

Disciplinary Policy	Cyngor Cyllido Addysg Uwch Cymru Higher Education Funding Council for Wales 
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Version	Date	Description
0.1	March 09	New ACAS code of Practice
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0.4	July 2009	Management Board approval
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1. Background

Set out below is the disciplinary procedure in accordance with the ACAS code of practice, with additions applicable to HEFCW.

2. Purpose and scope

This procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance, details of which are available on the intranet. The procedure applies to all employees and to staff on secondment if it is specified in their secondment contract, but excludes employees on probation (see separate Probation procedure).

All employees are expected to comply with:

- a. The terms of their Contract of Employment;
- b. HEFCW's policies, procedures and financial and other regulations; and
- c. HEFCW's Code of Conduct

The aim of the Higher Education Funding Council for Wales (HEFCW's) Disciplinary procedure (based on the ACAS Code of Practice) is to ensure that disciplinary offences are dealt with fairly and consistently, to encourage improvement and to maintain standards of job performance, conduct and attendance. The full ACAS Code of Practice and guidance <http://www.acas.org.uk/index.aspx?articleid=2179> will be used as the reference basis for any disciplinary matter, and should be referred to by all those involved in the disciplinary process.

3. Principles

The line manager occupies a key role in the maintenance of acceptable standards of work performance, conduct, and attendance of employees. It will normally be a matter for initial decision by the line manager following preliminary investigation, in consultation with HR / Head of Resources, whether the formal disciplinary procedures should be invoked. Generally, formal disciplinary action will not be initiated on the occasion of a first offence of a minor nature.

4. Informal Action

- 4.1 Where a line manager is concerned about an employee's attendance, performance or conduct, he or she will aim to deal with the matter informally before considering the need to invoke the formal disciplinary procedure.
- 4.2 Any problems must be dealt with at an early stage with a view to bringing about acceptable levels of attendance, performance or conduct. This can be achieved by:
 - giving support and encouragement to the employee;
 - providing honest and open feedback;
 - encouraging two way communication;
 - identifying those aspects of attendance, performance or conduct that need to be improved; establishing appropriate standards; identifying how improvement can be achieved; and monitoring performance.
- 4.3 Many potential disciplinary cases can be resolved by advice or guidance and support from the line manager with the objective of encouraging and helping the employee to improve. The Probation policy and Management of Performance and Development scheme provide a context for line managers to give feedback to employees and for remedial action to be taken.

- 4.4 Where there are potential disciplinary issues, line managers should ensure that such discussions are documented; employees should be alert to the fact that this will be the case. Informal notes of discussions will be kept by the line manager to assist with reviews of progress at specified periods and for reference purposes, these notes will not be retained on personnel files. Timescales for reviews must be agreed between the employee and their line manager at the start of the process and should be between one and four weeks depending on the level of concern.
- 4.5 Occasionally, general guidance and support by the line manager may not bring about the desired improvement. When this occurs the line manager should inform the employee that if no or insufficient improvement is made within the agreed timescale it may result in formal disciplinary proceedings.
- 4.6 Informal discussions and subsequent action of an employee facing the possibility of formal disciplinary proceedings may be sufficient to resolve most problems. Where the informal process has been exhausted without satisfactory improvement being made the line manager (or designate) may decide, in consultation with HR / Head of Resources, to invoke the formal disciplinary procedure.

5.0 Formal Action

- 5.1 A full and thorough investigation will precede any disciplinary action. For formal action the employee will be advised by letter at the outset, of the nature of the complaint against him or her and will be given the opportunity to state his or her case during the disciplinary meeting and before a disciplinary sanction is made at the disciplinary meeting.
- 5.2 Disciplinary procedures will be considered when informal action or mediation has been unsuccessful or in cases of misconduct or gross misconduct. No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the sanction will be dismissal without notice or payment in lieu of notice.
- 5.3 In cases of alleged serious infringements or gross misconduct, where the informal approach will not be appropriate, the formal procedure will be invoked immediately. It is important that the line manager (or designate) acts promptly in consultation with HR / Head of Resources when he or she becomes aware of any possible serious infringement or gross misconduct, to ensure that it is dealt with in accordance with the specified time scales and requirements of this policy.
- 5.4 The following procedure describes the main steps that will be taken where it is considered that an employee's work, conduct or attendance are such as to warrant formal disciplinary action, or the informal procedure has not resulted in satisfactory improvement.
- 5.5 The Designated Officer may suspend the employee on full basic pay pending the outcome of an investigation and / or the disciplinary process and dependent upon the nature and seriousness of the alleged misconduct.

