



University of Essex



DISCIPLINARY PROCEDURE

PEOPLE AND CULTURE

DISCIPLINARY PROCEDURE

AIM

High standards of professional behaviour and conduct are essential for the maintenance of a good working environment and the delivery of the University's strategic plan. The aim of the Disciplinary Procedure is to help and encourage employees to achieve and maintain required standards of behaviour, conduct and attendance. When disciplinary action is taken, it should be applied consistently and fairly in every case, with proper and proportionate warning. There is a separate procedure which addresses concerns about capability, where an individual is unable to perform the duties of their post to the standard required.

SUMMARY

Line managers are responsible for dealing with problems as they arise, and this is usually done with informal coaching and counselling. If this fails, an informal oral warning may be issued, making it clear that formal disciplinary action may follow if there are further breaches. A written note will be given to the individual which will be kept on record. Where there is no improvement, formal disciplinary action will be invoked in consultation with the Employee Relations Advisory Team and a disciplinary hearing convened.

The procedure outlined below will be followed, in most cases¹, after an informal (verbal) warning:

- First formal written or oral warning – the letter will include a reprimand and warning of further disciplinary action for repeated behaviour/offence
- Final formal written warning
- Dismissal

Employees have the right of appeal against any formal sanctions issued. Probationary or short-term staff will only receive a first written warning before dismissal. In cases of serious misconduct employees may be suspended for a limited time on full pay pending further investigation.

¹ Action may start at later stages of the procedure depending on the seriousness of the breach.



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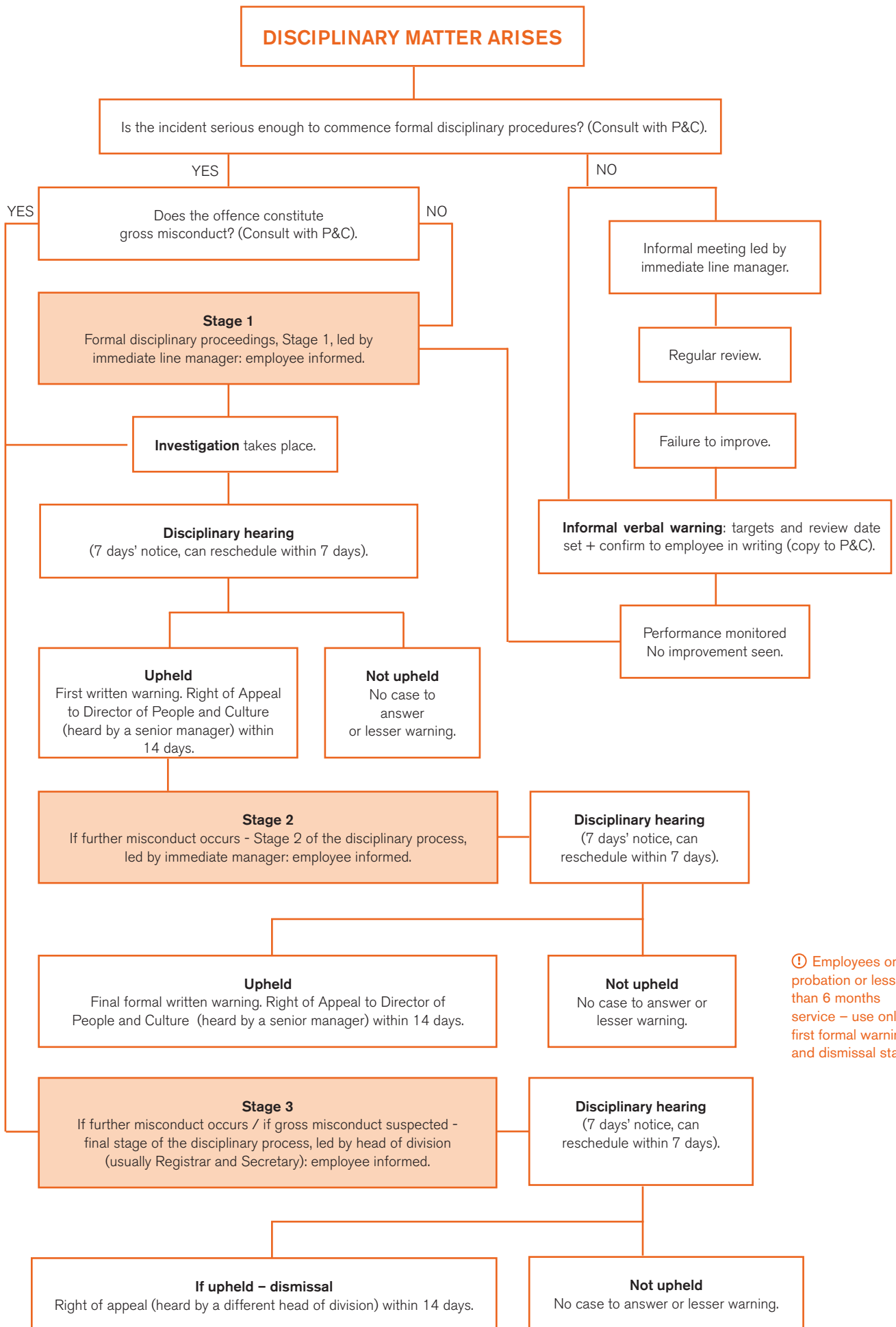
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RELATED POLICIES

