

Disciplinary Policy and Procedure

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Who can help?

- ☑ The Human Resources (HR) team can provide support and advice with the application of this policy and answer any questions that you may have.
HumanResources@napier.ac.uk
- ☑ If you are a member of the Educational Institute for Scotland (EIS) or UNISON, you can receive support and advice from a trade union representative.

Other Support

- ☑ Disciplinary Procedure: Guidance for Employees
- ☑ [ACAS Code of Practice on Disciplinary & Grievance Procedures](#)
- ☑ [Employee Assistance Programme](#)
- ☑ Informal Support: Guidance for Managers
- ☑ Guidance for Investigating Managers
- ☑ Guidance for Disciplinary Managers
- ☑ Guidance for Disciplinary Appeal Managers
- ☑ Disciplinary Toolkit – Template Scripts and Letters

Please Note

This policy does not form part of your contract of employment with the University and may be subject to change.

Context

We have a responsibility to maintain satisfactory standards of conduct from all of our employees in line with our values and behaviours. We are committed to ensuring any allegations of inappropriate behaviour are managed fairly and consistently. Wherever possible, disciplinary matters should be managed informally and formal action should only be taken in cases of more serious and/or repeated misconduct.

Scope

This policy applies to all employees of the University.

Where the matter relates to work performance, it will be dealt with in line with the Performance Improvement Policy.

Key Principles

The purpose of this policy is to provide employees with appropriate advice and support which will equip them to achieve and maintain the standards of conduct that we expect. It is not punitive in nature.

- ✔ Where appropriate, concerns will be settled without recourse to a formal process.
- ✔ The procedure will be applied consistently with a defined process for all stages.
- ✔ All employees will be treated fairly and sensitively and supported during the process.
- ✔ Formal disciplinary matters will be investigated promptly, thoroughly considered in an impartial and independent manner and in confidence.
- ✔ Employees have the right to be accompanied at formal meetings.
- ✔ Employees have a right of appeal against the outcome of a disciplinary hearing.

Suspension

In some circumstances, it may be necessary to suspend an employee on full pay pending the outcome of the investigation and/or prior to a disciplinary hearing. Suspension can occur at any stage of the disciplinary procedure. It is without prejudice and is not a disciplinary sanction. The decision to suspend will be taken by an appropriate senior manager upon consultation with a Head of HR and will be for as short a period as possible, with regular reviews.

Guidance timescales

The timescales outlined within the disciplinary procedure are in place to ensure that issues are dealt with as quickly as reasonably practicable whilst ensuring that a fair and impartial process is followed. We will always take a reasonable and supportive approach and will adjust the timescales where this is deemed to be appropriate.

If at any stage of the procedure it is not possible to adhere to the specified timescale, all parties will be advised of this and informed of an alternative timescale.

Reasonable adjustments

Reasonable adjustments will be considered to accommodate individual needs throughout the disciplinary procedure. Where appropriate, advice will be taken from the University's Occupational Health provider. Management will determine what adjustments are reasonable under the specific circumstances.

Objections

Where an employee believes that there is a justifiable reason for objecting to a particular manager being appointed to conduct a formal stage of the disciplinary procedure, they can raise an objection in writing to HR stating why they believe that person's involvement may prejudice the outcome. A Head of HR will consider the reasons for the objection and may allocate an alternative manager.

If an employee who is subject to formal disciplinary action refuses to co-operate in the process without good reason, a disciplinary hearing will be convened and the chair will make a decision on the basis of the information that is available.

Right to be accompanied

Employees attending any formal stage of the disciplinary procedure have the right to be accompanied by a work colleague, a trade union representative or an official employed by a trade union. Legal representation is not permitted.

Right of delay

It is expected that attendance at formal meetings will be prioritised, however if, for genuine reasons, any party is unable to attend a formal meeting, the meeting will be rescheduled. The rescheduled meeting will be held without reasonable delay and wherever possible, within five working days of the original date. If the employee fails to attend a rescheduled disciplinary hearing, it may be held in their absence. Whilst every effort will be made to find a time that is suitable for all parties, if the work colleague or trade union

representative accompanying the employee is not available at the rearranged time, then consideration will be given to insisting that the employee is accompanied by another person.

Records

Confidential records will be kept of all appropriate documentation generated during the stages of the formal procedure and retained by HR in line with our retention schedule.