5.6 HR will write to the employee on behalf of the Designated Officer outlining the nature of the disciplinary issue and informing them who has been appointed as Investigation Officers.

- The employee has the right to be accompanied by a work colleague or trade union representative of his or her choice, at all stages of the formal procedure.
- The employee will be provided with copies of evidence and relevant witness statements in advance of a disciplinary meeting.
- The employee will be able to put forward witnesses or witness statement or any supplementary evidence prior to the disciplinary meeting.

5.7 The employee will be given the opportunity to state his or her case during the disciplinary meeting and before a disciplinary sanction is imposed at the disciplinary meeting.

- An employee will have the right to appeal (see Appeals section) against any disciplinary sanction.
- The procedure may commence at any stage of the disciplinary process (see section 8 which details the procedure) if the employee's alleged misconduct warrants this.

6.0 Designated Officer

6.1 Formal disciplinary procedures can only be taken by an appropriate Designated Officer. One of the following employees will carry out the role of the Designated Officer in the Disciplinary procedure:

- Head of Team/Director;
- Chief Executive;
- Senior managers with delegated authority from the Chief Executive/Director
- Chair of HEFCW (where appropriate)
- HR Committee representative (where appropriate)
- Chair of HR Committee (where appropriate)

6.2 No formal disciplinary procedures will be instigated until the Designated Officer responsible for dealing with the disciplinary matter is satisfied that he or she has reasonable grounds for believing that an employee was responsible for the act of misconduct. A full and proper investigation of the facts and circumstances of the alleged misconduct will then be undertaken and careful consideration will be given to the explanation provided by the employee at the disciplinary hearing. Once the Designated Officer is satisfied he or she has received all relevant information and has had the opportunity to consider this, the outcome of the disciplinary process will be reached.

- 6.3 A Director will normally act as Designated Officer for all cases where the possibility of serious disciplinary action for what might constitute gross misconduct arises. In the absence of a Director, the senior manager to whom he or she has given delegated authority will act in their place.
- 6.4 HR / Head of Resources will provide advice to individual employees, immediate line managers, Designated Officers and Investigating Officers on the proper operation of the Disciplinary policy. The line manager should seek appropriate advice on the operation of the Disciplinary policy from HR immediately he or she becomes aware of a disciplinary issue.
- 6.5 If a disciplinary matter arises in the Chief Executive's Office, the Chief Executive will refer the matter to another Designated Officer. In cases of suspected fraud or financial misconduct, the Director of Finance and Corporate Services will be appointed as the Designated Officer or may be asked to conduct an investigation on behalf of the Designated Officer.
- 6.6 The Designated Officer will appoint an Investigation Officer(s) to conduct an investigation on his or her behalf. Where the Designated Officer feels he or she cannot act objectively, or an employee believes this is the case, they must put their concerns in writing to a Director, or where appropriate, the Chief Executive, who can decide to appoint another Designated Officer. If the Chief Executive is implicated in a disciplinary matter, the Chair of HR Committee will act as Designated Officer.
- 6.7 The Roles of the Designated Officer and Investigation Officer are detailed on the intranet.

7. Investigation and hearing

- 7.1 If as a result of the investigation, the Investigating Officer(s) decide that there are reasonable grounds for believing that a breach of discipline has occurred they will present a summary of their findings to the Designated Officer and HR representative. The Designated Officer will then arrange for a disciplinary hearing to take place, normally giving the employee at least 72 hours written notice and providing them with all relevant evidence collected by the Investigating Officer(s).
- 7.2 The Designated Officer will conduct a disciplinary hearing.
- 7.3 A HR representative will also attend the disciplinary hearing to ensure due process is being followed.
- 7.4 The Designated Officer will reach a decision on the case and inform the employee orally of the decision, and any disciplinary action to be taken, within two working days of the hearing (or of any adjournment to the hearing).

7.5 The decision and any disciplinary sanction to be taken will be confirmed by HR in writing under the signature of the Designated Officer, within five working days of the date of the hearing.

8. Disciplinary Sanction

8.1 In deciding the appropriate disciplinary sanction, regard will be given to the employee's previous employment record, (except that reference will not be made to previous disciplinary sanctions that are spent), the nature of the offence and the circumstances of each particular case.