ACAS CODE OF PRACTICE ON DISCIPLINARY AND GRIEVANCE PROCEDURES
GUIDELINES FOR DEALING WITH BULLYING AND HARASSMENT

FLOWCHART (ALL EMPLOYEES, EXCLUDING THOSE COVERED BY ORDINANCE 41)

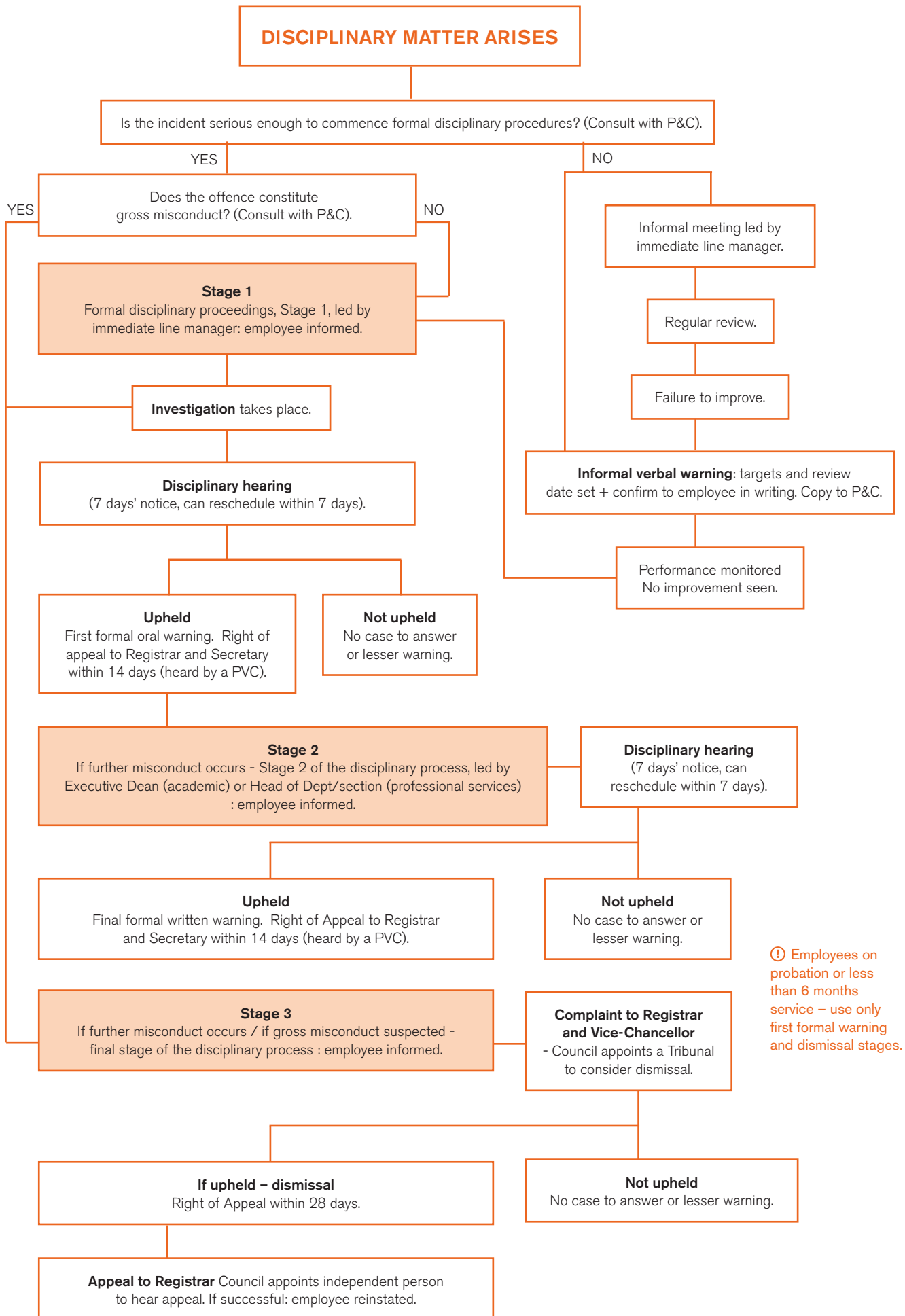
⚠ The Employee Relations Advisory Team should be consulted at every stage.



