

Disciplinary policy and procedure

1 Introduction

- 1.1 Whilst the University of Northampton Enterprises Limited (UNEL) expects its employees and staff to comply with this policy, it does not confer contractual rights or form part of any contract of employment and may be amended by UNEL or replaced at any time. Breach of this policy may be addressed via the UNEL Disciplinary Policy and Procedure and Code of Conduct.
- 1.2 This policy will be reviewed by the Human Resources department on a 3 year basis or amended in response to changes in future legislation, case law or the ACAS code.

2 Ownership

The Human Resources department owns and manages this policy on behalf of The University of Northampton Enterprises Limited (UNEL).

3 Organisational scope

- 3.1 This Disciplinary policy is a corporate policy and applies to all employees (and workers, as applicable) of The University of Northampton Enterprises Limited subject to any qualifying conditions.
- 3.2 The provisions of this procedure in relation to dismissal do not apply where dismissals arise out of:

- The expiry of a fixed-term contract of employment;
- Redundancy;
- The termination of a probationary contract under the provisions of the Probation Policy and Procedure
- Incapacity due to long term sickness absence or ill health.

4 Policy statement

- 4.1 This policy is intended to reinforce the expectation that appropriate levels of staff conduct and performance must be maintained to ensure the efficient operation of UNEL.
- 4.2 Failure to reach and maintain required standards of conduct or abide by the University's policies and procedures may result in employees being subject to disciplinary action up to and including dismissal.
- 4.3 UNEL has 3 policies to address conduct and poor performance; the Disciplinary Policy and Procedure, the Performance Improvement Policy and Procedure and the Absence Management Policy and Procedure.
- 4.4 UNEL will not discriminate on the grounds of gender, race/ ethnicity, disability, age, sexual orientation, religion or belief or lack of, pregnancy/ maternity, marriage/ civil partnership or gender reassignment when applying this policy and associated procedures.
- 4.5 UNEL will ensure employees are aware of this policy and procedure and how to access the contents.

5 Examples of misconduct

- 5.1 Misconduct/Negligence
General misconduct tends to cover minor misdemeanours. Behaviour like this would not warrant dismissal for a first offence, but may lead to a written warning.

- Unauthorised or unjustifiable persistent absence (dealt with under the Absence Management Policy and Procedure)
- Unacceptable behaviour (particularly aggressive or offensive)
- Insubordination
- Wilful unsatisfactory work performance
- Breach of confidentiality (except whistleblowing)
- Refusal to comply with reasonable management instruction
- Failure to observe health and safety regulations
- Failure to observe and comply with University policies and / or procedures
- Breach of trust and confidence (except whistleblowing)
- Poor timekeeping
- Misuse of UNEL equipment and resources including IT, email and the internet
- Harassment / bullying

5.2 Gross Misconduct/Gross Negligence

Gross misconduct is either deliberate wrongdoing or gross negligence by the employee which is so serious that it fundamentally undermines the relationship of trust and confidence between employee and employer. Gross misconduct entitles the employer to dismiss the employee without notice or payment in lieu of notice (known as a summary dismissal). Examples of behaviour that could amount to gross misconduct are:

- Fraud or deliberate falsification of records (as defined in the University's Fraud and Corruption policy)
- Physical violence or bullying / harassment
- Gross / serious insubordination
- Attending work under the influence of alcohol or illegal drugs
- Serious breach of health and safety rules
- Serious breach of confidentiality
- Criminal damage on the University's premises.
- Direct discrimination as defined in the University's Equality and Inclusion Policy
- Serious misuse of UNEL equipment and resources, including IT, email and the internet
- Serious breach of security or of financial procedures
- Behaviour which brings UNEL into serious disrepute
- Intentional and / or malicious refusal to comply with reasonable

- management instructions
- Serious breach of University/UNEL regulations, policies and procedures
 - A criminal offence, which may (whether it is committed during or outside the employee's hours of work for UNEL) adversely affect UNEL's reputation, the employee's suitability for the type of work they are employed to do.

6 Key principles

- 6.1 Every effort will be made to avoid the use of disciplinary action where alternatives are considered appropriate including resolving issues informally.
- 6.2 Each stage of the disciplinary procedure will normally be taken in sequence, however, the procedure may be implemented at any stage if the alleged misconduct warrants such action.
- 6.3 Employees will not normally be dismissed for a first disciplinary offence except in cases of gross misconduct or gross negligence.
- 6.4 In the interest of ensuring that disciplinary matters are resolved as fairly and efficiently as possible, all parties are expected to raise issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions. All parties must make time available to progress the investigation including rearranging diarised appointments and organising teaching cover, if appropriate.
- 6.5 Employees do not have the right to be accompanied at any informal stage meetings or at disciplinary investigation meetings; however, requests to be accompanied will be accommodated if bringing a companion (work colleague or Trade Union Representative or official) does not unduly delay the investigation.
- 6.6 Employees have the right to be accompanied by a companion (work colleague or a Trade Union Representative or official) at disciplinary hearings. The chosen companion will be allowed to address the hearing or meeting in order to put forward the employee's case, sum up the employee's case and respond on behalf of the employee to any view expressed at the meeting. The companion does not have the right to answer questions on the employee's

behalf or prevent the employer from explaining their case.