8.2 First stage of the formal procedure

This will normally be either:

8.3 **an improvement note for unsatisfactory attendance/conduct/performance** if this does not meet acceptable standards. This will set out the issue, the improvement that is required, the timescale, any help that may be given and the right of appeal. The employee will be advised that it constitutes the first stage of the formal procedure. A record of the improvement note will be kept by HR on the employee's personnel file for six months (See Section x Duration of Warnings), subject to achieving and sustaining satisfactory attendance conduct/performance

or

8.4 **a first written warning for unsatisfactory attendance/conduct/performance** if this does not meet acceptable standards. This warning will be in writing and set out the issue, the change required and the right of appeal. The warning will also inform the employee that a final written warning may be considered if there is no sustained satisfactory improvement or change. A record of the warning will be kept by HR on the employee's personnel file for six months – subject to achieving and sustaining satisfactory performance.

Second Stage of the formal procedure

8.5 **Final written warning** - If the offence is sufficiently serious, or if there is further misconduct or a failure to improve performance during the currency of a prior warning, a final written warning may be given to the employee. This will give details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to dismissal (or some other sanction short of dismissal) and the employee will be given the right of appeal. A copy of this written warning will be kept by HR on the employee's personnel file but will be disregarded for disciplinary purposes after 12 months (or longer in exceptional circumstances) (See Section x Duration of Warnings) subject to achieving and sustaining satisfactory attendance, conduct or performance.

Final Stage of the formal procedure

- 8.6 **Dismissal or other sanction** - If there is still further misconduct or failure to improve performance the final step in the procedure may be dismissal or some other sanction short of dismissal. Dismissal decisions can normally only be taken by the Director of Finance & Corporate Services (or individual with delegated authority), and the employee will be provided in writing with reasons for dismissal, the date on which the employment will terminate, and the right of appeal.

If some sanction short of dismissal is imposed, the employee will receive details of the sanction, will be warned that dismissal could result if there is no satisfactory improvement, and will be advised of the right of appeal. A copy this will be kept by HR on the employee's personnel file but will be disregarded for disciplinary purposes after the specified duration subject to achievement and sustainment of satisfactory attendance, conduct or performance.

9. Gross misconduct

- 9.1 The following list provides some examples of offences which are normally regarded as gross misconduct. It is not intended to provide an exhaustive list of areas of gross misconduct:
- theft or fraud
 - physical violence or bullying
 - deliberate and serious damage to property/documents/individuals
 - serious misuse of HEFCW's property or name
 - serious failure to apply HEFCW's policies and procedures
 - serious failure to comply with HEFCW's Information Security policies and procedures which includes deliberately accessing internet sites containing pornographic, offensive or obscene material
 - serious insubordination
 - unlawful discrimination or harassment
 - bringing the organisation into serious disrepute
 - incapability at work brought on by alcohol or illegal drugs
 - causing loss, damage or injury through serious negligence
 - a serious breach of health and safety rules
 - a serious breach of trust/confidence.
10. If an employee is accused of an act of gross misconduct, he or she may be suspended from work on full pay while the alleged offence is investigated. If, on completion of the investigation and the full disciplinary procedure, the organisation is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

Criminal proceedings

- a) Where there is an alleged criminal act at work, the matter will be referred to the police who will decide whether prosecution is justified. Where there is insufficient evidence for a criminal prosecution to proceed, disciplinary action may be taken.
- 11. Disciplinary action may be involved in certain circumstances, in addition to criminal investigations or legal proceedings. HEFCW will usually consult its legal advisers before taking disciplinary action in parallel with criminal proceedings. In cases of serious fraud WAG will also be consulted.
- 12. Criminal charges or convictions outside of work. Consideration will be given as to whether the offence makes the employee unsuitable for their particular type of work and whether the conduct is sufficiently serious to invoke the disciplinary procedure because of its employment implications.

13. Appeals

An employee who wishes to appeal against a disciplinary sanction must do so within five working days of receiving the letter. Appeals will normally be to either: the Director of Strategic Development; Director of Finance and Corporate Services or; Chief Executive, unless any of the individuals mentioned has acted as the Designated Officer, in which case the right of appeal will be to one of the other individuals mentioned above. Where the Chair of the HR Committee has acted as Designated Officer, the right of appeal will be to another member of the HR Committee. The individual hearing the appeal must be senior in authority to the individual who took the original disciplinary decision and, where possible, should not have been involved in the original decision process.

