

UNIVERSITY OF LEICESTER ORDINANCE

DISCIPLINE (Ordinance Policy)

For use in:	All Divisions/Schools/Departments/Colleges of the University
For use by:	All University employees
Owner	Staffing Policy Committee
Dates of Trade Union Consultation and Negotiation	Start: 8 January 2010 End: 2 March 2011
Date of Approval by Strategy, Policy and Resources Committee	15 November 2010
Date of Approval by Senate	30 March 2011
Date of Approval by Council	4 April 2011
Dates of Trade Union Ballots	13 June to 6 July 2011
Launch Date	12 September 2011
Contact - Comments	Alun Reynolds – Geraldine McAughtry

DISCIPLINE ORDINANCE: POLICY

1. Introduction

- 1.1. All staff are expected to adhere to the Statutes, Ordinances, Policies and Procedures of the University and to conduct themselves in a professional manner that supports their role at all times.
- 1.2. The Discipline Ordinance is made up of a policy and procedure that takes account of the ACAS code of practice. The Discipline Ordinance Policy and Procedure should be read together.
- 1.3. A discipline policy is essential to ensure professional standards of conduct and behaviour at work and to ensure the safety and well-being of staff, students and the public. A disciplinary procedure helps to promote fairness and consistency in the handling of misconduct cases.
- 1.4. The purpose of a disciplinary hearing is to review the facts of a case. Notification of a disciplinary hearing is not disciplinary action. Disciplinary action is a management response to unacceptable behaviour or conduct, which is normally decided after a disciplinary hearing has taken place. Disciplinary action may be informal or formal. Examples of formal disciplinary action include the issue of written warnings or dismissal.
- 1.5. The University will maintain the right of academic staff to exercise their Academic Freedom. The Discipline Ordinance (Procedure) includes appropriate procedural modifications to ensure the protection of Academic Freedom. Decisions about the definition of Academic Freedom will be made with reference to the “Ordinance Agreement on the definition of Academic Freedom”.
- 1.6. Staff will be consulted on changes via the established channels for consultation and negotiation with the recognised Trade Unions, where the University wishes to amend the Discipline Ordinance.

2. Aims

The aims of the Ordinance are:

- 2.1. To ensure that misconduct is addressed fairly, consistently, appropriately and in a timely manner.
- 2.2. To provide a member of staff with the opportunity to correct or improve unacceptable behaviour or conduct, within a set timescale.
- 2.3. To address an act (or acts) of gross misconduct.

3. Scope

- 3.1. The Discipline Ordinance (Policy and Procedure) applies to all University employees.

4. Principles

- 4.1. A member of staff will be informed, in writing, of the nature of the alleged misconduct or complaint(s) made against them and will be given the opportunity to respond before formal disciplinary action is taken.
- 4.2. A member of staff may, with good reason, object to the appointment of any individual involved in hearing their case. The objections will normally be considered by a manager of a higher grade than the chair of the hearing.
- 4.3. Staff may be required to assist in obtaining or providing medical reports.
- 4.4. Disciplinary action can only be taken against a member of staff following a disciplinary hearing.
- 4.5. In cases involving Academic Freedom, panel decisions will reflect the view of the majority.
- 4.6. Consideration for the application of, and impact on, other relevant policies will be included in all deliberations e.g. Data protection, Health and Safety.
- 4.7. Where a medical cause is offered as the reason for an act of misconduct, the University will consider whether it is a mitigating factor when reaching a decision on the disciplinary case.
- 4.8. The non-contractual procedure for the “Investigation of Misconduct in Research”, published by the UK Research Integrity Office as best practice, will normally be used to investigate cases of alleged misconduct in research. However, where there is a potential or actual issue of academic freedom, the procedural modifications (regarding a panel) set out in the Discipline Ordinance will be applied to the best-practice code.
- 4.9. In cases where a member of staff has an inter-dependent contract of employment with the NHS and the University, representatives from the NHS may be included in formal proceedings (e.g. in an Investigation or Hearing).
- 4.10. The Discipline Ordinance will be operated in accordance with the principle of Natural justice. Natural justice includes the notion of procedural fairness, which includes the following:
 - A right to advance warning - the relevant member of staff should be given adequate notice about the proceedings including any allegations made against them and access to relevant documentation in a timely manner;
 - Proceedings should be conducted so they are fair to all the parties;
 - Each party to a proceeding is entitled to ask questions and challenge the evidence of other parties;
 - A person who makes a decision should be unbiased and act in good faith;
 - A person (or panel) making a decision should declare any personal interest they may have in the proceedings;
 - Justice should be seen to be done.