- 6.7 UNEL will make reasonable adjustments in line with their statutory obligations. Examples of reasonable adjustments may be: to be accompanied by a support worker or carer in the case of disability; to be accompanied by an interpreter.
- 6.8 Witnesses may be invited to a hearing by the employee to assist them in presenting their case and should provide any additional documentation they wish to be considered at the hearing at least 24 hours prior to the hearing.
- 6.9 Employees will have the right of appeal against formal warnings and dismissal; however, there is no right of appeal during any informal procedures.
- 6.10 All formal disciplinary procedures must fully involve the HR Department to ensure consistency and fairness is applied across UNEL. The chair of the meeting is responsible for decision making.
- 6.11 The proceedings and outcome of a disciplinary hearing will normally be kept confidential between all persons involved. If the action has arisen originally from a grievance, the original complainant will only be informed that 'appropriate action has been taken'.
- 6.12 Where an employee raises a grievance during the disciplinary process, it may be temporarily suspended in order to deal with the grievance if appropriate. Where the grievance and disciplinary cases are unrelated it may be appropriate to deal with both issues concurrently.
- 6.13 Unauthorised recording of conversations is prohibited. Anyone in breach of this may be subject to disciplinary action.

7 Procedure

Informal Procedure

- 7.1 Managers should discuss concerns about conduct with employees at the earliest opportunity with the intention to resolve issues informally; for by example offering support, help and appropriate training and development to members of staff before resorting to formal disciplinary procedures.
- 7.2 A disciplinary sanction **must not** be applied during the informal stage.
- 7.3 If during the informal procedure it becomes obvious that the matter may be more serious, or if despite informal discussions, the employee's conduct does not meet acceptable standards, the employee should be advised that the matter will be addressed under the formal disciplinary procedure.

Formal Disciplinary Procedure

7.4 Suspension

- 7.4.1 Suspension should only be imposed after careful consideration. Where a line manager deems it appropriate to suspend the employee being investigated, approval must be sought from the HR Business Partner. If suspension is required outside normal operational hours (e.g. night time, weekend) then the most senior manager / supervisor present will ask the employee to leave the premises immediately and explain they must not return to work until they are asked to do so. The employee will be informed verbally of the suspension, which will be confirmed in writing by the HR department within a reasonable timeframe.
- 7.4.2 Examples where suspension may be appropriate include:
 - relationships have broken down
 - in some cases of alleged gross misconduct/negligence
 - where there are potential risks to an employee's or the University's property or there are health and safety concerns
 - the University must exercise its duty of care to other parties
 - the employee's presence at work may hinder the investigation.

7.4.3 Suspension is not a disciplinary sanction and this will be made clear to the employee.

7.4.4 The period of suspension must be as brief as possible, and will be kept under weekly review by HR. During suspension the employee is not required to work or attend work except to attend pre-arranged appointments/ meetings/ hearings in relation to the disciplinary proceedings. Employees will only be asked to attend meetings during their normal working hours.

7.5 Investigation

7.5.1 The investigation should be full, thorough and completed in a timely manner. However the detail will depend on the nature of the alleged misconduct, the initial evidence against the employee, and whether the individual has admitted to the misconduct.

7.5.2 Employees subject to investigations will be invited to a meeting with an Investigating Manager and a member of HR to establish the facts of the case. Employees will be informed the basis of the investigation. Employees will have the opportunity to put their version or viewpoint across as well as any other evidence relevant.

7.5.3 The Investigating Manager should not have had any involvement in the case and will not normally be the employee's line manager. However there may be occasions where it is appropriate for the line manager to investigate for example due to the need to deal with the issue quickly.

7.5.4 Witnesses may be interviewed and/or signed witness statements obtained. In cases of alleged bullying/ harassment the identity of the original complainant may be withheld until the initial phase of the investigation is completed.

7.5.5 Following the investigation, the Investigating Manager will conclude whether they are recommending formal action, informal action or no further action and will compile a summary report of facts.

The Investigating Manager should not suggest a possible sanction or prejudge what the outcome to a disciplinary hearing will be.

The formal action the Investigating Manager could recommend will usually be:

- to initiate a disciplinary hearing
- changes to a policy or procedure
- further investigation into other matters uncovered.