Where appropriate, a HR representative will take a record (not verbatim) of the formal meetings. Copies of the investigation documentation will be shared with the employee prior to any disciplinary hearing. Notes of any disciplinary or appeal hearings will be made available to the employee within ten working days of the hearing.

No parties involved in the process are permitted to attend formal or informal meetings with a recording device. This is to encourage openness and full participation by all parties during meetings.

Responsibilities

Employee	<ul style="list-style-type: none"> ☑ Co-operate fully at all stages of the disciplinary procedure. ☑ Prioritise attendance at all meetings to enable facts to be established as promptly and fully as possible. ☑ Maintain confidentiality and answer questions open and honestly.
Manager	<ul style="list-style-type: none"> ☑ Wherever possible and appropriate seek to resolve the issue informally and at the earliest opportunity. ☑ If applicable, attend a disciplinary hearing to present the management case. ☑ Prioritise meetings and maintain confidentiality.
Investigating Manager	<ul style="list-style-type: none"> ☑ Carry out a thorough and impartial investigation without unreasonable delay. ☑ Gather all of the information to complete an investigation report which will include recommended next steps. ☑ If applicable, attend a disciplinary hearing to present the investigation findings. ☑ Prioritise meetings and maintain confidentiality.
Disciplinary Manager	<ul style="list-style-type: none"> ☑ Review and thoroughly consider the investigation findings. ☑ Where appropriate, chair the disciplinary hearing and make a decision in relation to the case. ☑ If applicable, attend an appeal hearing to present the management case. ☑ Prioritise the hearing and maintain confidentiality.

Appeal Manager	<ul style="list-style-type: none"> ✔ Review all documentation thoroughly and chair an appeal hearing. ✔ Carefully consider all of the information presented and make a final decision in relation to the appropriateness of the disciplinary sanction. ✔ Prioritise the hearing and maintain confidentiality.
Trade Union	<ul style="list-style-type: none"> ✔ Represent or accompany members at formal meetings. ✔ Prioritise meetings and maintain confidentiality.
Work Colleague	<ul style="list-style-type: none"> ✔ Accompany colleagues at formal meetings. ✔ Prioritise meetings and maintain confidentiality.
Human Resources (HR)	<ul style="list-style-type: none"> ✔ Provide impartial advice and guidance to all parties involved on the application of the Disciplinary Policy and Procedure. ✔ Make the final decision in the event of an objection from an employee to a particular manager's involvement in the formal process. ✔ Where appropriate, attend formal meetings. ✔ Retain master copies of all documentation gathered as part of the process in line with our retention schedules. ✔ Prioritise meetings and maintain confidentiality.

Informal Support

Wherever possible managers should seek to resolve minor conduct and behaviour issues informally. Informal support is most appropriate where the alleged misconduct is not of a serious nature.

In many circumstances, a confidential conversation between a manager and employee is all that is required to resolve an issue. In other cases, it may be appropriate to hold a series of discussions which could form part of regular one-to-one meetings to ensure the necessary support is in place.

The purpose of these discussions is to ensure that the employee understands the nature of the concerns and the expected improvement. Together the manager and employee should explore support mechanisms and ways in which the employee can achieve the necessary improvement, how this will be reviewed to monitor/assess progress and by when. A record should be retained of these discussions to support the process and ensure clarity.

Regular reviews should be held and if there has been satisfactory progress made by the end of the review period, then no further action will be required. On occasion it may be appropriate to extend the review period. If there has been insufficient or no satisfactory improvement, then the matter will progress to the formal disciplinary procedure.

Formal Disciplinary Procedure

We recognise that a formal disciplinary procedure can be a difficult experience for all parties involved, whether an allegation is upheld or not. The purpose of the disciplinary procedure is to resolve issues in the workplace fairly and quickly to minimise any stress caused during the process.

Investigation

An appropriate manager will be appointed to conduct an investigation to establish the facts and determine whether or not there is a case to answer. The investigating manager will be senior to the employee involved and where appropriate will be in the same employee group, e.g. academic or professional services.

It is important that necessary investigations are carried out thoroughly and without unreasonable delay. In some cases, this may require holding investigation meetings with the employee and other witnesses and in other cases, the investigation stage may simply be the gathering of facts through reviewing documentary evidence. Where appropriate, written notes of informal meetings and any action plans will form part of the investigation.