5. Role of HR

- 5.1. The role of HR is to ensure that formal proceedings comply with employment law and the University's policies and procedures. The primary role of HR is to advocate on the part of the institution, not for a manager or a member staff.
- 5.2. During formal proceedings, members of HR will act as independent, advisory guardians and regulators of the process. Members of HR will point out any issues in respect of employment law or the University's policies and procedures during formal meetings.
- 5.3. Members of HR are not permitted to undertake the role of decision maker on individual cases. Questions from members of HR must be asked through the chair of a formal meeting.
- 5.4. Once informed of a formal disciplinary case, HR will issue the Discipline Ordinance (Policy and Procedure) to all parties involved.

6. Right to be accompanied

- 6.1. A member of staff has the right to be accompanied to formal meetings. The chosen companion may be a trade union representative, an official employed by a trade union or a fellow worker.
- 6.2. Where the right to be accompanied is exercised, the normal expectation is that a member of staff will be accompanied by a local Trade Union representative at formal meetings and, where required, by an official employed by the Trade Union at appeal.
- 6.3. Where the Discipline Ordinance (policy and procedure) refers to a "Trade Union representative", this includes an official employed by the Trade Union.
- 6.4. In cases where the outcome is likely to end, prematurely, the staff member's professional career, the Registrar or a Pro-Vice-Chancellor (with advice from the University's Legal Adviser) may permit the member of staff to have legal representation at the individual's own cost.
- 6.5. A member of staff who has an inter-dependent contract of employment with the NHS and the University may be accompanied to formal meetings by a representative of a medical defence union.
- 6.6. A member of staff is not normally permitted to be accompanied or represented at informal meetings.

7. Exclusions

- 7.1. The Discipline Ordinance will not be used to deal with performance issues, except where performance problems result from misconduct e.g. in cases of gross misconduct. Performance issues will normally be considered under the relevant part of the Performance Management Ordinance.

8. Formal Disciplinary Procedure

- 8.1. The formal disciplinary procedure may be invoked where a line manager (in consultation with HR) considers that:
- previous informal support or advice regarding conduct has been ineffective or disregarded;
 - informal action is inappropriate;
 - current formal warnings have been ineffective or disregarded;
 - a number of minor issues, which taken together, constitute misconduct; or
 - a serious act(s) of misconduct is alleged.
- 8.2. Please refer to the Discipline Ordinance (Procedure) for full details about the key steps of the procedure including suspension, investigation, the disciplinary hearing and, where required, appeal.

9. Witnesses

- 9.1. The member of staff has the right to call witnesses. However, the staff member's witnesses are not obliged to attend if they do not wish to.
- 9.2. Witnesses and the relevant individual(s) involved in a disciplinary case will normally be interviewed as part of the formal investigative process.
- 9.3. Interviews with witnesses will be documented. A note of the interview must be signed by each witness or relevant individual to confirm that the information is accurate and complete.
- 9.4. The member of staff under investigation will receive a copy of all appropriate paperwork relevant to the investigation that they are entitled to see (including witness statements).
- 9.5. Where requested, the note of an interview may be disclosed to other appropriate individuals involved in a disciplinary case (e.g. a witness). However, in accordance with data protection regulations, these documents may be redacted to items relevant only to that individual.
- 9.6. Where the member of staff wishes to call witnesses, the request must be made to the chair at least 72 hours in advance of the hearing. Where the Investigating Officer wishes to call relevant witnesses, the member of staff will be informed at least 72 hours in advance of the hearing.
- 9.7. Any member of staff called to attend a disciplinary hearing may request that alternative arrangements are made to reflect the sensitivity of the situation (i.e. submissions may be made in writing or HR may have the member of staff in a separate room). The Chair of the hearing will decide, after seeking advice from HR, if the request is appropriate.
- 9.8. Any relevant information including evidence from witnesses or relevant individuals must be made available to the member of staff against whom misconduct is alleged at least 5 working days before a hearing.

- 9.9. Witnesses and the relevant individual(s) involved in a disciplinary case have the right to be accompanied to formal meetings, if they choose, by a Trade Union representative or work colleague.