- 10.1 In any case of appeal, the individual(s) hearing the appeal have the right only to confirm or reduce the sanction.
- 10.2 Appeals should be made formally, where possible in writing and be received within five working days of the receipt of the notification confirming the disciplinary sanction, unless the employee is able to show that there is good reason why this is or was not practicable. Appeals must make clear the basis of the appeal and whether the employee is appealing against:
 - a the finding that the employee committed the offence; or
 - b the form of disciplinary sanction decided upon.

- 10.3 To assist the individual(s) hearing the appeal, the following documents must be available to all parties:
- a copies of relevant documents presented at the disciplinary hearing;
 - b copies of the record of the disciplinary hearing; and
 - c any statement of agreed fact confirmed in writing between the parties prior to the hearing.
- 10.4 The individual(s) hearing the appeal must ensure that the employee, if the employee so wishes, has an opportunity to comment on any new evidence arising during the appeal hearing before any decision is taken.
- 10.5 The employee will be advised by letter of the date, location and other arrangements for the hearing. Appeal hearings should be heard within five working days of the receipt of the notice of appeal, but in any case as soon as reasonably possible, particularly where suspension or dismissal is involved.
- 10.6 The individual(s) hearing the appeal will reach a decision which will be to either confirm or reduce the sanction and inform the employee in the first instance, orally, of that decision within two working days of the hearing. If it is not possible to inform the employee orally, this may be provided in writing.
- 10.7 The decision will be confirmed in writing within five working days of the hearing.
- 10.8 Decisions made as a result of an appeal will be final and will be the concluding stage of this procedure.

11. Disciplinary records

- 11.1 Line managers, Investigation Officers and Designated Officers must keep full written records of all meetings and investigations held. Documentary evidence for the formal process will be collected where appropriate. Notes will be written at the time or as soon as possible after a discussion or hearing to ensure accuracy. Records will be signed and dated by all those attending the hearing.
- 11.2 Employees may also wish to keep records of events to support their case.
- 11.3 All records relating to any formal disciplinary procedures will be kept on the employee's personal file. No duplicate records will be kept by individuals undertaking a role within the process. Records will be confidential and retained in accordance with the disciplinary policy and the Data Protection Act.
- 11.4 Should an alleged act of indiscipline be found to be unsubstantiated at any stage within this process or a particular disciplinary sanction be considered unwarranted following an appeal, any written reference to it on the employee's personal file shall be destroyed.

12. Duration of warnings

- 12.1 Except in agreed special circumstances, any disciplinary sanction imposed will be disregarded for disciplinary purposes after a specified period of satisfactory conduct or performance. In confirming the issuing of a written warning, including a final warning, the Designated Officer must specify the period after which the record of this sanction can be reviewed. The duration of the warning being kept on personnel files will be based on the individual case and circumstances.
- 12.2 A record of an improvement note will be kept by the line manager for six months, a first written warning will normally be kept on file for six months; the final written warning will normally be kept on file for 12 months and in exceptional circumstances for more than 12 months. The warning will be disregarded for disciplinary purposes after this period.

13. Justification of duration of warnings

- 13.1 Similar offences will not always call for the same disciplinary sanction or the duration of the warnings. Each case must be looked at on its own merits and any relevant circumstances taken into account. Such relevant circumstances may include health or domestic problems, provocation, justifiable ignorance of the rule or standard involved, inconsistent treatment in the past, sufficient time to evidence satisfactory conduct, duration of unsatisfactory conduct etc.

14. Monitoring performance

- 14.1 Where appropriate, disciplinary action will be followed up with the aim of encouraging improvement. The line manager must monitor the progress of the employee and discuss it with him or her regularly.

15. Right to be accompanied

- 15.1 The employee has the right to be accompanied at all stages by a work colleague or a trade union representative. The accompanying individual will be allowed time off with pay to fulfil their role.

16. Levels of authority

- 16.1 Informal disciplinary action may be taken by an employee's line manager. Formal disciplinary action may only be taken by the Designated Officer. The decision to dismiss can normally only be taken by the Director of Finance and Corporate Services (or designate).

17. Notice

17.1 Unless dismissal is because of gross misconduct the employee will receive the appropriate period of notice as defined in their Contract of Employment.