If the investigating manager believes that investigation meetings are required, the employee/witness will be invited in writing to attend the meeting with at least five working days' notice of this meeting. A written record of the meeting will be given to the employee/witness to review and return, ideally within three working days and no longer than five working days.

Once the investigating manager is satisfied that all of the facts have been established they will prepare an investigation report. The investigation report will include a recommendation which will be either:

- ☑ No disciplinary case to answer and this case should not progress to a disciplinary hearing.
- ☑ There is a disciplinary case to answer and this matter should progress to a disciplinary hearing.

Where the investigating manager considers that there is no case to answer they may still wish to recommend appropriate informal supportive actions which may be beneficial in the circumstances. The employee will be advised in writing of this outcome and the case will not progress to a disciplinary hearing.

Where the investigating manager recommends that there is a case to answer, a different manager will be appointed to consider the case further.

Disciplinary Hearing

Invite to Disciplinary Hearing

An appropriate manager will be appointed to review all of the relevant documentation and chair a disciplinary hearing if they agree with the recommendation that there is a case to answer. The disciplinary manager will be senior to the employee involved and where appropriate they will be in the same employee group, e.g. academic or professional services

The employee will be invited to attend a disciplinary hearing with at least five working days' notice. If they wish to submit any written submissions and/or provide any names of witnesses they may wish to call to the hearing, they should do this at least two working days prior to the hearing.

The letter will detail the allegation(s), give an indication of the alleged level of misconduct and will include the investigation documentation.

Disciplinary Hearing

The constitution of the panel hearing the disciplinary matter will vary depending upon the severity of the alleged misconduct.

For allegations of misconduct, one manager will chair the hearing. For allegations of gross misconduct there will be two managers on the panel who will not have had any prior involvement in the disciplinary matter; they will be senior to the employee, and where appropriate they will be in the same employee group as the employee.

At the hearing, the employee will have the opportunity to respond to the allegations; challenge the investigation findings, ask questions and seek clarification; present evidence; call witnesses; and will be expected to answer questions.

Where appropriate, the employee's manager and/or investigating manager may be in attendance to present the investigation findings and/or the management case and to answer questions.

Outcome of the Disciplinary Matter

The panel will consider all of the information to decide whether or not there is a case to answer. They will base their decision on the evidence that has been presented and if appropriate, on the balance of probabilities. If there is a case to answer, consideration will be given to determine if it constitutes misconduct or gross misconduct and if so, the level of disciplinary sanction that is appropriate.

The decision may be given verbally at the hearing (after a short adjournment) and/or confirmed in writing within five working days of the hearing. If more time is required, the employee will be notified of this delay as soon as possible and given the reasons for it.

Disciplinary sanctions

If the panel decides not to uphold the allegation, no disciplinary sanction will be required, however recommendations may be given. In exceptional circumstances, the allegation may be upheld, however mitigation is such that no sanction is proposed. In the event that an allegation is upheld and the chair considers that a sanction is appropriate, one of the following disciplinary sanctions may be issued.

- ☑ **Written Warning** - A written warning will remain in force for a set period of time (no longer than 12 months). During the period of the warning, the employee's conduct or attendance should improve to a fully satisfactory standard. Where there is insufficient or no improvement, further disciplinary proceedings may result which may lead to a more severe disciplinary sanction being imposed. In cases of unsatisfactory attendance, consideration will be given to the nature of any further periods of absence before invoking further disciplinary action.

If an employee has extended absence during the period the warning is live and this absence may have been detrimental to the ability of the employee to demonstrate an improvement, it may be extended proportionally to the duration of the absence.

- ☑ **Final Written Warning** - This disciplinary sanction will normally remain in force for a 12 month period and would typically be applied for repeated incidents of misconduct, where there is insufficient or no improvement in attendance or conduct during the period of a current written warning or where the matter is deemed to be more serious. In cases of unsatisfactory attendance, consideration will be given to the nature of any further periods of absence before invoking further disciplinary action.

Exceptionally, when a final written warning is current, this may be extended or broadened, where appropriate, as an alternative to dismissal. If an employee has extended absence during the period the warning is live and this absence may have been detrimental to the ability of the employee to demonstrate an improvement, it may be extended proportionally to the duration of the absence.