⚠ Employees on probation or less than 6 months service – use only first formal warning and dismissal stages.

FLOWCHART (EMPLOYEES COVERED BY ORDINANCE 41)

ⓘ Ordinance 41 applies to academic staff, the Registrar and Secretary, the Librarian, and professional services staff grade 7-11 employed before October 2016.



ⓘ Employees on probation or less than 6 months service – use only first formal warning and dismissal stages.

INTRODUCTION

1. INTRODUCTION

1.1

The University of Essex seeks to promote fairness in the treatment of all employees.

1.2

All employees are expected to observe standards of conduct, behaviour, attendance, and other policies and procedures which have been established for the health and safety of all and for the efficient running of the University. Prompt corrective action should be taken by line managers if required standards are not being maintained. The majority of problems will be resolved this way and without recourse to a formal procedure. However as a last resort and if the breach is serious or recurs, action will be taken through this formal procedure.

1.3

The disciplinary procedure reflects appropriate legal requirements, including the procedures in the Employment Act 2002 and the ACAS Code of Practice on Disciplinary and Grievance Procedures.

⚠ It is important that line managers take prompt action, either informally at first or formally if more serious or if misconduct is repeated.



2. SCOPE

2.1

This disciplinary procedure applies to all University of Essex employees. It incorporates and complements the provisions of Ordinance 41 for those employees to whom the Ordinance applies. Ordinance 41 applies to academic staff, the Registrar and Secretary, the Librarian and professional services staff grade 7-11 employed before October 2016.

2.2

This procedure applies to all communications which directly or indirectly represent the University, including social media and email.

2.3

References to “manager” in this procedure refer to those with management responsibility for others and to the appropriate officer as set out in Part 6 of this procedure.

2.4

Employees on probation or with less than six months service are covered under Part 10.

2.5

There is a separate procedure to deal with capability. If the capability issues arise from a persistent or wilful failure to reach appropriate standards the Disciplinary Procedure may be invoked.

2.6

Normal disciplinary standards apply to trade union representatives. However, no disciplinary action 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. Trade Union representatives should identify themselves for this purpose. This is to ensure that representatives are treated with fairness and not victimised for their representational activities.