10. Suspension

- 10.1. Depending on the nature and severity of the alleged misconduct, the chair of a disciplinary hearing (on the advice of HR) may deem it necessary to suspend a member of staff. Reasons for this could include *but are not limited to* the following: the manager has reasonable belief that the staff member's alleged action has presented or is likely to present a risk to the staff member's health and safety or that of others, or to systems, processes and relationships necessary for good management.
- 10.2. Suspension is not disciplinary action. It is a neutral act. A member of staff on suspension will continue to be paid.

11. A Disciplinary arising out of a Grievance Process

- 11.1. Where appropriate, the University has the right, at its discretion, to initiate the start of proceedings under the Discipline Ordinance for any member of staff involved in a grievance. This may take effect at any point during the grievance process according to the circumstances of the case. The decision to invoke the Discipline Ordinance will be taken by a manager of the same or more senior level than the chair of the Grievance Hearing.
- 11.2. In cases where the Discipline Ordinance is activated as a result of a grievance (which may include any relevant appeal), the grievance investigation report, previous witness statements, meeting notes and submissions from the related grievance will normally form the basis of a disciplinary investigation.
- 11.3. All relevant documentation from the related grievance will normally be used as the basis of a disciplinary investigation report. This will avoid duplication and will ensure accuracy regarding the allegation(s) and the evidence.
- 11.4. In exceptional cases, it may be necessary to invoke the Discipline Ordinance before the grievance has been concluded. The evidence gathered to that point will be made available to the disciplinary investigating officer and further investigation(s) will be carried out as required.
- 11.5. Issues that have already been investigated and addressed during a related grievance investigation or hearing will not normally be re-investigated during a subsequent disciplinary investigation. However, additional investigation interviews may be carried out, as required. For example, where there are new witnesses/parties or new information is directly relevant to the disciplinary allegation(s).

12. A Grievance arising out of a Disciplinary Process

- 12.1. Where a member of staff raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended by the University in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate for the University to deal with both issues concurrently.
- 12.2. The decision to suspend or continue the disciplinary process will normally be made by the PVC Resources (for academic staff) or the Registrar and Secretary (for all other staff).

13. Stress/Illness and the Disciplinary process

- 13.1. The University has a duty of care to all of its members of staff. Therefore, where a member of staff is experiencing stress or illness during a disciplinary process and there is a possibility that the process could be delayed as a result of the absence, the University will request a medical report (from the staff member's GP, specialist or Occupational Health) to determine if and when a member of staff is fit to attend a hearing.
- 13.2. The role of Occupational Health is to meet, confidentially, with a member of staff and based on the medical evidence, to provide recommendations to the University about a staff member's health.
- 13.3. Where a medical practitioner or Occupational Health recommend that the member of staff is deemed fit enough to attend, the hearing will be arranged in the normal way. Where the medical advice suggests that a hearing may go ahead with adjustments, the hearing will be arranged accordingly.
- 13.4. Where a member of staff is deemed to be too unwell to attend by a medical practitioner or Occupational Health, the hearing will normally be rescheduled. However, where the member of staff is persistently unable to attend, the chair may make arrangements for written statements to be submitted instead or take a decision to hold the disciplinary hearing in their absence.

14. Rearranging or Non-Attendance at Hearings

- 14.1. A member of staff must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct.
- 14.2. Where a member of staff is unable to attend for any reason then he/she must notify the chair of the disciplinary/appeal hearing, as soon as possible, and fully explain the failure to attend.
- 14.3. Where the chair of a disciplinary/appeal hearing considers that a member of staff has failed to attend without good reason, the chair may take a decision (in consultation with HR) based on the available evidence, where appropriate.

- 14.4. Where the member of staff is persistently unable to attend (for example for health reasons), the chair of a disciplinary/appeal may take a decision on how to progress a case (in consultation with HR) based on the available evidence, where appropriate.

15. Mediation

- 15.1. The University of Leicester recognises that encouraging positive working relationships has a positive impact on staff wellbeing.
- 15.2. Where appropriate, mediation may provide an objective and impartial framework for resolving conflict, on a voluntary basis. Mediation may also assist in reconciling working relationships, where possible.
- 15.1. Members of staff and/or line managers are advised to contact HR for details about whether mediation may be appropriate. Where it is deemed to be appropriate, HR will provide contact details of relevant sources of mediation to staff or line managers.

16. Documentation

- 16.1. All documentation (informal and formal) relating to this Ordinance will be written sensitively by line managers, treated as confidential and forwarded to HR for filing on the staff member's personnel file. Informal documentation will be retained for data protection purposes, only.