- ☑ **Dismissal** - This disciplinary sanction would typically be applied for acts of gross misconduct, repeated incidents of misconduct or where there is insufficient or no improvement in attendance or conduct during the period of a current final written warning. In cases of unsatisfactory attendance, consideration will be given to the nature of any further periods of absence before

invoking further disciplinary action. An employee dismissed for gross misconduct will normally be dismissed without notice or payment in lieu of notice.

☑ Misconduct and gross misconduct examples are contained in the appendix.

Appeal

Employees have the right to formally appeal against the decision of a disciplinary hearing. In all cases, the disciplinary sanction will remain live throughout any appeal process.

Timing	<ul style="list-style-type: none"> ☑ An employee may appeal against the outcome within 10 working days of being notified of the decision. The appeal should be made in writing to the next level of manager or to HR. The appeal will be acknowledged and heard within a reasonable timeframe, normally within 10 working days from the date of receipt of the appeal.
Grounds	<ul style="list-style-type: none"> ☑ The letter should clearly state the grounds for the appeal. ☑ The appeal process is not a re-hearing, therefore the grounds for appeal must be based on: <ul style="list-style-type: none"> • New evidence coming to light which was not previously available at the time the decision was made or which was unreasonably withheld (other than by the employee) and which could have materially affected the outcome; • A flaw in the procedure which could have influenced the final outcome; • Unfairness of the judgement or; • Severity of the penalty.
Appeal Manager	<ul style="list-style-type: none"> ☑ Appeal managers will be more senior to the manager who chaired the disciplinary hearing; they will not have had any prior involvement in the disciplinary matter, and where appropriate they will be in the same employee group, e.g. academic or professional services, as the employee. ☑ In misconduct cases, one manager will be appointed to hear the appeal. ☑ In gross misconduct cases, two managers will be appointed to hear the appeal.
Appeal Hearing	<ul style="list-style-type: none"> ☑ At the appeal hearing, the employee will be given the opportunity to state their appeal. ☑ Where appropriate, the chair of the disciplinary hearing will be in attendance to explain the reasons for their decision. ☑ The appeal manager may adjourn the meeting to make further investigations or seek advice/further information if necessary ensuring that they inform the employee of any additional information that is considered.

**Further
action**

- ☑ The appeal manager will make a final decision and will notify the employee of their decision in writing within **5 working days** of the appeal hearing, unless otherwise notified.
- ☑ There is only one level of appeal within the University and therefore the decision taken following the appeal is final.

Potential Appeal Outcomes

The following are potential outcomes of the appeal stage of the disciplinary procedure:

- ☑ Uphold the disciplinary decision
- ☑ Impose a lesser disciplinary sanction
- ☑ Uphold or partially uphold the appeal

Where the allegations are against an employee who is a member of the University Leadership Team (ULT), the investigation will be conducted by another ULT member, any disciplinary hearing will be chaired by the Principal and any appeal hearing chaired by a member of the University Court.

Grievances raised during a disciplinary procedure may exceptionally result in disciplinary proceedings being temporarily suspended for a short period while the grievance is investigated. Where matters are related it may be appropriate to manage the issue within the resolution method of the ongoing disciplinary process or deal with both issues concurrently.

Related Policies

- ☑ Grievance Policy and Procedure
- ☑ Performance Improvement Policy
- ☑ Alcohol and Substance Misuse Policy
- ☑ Social Media Usage Policy
- ☑ Sickness Absence Policy

Document Control

Author	Human Resources
Date First Approved	September 2016
Last Review Date	March 2018
Review Frequency	2 years or as appropriate

Appendix – Examples of Misconduct and Gross Misconduct

The list below are examples under each level of misconduct. This is an indicative list and is not exhaustive. We will deal with each situation on a case by case basis, taking into consideration all of the evidence available. The manager chairing the disciplinary hearing will decide if any of these acts took place and will determine whether they are misconduct or gross misconduct based on the evidence presented.