3. OBJECTIVE

3.1

The objective of the procedure is to restore a satisfactory standard of personal conduct, behaviour or attendance where the required standards have not been maintained. To achieve this objective, there are four main aims when undertaking performance discussions or disciplinary hearings:

- To set the standard – to bring to the attention of the employee how they are failing to meet the required standard and of the complaint(s) against them.
- To seek an explanation – to provide the employee with an opportunity to explain why they are not meeting the standard and to discuss the acceptability of the explanation(s).
- To require improvement – to tell the employee what they are expected to do to bring about improvements in conduct or behaviour, outline any management action and support and give a time limit within which the employee can reasonably be expected to modify or change their behaviour. Improvement in some conduct issues may, reasonably, be expected to occur immediately
- To warn of the consequences – to warn the employee about the consequences of failure to improve, to meet and sustain the standard of behaviour, attendance or conduct required.

4. ROLE OF THE LINE MANAGER

4.1

It is the responsibility of line managers to confront problems as they arise. Line managers will wherever possible help an employee to overcome difficulties. If required standards (whether expressed or implied) are not maintained, prompt corrective action will need to be taken by the line manager. This will usually be done through informal coaching. However, if the breach is serious or recurs, action will need to be taken through this formal procedure.

ⓘ This procedure applies to all employees including those covered by Ordinance 41.

ⓘ There is a separate Capability Procedure to help and encourage employees to meet required standards of performance.

ⓘ Line managers are responsible for taking prompt action where misconduct occurs. The Employee Relations Advisory Team can provide advice and support to managers.

► www.essex.ac.uk/hr/contact.aspx#principal

5. PRINCIPLES

- The disciplinary procedure may be implemented at any stage.
- The University will deal with disciplinary matters promptly and without undue delay and expects the employee to cooperate to achieve that aim.
- Employees have the right to be accompanied at formal disciplinary hearings.
- At any stage within the disciplinary procedure, an employee may seek advice on procedure from People and Culture staff. Staff assisting the line manager in the procedure will not normally offer advice to avoid a conflict of interest.
- To ensure consistency of treatment, no formal disciplinary action will be taken without prior discussion with People and Culture.
- Records will only be shared with those involved in the case.
- Disciplinary action (warnings) will remain active for 12 months unless otherwise specified in the letter of confirmation. This means that if similar offences are committed or further misconduct or unsatisfactory attendance occurs during this period, more serious disciplinary action may be taken. Once expired, the disciplinary warning will remain on the file as part of the employees overall record of employment.

The Employee Relations Advisory Team can provide advice and support.

- ▶ www.essex.ac.uk/hr/contact.aspx#principal

ⓘ The disciplinary procedure may be implemented at any stage depending on how serious the misconduct is. See Annex 1 for examples of misconduct.

ⓘ Disciplinary warnings are active for 12 months – if further misconduct occurs in this period, action can be taken at the next level.



6. AUTHORITY TO TAKE ACTION

	ALL EMPLOYEES (EXCEPT THOSE COVERED BY ORDINANCE 41)	EMPLOYEES COVERED BY ORDINANCE 41
INFORMAL	Line manager	Head of Department (Line manager for professional services staff)
STAGE 1 (FIRST FORMAL ORAL / WRITTEN WARNING)	Line manager	Head of Department (Line manager for professional services staff)
STAGE 2 (FINAL FORMAL WRITTEN WARNING)	Line manager	Executive Dean (Head of Section for Professional Services staff)
STAGE 3 (DISMISSAL)	Head of Division, usually the Registrar and Secretary	Vice-Chancellor Council appoints a tribunal to consider the charges.
APPEAL	To Director of People and Culture. Appeal heard by a senior member of staff with no previous involvement	Pro-Vice-Chancellor
APPEAL AGAINST DISMISSAL	To Director of People and Culture. Appeal heard by a Head of Division with no previous involvement	To Registrar. Council will appoint a person not employed by the University who has held judicial office or is a barrister or solicitor of ten years standing to hear and determine the appeal.

ⓘ Depending on the stage of the disciplinary procedure and how serious the misconduct is, there will be a difference in who has authority to take action. The Employee Relations Advisory Team can advise on the appropriate officer.

6.1

Action should be taken in consultation with the Employee Relations Advisory Team.