The informal action the Investigating Manager could recommend will usually be:

- training or coaching for parties involved
- counselling for parties involved
- mediation for parties involved
- notification that further similar action may result in disciplinary action.

Although an investigator may find there is no further action necessary they could recommend that counselling, mediation or another form of support may be beneficial to the parties involved and the organisation.

7.5.6 If formal action is recommended, a Senior Manager will be appointed who will review the Investigators report and will make the final decision as to whether a disciplinary hearing will be held.

7.5.7 The employee will be informed of the outcome of the investigation as soon as practicable and within 5 working days.

7.6 Disciplinary Hearing

7.6.1 If a disciplinary hearing is to be held the Disciplinary Manager will be at the same level or more senior than the Investigating Manager and will not previously have been involved. This can be the employee's line manager if they have not been involved in the investigation or another manager appointed by the HR Department.

7.6.2 The employee will be informed in writing of a disciplinary hearing giving at least 5 working days' notice and ensuring sufficient time for the employee to prepare their case. Full details of the alleged misconduct and copies of written evidence including the summary report will be provided. The employee will also be informed of:

- the possible consequences, up to and including dismissal (in cases of gross misconduct, gross negligence or where an employee has a live final written warning for a similar offence)
- the right to be accompanied by a companion (work colleague or a Trade Union Representative or official)
- the right to provide further evidence
- the right to call witnesses to support their case.

Also present at the meeting will be an HR representative who will advise on procedure and legislation, precedents within the organisation, ensure fairness and consistency and ensure that any penalty is reasonable in view of all the circumstances. Wherever possible another member of HR will attend as a note taker.

7.6.3 The Disciplinary Manager will accommodate one alternative meeting to take place within 5 working days of the original date if the employee or companion cannot attend due to circumstances outside their control.

7.6.4 Any further request to reschedule may be refused unless there are exceptional circumstances. The employee will be invited to make a written submission.

7.6.5 Where an employee continues to be unavailable to attend a meeting a decision may be made on the evidence available.

7.6.6 The employee will provide copies of all documentation that they intend to reply upon to the HR department 24 hours before the hearing.

7.6.7 During the hearing the Disciplinary Manager will state the case and the Investigating Manager will present the evidence. The employee or their companion will then have the opportunity to present their case and answer the allegations made. They will be able to present any additional evidence they have and call witnesses.

A witness will only be present in the hearing during their own part in the proceedings. If it is not practical for a witness to attend, the Disciplinary Manager should consider whether proceeding will affect the outcome.

7.6.8 If new facts emerge it may be necessary to adjourn the hearing to allow the Disciplinary Manager to investigate them.

7.6.9 The Disciplinary Manager will consider all of the evidence presented and will decide one of the following outcomes:

- No case to answer; the case is dismissed in full and will not be considered in any future cases
- Informal action is appropriate
- Disciplinary sanction is appropriate.

7.6.10 When deciding any disciplinary sanction the following should be taken into account:

- The sanction imposed in similar cases in the past
- Whether standards of other employees are acceptable and that this employee is not being unfairly singled out
- The employees disciplinary record (including live warnings, general work record, work experience, position and length of service)
- Any special circumstances which might make it appropriate to adjust the severity of the sanction
- Whether the proposed sanction is reasonable and proportionate in view of all the circumstances
- Whether any training, additional support or adjustments to the work are necessary.

7.7 Notification of the outcome

The outcome will be notified to the employee in writing as soon as is practicable (normally within 5 working days) and will include details of their right to appeal. In some circumstances it may be possible to inform the employee of the outcome at the end of the hearing and confirm it in writing.

There are three levels of sanction and each stage will normally be taken in sequence. However there may be times when it is appropriate to give a higher level of sanction due to the seriousness of the issue.

7.8 Levels of warning

7.8.1 First Written Warning

A first written warning will normally be given for a first act of misconduct and remains in force for 6 months.

7.8.2 Final Written Warning

A final written warning will normally be given when:

- a further act of misconduct has occurred during a 'live' first written warning
- there has been failure to achieve the required improvements
- an employee's first misconduct is sufficiently serious.

A final written warning will remain in force for 12 months.

Warnings will cease to be live following the specified period.

7.8.3 Dismissal

Dismissal is normally used in sequence to written warnings, or may be appropriate in the first instance of an offence amounting to gross misconduct or gross negligence. In the case of gross misconduct summary dismissal is usually the outcome and pay in lieu of notice is not paid.