Examples of **misconduct** may include:

- ☑ Poor timekeeping (repeated lateness without reasonable explanation)
- ☑ Smoking outside designated areas
- ☑ Abuse of flexi-time (where the abuse may constitute fraudulent behaviour it may be treated as gross misconduct)
- ☑ Improper use of the telephone, e-mail or internet (e.g. excessive levels of personal calls or correspondence)
- ☑ Minor academic misconduct, such as plagiarism
- ☑ Unauthorised absence from work, including, an employee's failure to follow the [Managing Sickness Absence Policy](#)
- ☑ Improper use of University funds, equipment or resources, including improper use of the internet, sending abusive e-mails or messages, or other breaches of the [Information Security Policy](#) - subject to the provisions under the Public Interest (Disclosure) Act 1998
- ☑ Improper use of IT equipment and software
- ☑ Instances of inappropriate behaviour towards staff or students which could include discourtesy or rudeness
- ☑ Refusal to comply with reasonable management instructions or requests
- ☑ Breach of Health and Safety rules and regulations
- ☑ Failure to comply with the University policies and procedures
- ☑ Removal of University property without authorisation
- ☑ Being under the influence of alcohol or drugs whilst at work or on University premises (see also [Alcohol and Substance Misuse procedure](#))
- ☑ Serious academic misconduct may include; situations where there is a personal commercial or reputational gain, the falsifying lab data / research findings and falsifying or claiming academic qualifications
- ☑ Posting social media content that has the sufficient potential to or does bring the University into disrepute, or reflects negatively on the University, colleagues or students (in line with the [Social Media Usage Policy](#))
- ☑ Making untrue / vexatious and malicious allegations against a colleague

Examples of **gross misconduct** may include the list below or repeated instances of the list above:

- ☞ Harassment on any grounds, including gender, sexuality, race, religion, nationality, disability, age, sexual orientation or any characteristics of an individual
- ☞ Any form of bullying (in line with the University's [Bullying and Harassment Policy](#) including aggressive physical or verbal conduct, victimisation, exclusion or intimidation (including "cyber bullying")
- ☞ Assault - physical violence or the malicious ill-treatment of other members of staff, visitors or students, including the threat of violence
- ☞ Posting social media content that has the sufficient potential to or does bring the University into disrepute, or reflects negatively on the University, colleagues or students (in line with the [Social Media Usage Policy](#))
- ☞ Gross negligence or recklessness which seriously endangers the health and safety of other staff, students or others, or causes (or might cause) unacceptable loss, damage or injury
- ☞ Continued refusal to comply with reasonable management instructions or requests
- ☞ Behaviours which have the potential to or do bring the employer into disrepute (which can include behaviour outside work premises or hours)
- ☞ Dishonesty, theft or fraud involving University property or unauthorised possession of property belonging to others
- ☞ Failing to declare any private, business and / or financial interests, that would potentially conflict with the role and duties undertaken by the employee at the University (as required by the University's [Finance Regulations](#))
- ☞ Giving false information about qualifications or entitlement to work (including immigration status); using fraudulent identity or withholding information that would be relevant
- ☞ Unauthorised and deliberate possession, copying, alteration, destruction or retention of University's documentation
- ☞ Deliberate breaches of confidentiality – subject to provisions under Public Interest (Disclosure) Act 1998
- ☞ Serious breach of confidentiality
- ☞ Falsification of documents including expenses claims or other official documents
- ☞ Wilful damage to University property, equipment or other resources
- ☞ Illegal or inappropriate use of, or copying of, IT equipment or software (including viewing, copying or sending pornographic material or violent images on the internet)
- ☞ Extended period of unauthorised absence from duty
- ☞ Serious incapability to perform normal duties through the consumption of alcohol or illegal drugs (also see [Alcohol and Substance Misuse procedure](#))
- ☞ Criminal offences within employment, for instance corrupt practices including the receipt of money, goods, favours or hospitality in respect of services rendered
- ☞ Criminal activities outside work, where such conduct is judged to be incompatible with the individual's employment, or where it could bring the University into disrepute

- ☑ Misuse of the organisation's property or name
- ☑ Serious breach of trust and confidence – in line with the provisions of the [Public Interest Disclosure \(Whistleblowing\) Policy](#)
- ☑ Continued academic misconduct

If an employee is charged with, or convicted of, a criminal offence (outside of their employment with the University) this will not normally in itself be considered a reason for disciplinary action. Consideration will be given to the relevance and effect the charge or conviction has on the employee's suitability / ability to complete their job and their relationship with the University, work colleagues, students and customers.

The University will not wait for the outcome of a criminal prosecution in convening a disciplinary hearing and reaching a decision, if it considers that prompt action is required.