6.2

For those employees not covered by Ordinance 41, all stages of disciplinary action, including dismissal, may be taken by the Vice-Chancellor, Registrar and Secretary, Executive Deans, Heads of Professional Services in consultation with the Employee Relations Advisory Team. The Director of People and Culture may authorise other named managers to take defined levels of disciplinary action in accordance with this procedure.

6.3

References to "line manager" in this procedure refer to the appropriate officer as set out above.

7. SUSPENSION

A member of staff may be suspended on normal pay during an investigation or prior to a disciplinary hearing when the alleged behaviour is viewed as possibly constituting gross misconduct or if there is a significant risk to the University from the member of staff being on site. Suspension may also be necessary where the presence of the member of staff at the University may hinder the investigation or for the individual's own protection. Suspension should not be an automatic response but used only if necessary and reasonable.

- suspension from duty is not a pre-judgement of guilt and is not a disciplinary penalty;
- the decision to suspend can only be taken (and lifted) by a manager authorised to take action, following consultation with the Employee Relations Advisory Team;
- the reasons for the suspension must be stated clearly to the member of staff in writing;
- the period of suspension will be as brief as possible – no more than 7-14 calendar days - and must be kept under review. Any decision to extend the period of suspension beyond 7-14 days can only be taken in consultation with the Director of People and Culture;
- whilst suspended, an employee must not contact fellow workers other than where absolutely necessary and in the strictest confidence, for example, as part of the support provided by your union representative or immediate family. Employees must also not visit University property or access University facilities and data including email and databases without first obtaining authority from the manager: such authority would be granted (subject to any conditions considered appropriate) to enable the member of staff to prepare their response. Normally, access to University networks and systems will be withdrawn for the period of the suspension. Staff retain the right to contact their Trade Union representative and to visit the University for this purpose having first obtained permission from their manager.
- during suspension the member of staff 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.

8. INVESTIGATION

8.1

Where there are grounds for considering disciplinary action against a member of staff it is essential to ensure that there is clear supporting evidence. Where the evidence is not clear it may be necessary to undertake an investigation. The purpose of the investigation is to gather evidence to enable a decision to be taken by the manager, with advice from the Employee Relations Advisory Team, on whether the matter should proceed to a formal hearing under this procedure.

8.2

Investigations must be undertaken promptly, especially if the employee under investigation has been suspended.

8.3

The investigation should be undertaken by an Investigating Officer appointed by the line manager or Head of Department/Section in consultation with the Employee Relations Advisory Team. The Investigating Officer should be someone more senior than the individual being investigated, but not their line manager. The Investigating Officer may be from the same Department, but not directly working with the individual concerned.

- If appropriate, as part of the investigation, the member of staff will be interviewed. This will not be a disciplinary hearing, but will be for the purpose of investigating the matter before a decision is taken as to whether or not a disciplinary hearing is warranted.
- If there are witnesses to an incident, or a person makes an allegation against someone else, these people will be interviewed and notes of the interview/s and/or statement from the individual interviewed will be produced and shared with the individual.
- Only in exceptional circumstances where there is, for example, a genuine concern for personal safety, will the Director of People and Culture permit statements to be anonymised.
- The Investigating Officer and any managers who have been interviewed as part of the investigation, would not usually take part in any subsequent disciplinary hearing except to give evidence.
- The member of staff may also provide documentary evidence to support their case or identify witnesses to be interviewed as part of the investigation.

⚠ Employees may be suspended if the alleged misconduct is viewed as potential gross misconduct or if there is a significant risk to the University. Suspension should be kept as brief as possible.

⚠ Suspension is not a pre-judgement of guilt or a disciplinary penalty. Individuals who are suspended must have a named contact so that they are able to raise concerns or questions.

⚠ There is separate guidance available on conducting an investigation and what should be covered in an investigation report.

► http://www.essex.ac.uk/hr/policies/docs/conducting_investigations.pdf

8.4

When the investigation is concluded, the Investigating Officer should present his/her findings to the manager to enable him/her to decide whether the matter should be dealt with informally outside the formal disciplinary procedure; or whether there is a case to answer and it is necessary to consider the matter under the formal disciplinary procedure.

