ordinance 41, any case for dismissal would be considered by a Tribunal as set out under paragraphs 15 – 19 of the Ordinance. A complaint seeking the institution of charges to be heard by a Tribunal appointed under paragraph 16 may be made to the Registrar and Secretary who shall bring it to the attention of the Vice-Chancellor. The Vice-Chancellor may then request Council to appoint a Tribunal to consider the charges and determine whether the conduct constitutes good cause for dismissal. Where the Tribunal upholds the charges, the Vice-Chancellor would take the final decision on dismissal.

## **12. Summary dismissal**

- 12.1. Summary dismissal (dismissal without notice or pay in lieu of notice) will only occur where an employee has committed gross misconduct (or where it is believed on the balance of probabilities that they have committed gross misconduct). This sanction will not be imposed before the employee has had the opportunity to attend a disciplinary hearing. The hearing will be arranged in the same way as for a Stage 3 Dismissal.

## **13. Appeals**

- 13.1. An employee who has been subject to formal disciplinary action is entitled to appeal. The right of appeal must be exercised within 10 working days of the date of the letter of confirmation of disciplinary action.

- 13.2. It is in the interest of the appellant to make their points sufficiently clear and concise to enable the panel to fully understand the grounds for appeal. The panel will not usually need to review all the information considered at the original hearing.
- 13.3. The Chair of the Appeal Panel will review the letter of appeal to determine, whether there are sufficient grounds for it to go to a full hearing. If they decide there are insufficient grounds the appeal will be dismissed. If there are sufficient grounds for appeal the case will proceed to an appeal hearing.
- 13.4. The appeal will not involve a full re-hearing of the case but a review of the decision already made in relation to the grounds for appeal i.e. to determine if the previous decision was fair, consider whether there were any factual or procedural errors and judge the reasonableness of the decision in relation to the policy.
- 13.5. The appeal should be addressed to the Director of People & Culture. For employees covered by Ordinance 41, appeals should be addressed to the Registrar and Secretary. The People & Culture representative should also be sent a copy of the letter.
- 13.6. Appeals against disciplinary action not including dismissal will be heard by a senior employee who has not been previously involved in the case. For employees covered by Ordinance 41, appeals will be heard by the appropriate Pro-Vice-Chancellor. Advice on procedure should be taken from People & Culture.
- 13.7. The appeal hearing will review the decision taken at a previous stage. New evidence can only be presented at the appeal stage if there are exceptional reasons why such evidence or witnesses were not produced at the disciplinary hearing and/or that it is necessary in the interests of fairness.
- 13.8. The appeal hearing should normally take place within 20 working days of the appeal being lodged. People & Culture must give notice (of at least 5 working days) of the appeal hearing in writing to the employee, covering:
- who will hear the appeal
  - the date, time and venue of the hearing
  - the possible outcomes under the Disciplinary Procedure
  - the right to be accompanied by a workplace colleague, a 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)
- 13.9. All parties should make every effort to attend the appeal on the date scheduled. If there are exceptional circumstances, the appeal may be re-arranged for a different date, but the appellant and respondent should be aware that this may cause delays in the process and undue anxiety in resolving the matter promptly. The employee is entitled to offer an alternative time and date so

long as it is reasonable, including having regard to the availability of the senior employee hearing the appeal. It must be within five working days of the date originally proposed. Should either party not be able to attend the re-arranged date, decisions may be made in their absence on the basis of the information available.

13.10. The response to the appeal may be to:

- uphold the disciplinary action taken
- withdraw the disciplinary action taken
- reduce the level of disciplinary action taken

13.11. The University will inform the employee of the final decision as soon as possible, usually within 10 working days of the appeal hearing.

13.12. There will be no further right of appeal.

## **14. Appeals against dismissal (excluding Ordinance 41)**

14.1. Appeals against dismissal will be subject to the following procedure.

14.2. An employee who has been issued with notice of dismissal following a disciplinary hearing is entitled to appeal on the grounds that new evidence has emerged or that the procedure which led to the decision to dismiss was so flawed that it rendered the decision unfair. The right of appeal must be exercised within 10 working days of the date of the letter of confirmation of dismissal.