7.9 Appeals

- 7.9.1 An employee may appeal if they feel the disciplinary action taken against them is wrong or unjust. The employee may appeal on any number of grounds, e.g.
- belief the disciplinary procedure was not followed
 - belief the sanction was too severe/ inconsistent
 - where there is new evidence to be considered.
- 7.9.2 The employee, following receipt of their disciplinary outcome letter, can appeal in writing to the Director of Human Resources within 5 working days. The letter must state precisely the grounds of the appeal.
- 7.9.3 The HR department will acknowledge the appeal within 5 working days of receipt.
- 7.9.4 The employee will be invited in writing to the appeal hearing giving at least 5 working days notice and will be informed of:
- the potential outcomes of the appeal
 - details of the procedure
 - the right to be accompanied by a work colleague or Trade Union representative
 - the right to introduce and comment on any new evidence.
- 7.9.5 The appeal hearing will normally be chaired by a more senior manager than the Disciplinary Manager, who has not previously been involved in the case. They will be supported by a Human Resources representative.
- 7.9.6 During the meeting the employee or their representative will be given the opportunity to explain their reason for appeal and any additional evidence.
- 7.9.7 After the hearing consideration will be given by the Appeal Manager to either uphold or overturn the original decision. If further investigation is required the employee will be informed. No sanction can be increased as an outcome of an appeal.

- 7.9.8 The decision will be communicated in writing to the employee as soon as reasonably practicable but normally within 5 working days of the appeal hearing. On some occasions it may be possible to adjourn the meeting and provide a response on the same day which will then be confirmed in writing. Where further investigation has been necessary the employee will be informed of the timeframe for an expected outcome.
- 7.9.9 The decision of the Appeal Manager is final and concludes the internal procedure. Employees have no further recourse to appeal within the institution.
- 7.9.10 Where there is an appeal against a summary dismissal the individual will not be paid during the appeal procedure. If the sanction is revoked and the individual is re-engaged, their pay and service will be restored so that there is no break in them.

7.10 Criminal charges/convictions

- 7.10.1 An employee should not be dismissed or otherwise disciplined solely because he/she has been charged with a criminal offence. Consideration needs to be given to what effect the charge or conviction has on the employee's ability and/or suitability to do the job and their relationship with UNEL, work colleagues and customers.
- 7.10.2 Failure to disclose a criminal conviction whilst in employment at UNEL could be considered as gross misconduct, depending on the relevance to the role they have and following full investigation.
- 7.10.3 Where the alleged conduct requires prompt attention, UNEL need not await the outcome of the prosecution before taking fair and reasonable action.
- 7.10.4 Where the employee is not available for work because they are or on remand UNEL must decide, in light of UNEL's needs whether the employee's job can be held open.

7.10.5 Where the nature of the conviction would prevent the employee carrying on in their role, i.e. removal of a licence, consideration should be given to whether alternative work is appropriate and/or available.

7.11 Allegations by individuals who wish to remain anonymous (potentially in cases of bullying/harassment)

7.11.1 In these circumstances UNEL should ensure a balance is maintained between protecting and respecting the individual's wish to remain anonymous with that of the alleged employee's right to have a fair hearing. However, following the initial investigation phase the identity of the complainant will in most cases need to be revealed to the person against which the alleged bullying/harassment is lodged. The Human Resources department should be consulted regarding the appropriateness of the person's identity being revealed.

7.11.2 In these cases the disciplinary procedure is still appropriate but the original complainant can submit a written statement anonymously providing full details of the incident are documented (e.g. time, place, date and description). This complaint may arrive in the form of a grievance. The investigating manager where possible must obtain corroborating evidence from other sources for submission at the disciplinary hearing. The investigating manager should also sensitively interview the complainant during the investigation to ascertain the full facts.

7.11.3 It is probable that the complainant would be reluctant to attend a disciplinary hearing as a witness because of alleged bullying/harassment. Arrangements should be considered for the employee against whom the allegation is made to question the complainant through the chair of the disciplinary panel.

7.11.4 Vexatious or malicious allegations will be treated as disciplinary actions in their own right and are thereby subject to the disciplinary procedure.

7.12 Professional registration

Certain professions (e.g. nursing, midwifery) are regulated by statutory bodies conditional upon continuing registration. Any incidents involving alleged professional misconduct or serious performance issues must be reported to the appropriate registration authority; in such cases, the Human Resources department will undertake to inform the authority in liaison with the Senior Manager.

7.13 Records

7.13.1 Written records should be kept of any disciplinary proceedings. The records should be retained confidentially and within the statutory requirements of the Data Protection Act 1998 and kept for no longer than necessary.

7.13.2 Records should include:

- the allegation against the employee
- the employee's defence
- findings made and actions taken
- the reason for the action taken
- whether an appeal was lodged
- the outcome of the appeal
- Any grievances raised during the disciplinary procedure and subsequent developments
- notes of any formal meetings

8 Associated documents

Poor Performance Procedure

Grievance Policy and Procedure

Absence Management Policy and Procedure

Code of Conduct

9 Equality impact assessment

Completed