8.5

Further guidance on conducting formal investigations is available.

9. RECORDS

9.1

Records of disciplinary action will be placed on the individual's personal file.

10. PROBATION

10.1

Employees with less than 6 months service or who are on probation will be subject to regular reviews of progress in line with the University's probation policies. Should disciplinary action become necessary they will be dealt with at the first formal warning and dismissal stages (with a right of appeal). The informal warning and final formal warning stages will not apply.

11. THE PROCEDURE

11.1

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

12. GENERAL

12.1.

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. The manager in consultation with the Employee Relations Advisory Team is responsible for deciding at what stage within the procedure action should be taken.

13. DISCUSSION AND INFORMAL ORAL WARNING

13.1.

Where there have been minor breaches of discipline (e.g. lateness for work), the line manager should discuss the matter informally with the member of staff. Appropriate action at this stage may include:

- support and training
- advice and guidance

13.2

Although this is an informal discussion and not part of the formal process, 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 member of staff:

- 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.

13.3

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 (see Part 5). Once expired, the warning will remain on the personal file as part of the employees overall record of employment.

13.4

Line managers should keep a record of informal discussions and warnings and what counselling has taken place – future reference may need to be made to them. They should be confirmed in writing to the employee as a true record of the discussions that have taken place – either sent by email or a copy signed by both parties for the file.

13.5

This is not a stage in the formal Disciplinary Procedure.

⚠ Employees on probation will be dealt with under two stages of disciplinary procedure – first formal warning and dismissal.

⚠ The disciplinary procedure may start informally and then progress through each stage – or, it may start at a formal written warning or dismissal in more serious cases.

⚠ Line managers should keep a record of all informal discussions and warnings and share them with the employee.

14. STAGE 1 - FIRST FORMAL WRITTEN OR ORAL WARNING

14.1

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.

14.2

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.

14.3

When a formal warning is contemplated, the line manager will ensure that the following procedure is observed:

- The matter is discussed with the Employee Relations Advisory Team to ensure consistency of approach.
- The line manager must give notice (of not less than 7 calendar days) of the disciplinary hearing 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 appropriate
 - the possible outcomes under the disciplinary procedure
 - the right to be accompanied by a workplace colleague or trade union representative (if they are a member of a trade union).
 - A copy of the Disciplinary Procedure.
- Meetings 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 him/her, cross examine witnesses and present any mitigating circumstances or evidence. Normally the line manager and

the Employee Relations Advisory Team would conduct such a meeting.

- 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 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.

14.4

Following the disciplinary meeting one of the following courses of action will be taken, 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. (Examples: Annex 1).
- Give a final formal written warning where the breach turns out to be more serious or where the individual's behaviour during the hearing requires this.
- 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.

14.5

Where a formal warning is issued, confirmation of the outcome of the disciplinary hearing will be given in writing within 7 calendar days. 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.
- That the warning will be active for disciplinary purposes for 12 months (see part 5 of this procedure) 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.

ⓘ Annex 1 gives guidance on the misconduct that it is appropriate to deal with at Stage 1 of the procedure.

ⓘ Any disciplinary action should be discussed with the Employee Relations Advisory Team. They will advise on the appropriate action and process.

ⓘ Where action is taken at Stage 1, there are four possible outcomes:

- No formal action
- Informal oral warning
- First formal written or oral warning
- Final formal written warning

15. STAGE 2 - FINAL FORMAL WRITTEN WARNING

15.1

In cases where there is a reasonable belief that serious misconduct has occurred or where there is a repetition of an offence which occurs while a first formal written or oral warning remains active, a final formal written warning will be issued to the employee.

15.2

The same procedure is followed as for a formal written or oral warning (stage 1) – para 14.3. A hearing should take place promptly. 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, it would be the Head of Section.

15.3

If it becomes clear that dismissal might be an outcome at this stage, for example, if the breach might be considered gross misconduct, the hearing should be adjourned and reconvened under Stage 3 (see part 20).