14.3. The appeal should be addressed to the Director of People & Culture. The relevant People & Culture representative should also be sent a copy of the letter.

14.4. Appeals against dismissal will be heard by a Head of Department/Section who has had no previous involvement in the case. Advice on procedure should be taken from People & Culture.

14.5. The appeal hearing will review the decision taken at the previous stage in respect of the dismissal. New evidence can only be presented at the appeal stage if there are exceptional reasons why such evidence or witnesses were not produced at the disciplinary hearing and/or that it is necessary in the interests of fairness.

14.6. The appeal hearing should take place within 20 working days of the appeal being lodged.

14.7. The response to the appeal may be to:

- uphold the disciplinary action and dismissal
- revoke the decision to dismiss

- reinstate the employee with a lesser disciplinary penalty
- 14.8. The University will inform the employee of the final decision as soon as possible, normally within 10 working days of the appeal hearing.

## **15. Appeals against dismissal under Ordinance 41**

- 15.1. Appeals against dismissal under Ordinance 41 will be governed by Part V of that Ordinance. The appeal shall be made to the Registrar and Secretary within 28 days of the decision being communicated. The Registrar and Secretary will bring the appeal to the attention of the Council, which will appoint a person not employed by the University who holds or has held judicial office or is a barrister or solicitor of ten years standing to hear and determine the appeal.
- 15.2. An appeal hearing must take place where the employee bringing the appeal can bring witnesses and is entitled to be represented by another person. The individual hearing the appeal may refer it back to Council or for a rehearing by a differently constituted tribunal.
- 15.3. The response to the appeal may be to:
- uphold the dismissal;
  - revoke the decision to dismiss
  - reinstate the employee with a lesser penalty

## **16. Right to be accompanied**

- 16.1. The employee has the right to be accompanied at any formal hearing. Please see [Guide to Workplace Representatives](#) for more information.

## **17. Disability**

- 17.1. If an employee has particular requirements at any stage of the disciplinary procedure as a result of a disability or wishes to inform the University of any medical condition which may be relevant, the individual should confirm this as early as possible during the process by contacting their line manager or a member of [People & Culture](#).

## **18. Considering wellbeing**

- 18.1. When going through a disciplinary procedure it is important to consider the wellbeing and mental health of all employees involved. Managers should signpost to support where required.

## 19. Equality impact assessment

19.1. The University has conducted an Equality Impact Assessment on this policy and is satisfied that its application should not result in a differential and negative impact on any groups of employees identified under the Equality Act 2010.

## 20. Monitoring

20.1. People, Culture and Inclusion Advisory Group (.pdf) will monitor the impact of this policy.

## 23. Related university policies and procedures

- Disciplinary Procedure Guidance
- Equality and Diversity Policy and Strategy
- Zero Tolerance of Harassment and Bullying
- Health and Safety Policy
- Capability Procedure
- Grievance Procedure
- Sickness Absence Policy and Procedure
- Stress Management Policy (.docx)
- Professional Services Probation Policy
- Flexible Working Policy
- Whistleblowing Policy
- Special Leave Policy
- Social Media Policy
- Essential Training Policy
- Academic Freedom and Freedom of Speech

## 24. University sources of support and information

- Health and Wellbeing

- Work-Related Stress
- Coaching Essentials for Line Managers
- Report and Support
- Mental Health First Aid
- Employee Assistance Programme

# Appendix 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.

The following are 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 a 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

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.

## Document Control Panel

Field	Description
<b>Title</b>	<b>Disciplinary Procedure</b>
<b>Policy Classification</b>	Procedure
<b>Security Classification</b>	Open
<b>Security Rationale</b>	N/A
<b>Policy Manager Role</b>	Policy and Projects Officer
<b>Nominated Contact</b>	develop@essex.ac.uk
<b>Responsible UoE Section</b>	People and Culture
<b>Approval Body</b>	University Steering Group
<b>Signed Off Date</b>	May 2023
<b>Publication Status</b>	Published
<b>Published Date</b>	October 2023
<b>Last Review Date</b>	May 2023
<b>Minimum Review Frequency</b>	3-Yearly
<b>Review Date</b>	May 2026
<b>UoE Identifier</b>	0069

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