15.4

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 member of staff 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) 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.

15.5

A decision will be communicated in writing to the member of staff within 7 calendar days of the hearing or the re-convened hearing date. The letter should cover:

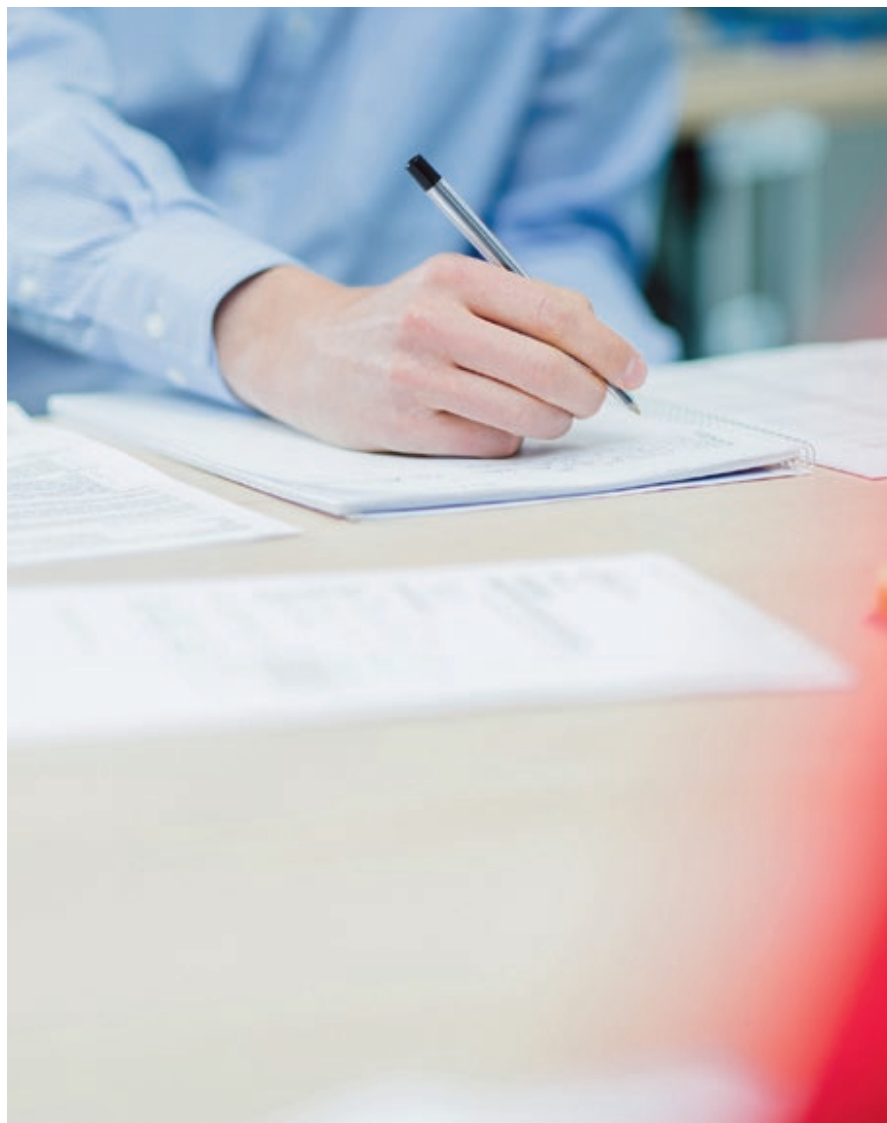
- The level of action taken (or the fact that no formal action was taken) and the reasons for that action
- Any remedial action required by the employee and the consequences of any recurrence of misconduct, including any dates for review (in the case of first or final warning)
- That the employee has 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 (see part 5 of this procedure) 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.
- 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.

ⓘ Annex 1 gives guidance on the misconduct that it is appropriate to deal with at Stage 2 of the procedure.

ⓘ Where action is taken at Stage 2, there are four possible outcomes:

- No formal action
- First formal written or oral warning
- Final formal written warning

ⓘ Where a final written warning is issued, the confirmation letter must state that any further misconduct or failure to improve may lead to dismissal.



16. STAGE 3 – DISMISSAL

16.1

Where the employee has not reached the standard within the timescale for improvement or where there are continued breaches of conduct, the employee may be dismissed.

16.2

A case for dismissal should be considered by a Head of Division, usually the Registrar and Secretary.

16.3

In cases where dismissal is contemplated, the line manager will send the employee written notice of a disciplinary hearing at which he/she will be advised to be represented. The meeting should take place promptly. 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 (see para 14.3).

16.4

If, in the opinion of the dismissing officer with the advice of the Employee Relations Advisory Team, any mitigating circumstances put forward at the hearing are not sufficient to warrant reconsideration, the employee will be informed that he/she has been dismissed with contractual notice or payment in lieu of notice.

16.5

The dismissing officer will confirm, in writing, the dismissal to the employee and send it by recorded delivery.

Dismissals under Ordinance 41

16.6

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.



17. SUMMARY DISMISSAL

17.1

Summary dismissal will only occur where an employee has committed gross misconduct (or where it is believed on the balance of probabilities that he/she has committed gross misconduct). This means that the employee will be dismissed without notice but not without a disciplinary hearing. The hearing will be arranged in the same way as for a Stage 3 Dismissal. Examples of gross misconduct are at Annex 1.

18. APPEALS

18.1

An employee who has been subject to formal disciplinary action is entitled to appeal. The right of appeal must be exercised within 14 calendar days of the date of the letter of confirmation of disciplinary action.

18.2

The appeal should be addressed to the Director of People and Culture. For employees covered by Ordinance 41, appeals should be addressed to the Registrar and Secretary. The Employee Relations Advisory Team should also be sent a copy of the letter.

18.3

Appeals against disciplinary action not including dismissal (see section 19) will be heard by a senior member of staff 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 the Employee Relations Advisory Team.

18.4

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.

ⓘ Annex 1 gives guidance on what may constitute gross misconduct, which may lead to dismissal.

ⓘ Where dismissal is contemplated, the individual should be advised to be represented, either by a colleague or a trade union representative

ⓘ At a disciplinary hearing, the decision must be taken "on the balance of probabilities" and not "beyond reasonable doubt".

18.5

The appeal hearing should take place within 28 calendar days of the appeal being lodged. People and Culture must give notice (or not less than 7 calendar 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 or trade union representative.

18.6

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 senior member of staff hearing the appeal. It must fall before the end of the fifth working day following the day originally proposed.

18.7

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

19. APPEALS AGAINST DISMISSAL**19.1**

Appeals against dismissal will be subject to the following procedure.

19.2

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 14 working days of the date of the letter of confirmation of disciplinary action.

19.3

The appeal should be addressed to the Director of People and Culture. The Employee Relations Advisory Team should also be sent a copy of the letter.

19.4

Appeals against dismissal will be heard by a head of division who has had no previous involvement in the case. Advice on procedure should be taken from the Employee Relations Advisory Team.

19.5

The appeal hearing will review the decision taken at the 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.

19.6

The appeal hearing should take place within 28 calendar days of the appeal being lodged.

19.7

The response to the appeal may be to:

- Uphold the disciplinary action and dismissal
- Revoke the decision to dismiss
- Reinstatement of the employee with a lesser disciplinary penalty

Appeals against dismissal under Ordinance 41**19.8**

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 calendar 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.

19.9

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 re-hearing by a differently constituted tribunal.

19.10

The response to the appeal may be to:

- Uphold the dismissal;
- Revoke the decision to dismiss
- Reinstatement of the employee with a lesser penalty.

⚠ The appeal hearing may:

- Uphold the disciplinary action
- Withdraw the disciplinary action
- Reduce the level of disciplinary action

⚠ Appeals against dismissal will be heard by a head of division who has had no previous involvement in the case.

⚠ The appeal hearing must take promptly and within 28 calendar days.

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.

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 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

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.



POLICY CREATOR: PEOPLE AND CULTURE

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