

TITLE	REF	VERSION
Staff Disciplinary Procedure	HRPRO005	3.0

  

DEPARTMENT	Group Human Resources		
DATE	01/07/2023	REVIEW DATE	01/07/2025

# STAFF DISCIPLINARY PROCEDURE

## Procedure Statement

The aim of Activate Learning is to give employees as much freedom as possible in how they deliver their work whilst recognising that to safeguard everyone's interest it is necessary to have in place rules that must be upheld in the workplace. Activate Learning promotes positive conduct and aims to ensure that there will be a fair and systematic approach to the management of disciplinary issues in the workplace.

## 1. Purpose and Scope

1.1 The purpose of this Disciplinary Procedure is to:

- a. Help and encourage employees to achieve and maintain the required standards of conduct.
- b. Provide a framework for dealing with instances where employees are alleged not to have met the required standards of conduct.
- c. Ensure consistent and fair treatment for all in relation to disciplinary action.

The aim is also to ensure that the Organisation's services are maintained and effective while all staff are treated fairly and equitably. This procedure sets out the action that will be taken in response to alleged misconduct or poor work performance. Activate Learning expects exceptional standards of behaviour, conduct and attendance from all its employees.

1.2 Line managers must ensure that their staff are aware of general and specific rules, standards and procedures covering work and conduct.

1.3 Employees must familiarise themselves with these standards and procedures and follow them. In certain cases of minor misconduct or unacceptable performance or behaviour, managers should use informal action before formal disciplinary action is taken.

- a. This may include setting clear targets and expectations, monitoring progress over a reasonable time period and providing additional coaching or training.
- b. Informal approaches are encouraged in the [ACAS Code of Practice for Disciplinary and Grievance Procedures](#).
- c. A quiet word with a staff member or asking for support from a line manager may be all that is needed.
- d. Some workplace disputes can be resolved through the support of an independent third party or mediator.
- e. Mediation does not decide on who is right or wrong, nor can the parties be forced to undertake mediation; it must be a purely voluntary process.
- f. If the issue cannot be resolved informally, formal action might be necessary.
- g. No disciplinary action will be taken until a case has been thoroughly investigated.
- h. When starting an investigation into an allegation of misconduct or poor performance, there shall be no assumption that disciplinary action will automatically follow.

1.4 Issues of underperformance should be addressed in line with the Capability Procedure.

1.5 This procedure applies to all members of staff other than “holders of senior posts” as defined in the Company’s Articles of Government.

## **2. General Principles**

2.1 The following principles will apply to the application of this procedure:

- a. Disciplinary matters will be dealt with consistently and in a timely manner.
- b. No disciplinary action will be taken against an employee until the organisation has fully investigated the circumstances of the alleged misconduct.
- c. The employee will be advised of the nature of the alleged misconduct and will be given the opportunity to state their case in response before any decisions are made.
- d. An individual may be suspended at any stage during the procedure.
- e. At all formal stages of this procedure the member of staff is entitled to be accompanied or represented by a work colleague or Trade Union representative.
- f. If an employee fails, without good reason, to attend a disciplinary hearing, which the organisation has instructed them to attend, the hearing will take place, and a decision made in their absence.
- g. No formal disciplinary sanction will be imposed without a disciplinary hearing / meeting.
- h. An employee will have the right to appeal against any disciplinary sanction imposed.
- i. All parties involved in these procedures must ensure that they maintain the confidentiality of the process within and outside Activate Learning. Disclosure of information by any of the parties involved might occur where this is required under law or where there is a circumstance involving duty of care which requires disclosure, e.g. where a manager has concerns for the well-being of the employee or others. In situations where disclosure may be required, the decision to disclose will be made by the Data Protection Officer or nominated deputy.

## **3. Stages of the Procedure**

Normally the procedure will be followed in the order of the stages set out in sections below. However, misconduct of a serious nature may be brought into the procedure at any stage if any earlier stage would not be severe enough or appropriate to deal with it.

For example, there may be occasions when misconduct is considered not to be so serious to justify dismissal, but serious enough to warrant only one written warning which will be both the first and final written warning.

### **3.1 Informal Stage**

- a. Minor lapses from the required standards of conduct will usually be dealt with informally by the employee’s line manager as early as possible with the intention of gaining sustained improvement in the employee’s conduct.
- b. A one-to-one confidential discussion between the line manager and the employee should consider:
  - i. The nature of the concerns.
  - ii. The employee’s views and / or any mitigating circumstances that may be affecting their conduct.
  - iii. The expected standards of conduct and improvements required.
  - iv. Any support required.
  - v. Timescales for improvement and review dates.

- vi. The potential consequences of not achieving the required improvements in conduct.
  - vii. Based on this discussion the line manager may issue the employee with an informal oral warning.
- c. Brief confidential notes will be kept by the manager to record the discussions and any agreed informal action. The outcomes of any discussions should be confirmed in writing to the employee (email correspondence is acceptable). These notes will be retained by the manager for six months but will not be kept on the personal file. However, should the case warrant consideration of formal disciplinary action within this six-month period the notes may be disclosed and form part of a formal investigation.
- d. It is important for both parties to understand that informal action is not formal disciplinary action and employees are not entitled to representation at this stage, although the employee may seek advice from their trade union representative.
- e. Following a satisfactory outcome, the matter will be considered resolved. However, where an issue has been discussed with an employee informally and if:
- i. The issue has not been resolved and the problem persists; or
  - ii. The required improvements in conduct are not achieved; or
  - iii. Further information becomes available during discussions which make the matter sufficiently serious; the formal procedure should be invoked.

### **3.2. Formal Stages**

Where the informal process has not led to improved conduct, or where the alleged misconduct is of such seriousness that the manager considers informal action to be inappropriate, formal action will be initiated. An investigation of the facts will be conducted as outlined in section 3.2a to determine whether there is a disciplinary case to answer. Where an investigation indicates that there may have been an act of misconduct the employee will be required to attend a formal disciplinary hearing at which they will be given the opportunity to respond and state their case.

#### **a. Investigation**

- i. Disciplinary action will not be undertaken until the necessary facts have been established. An Investigation Team will be appointed by Group Human Resources to conduct a disciplinary investigation.
- ii. The investigation team will comprise of an Investigating Officer, normally an individual paid on the management scale, and a Human Resources representative who will assist in ensuring that matters are handled fairly, reasonably and in compliance with current legislation and this procedure.
- iii. The employee will be informed in writing of the allegations and that an investigation will be undertaken as soon as practicable. The Investigating Officer, where appropriate, may choose to have an informal meeting with the employee to advise that an investigation is underway.
- iv. The length of the investigation will depend on the nature and number of allegations being investigated. However, the investigation should be concluded as soon as reasonably possible whilst allowing sufficient time to interview all relevant parties / witnesses and evaluate all available evidence.
- v. As part of the investigation the employee will be invited to attend an investigatory interview. The purpose of the investigatory interview is to gain the employee's response to the allegations and their version of events, and for the employee to identify any witnesses they feel are relevant to the case. The investigatory interview is not a disciplinary hearing and the Investigation Team do not have the authority to issue any form of formal warning.
- vi. Notes will be taken during the investigatory interview, and they will be sent to the employee to review and agree. If the employee wishes to make any

amendments, they can do so either by discussion with the Investigation Team or by forwarding their comments which will be appended to the notes.

vii. With the view of expediting matters, the employee will be given a deadline by which they must return the signed notes and any comments to the Investigation Team. Where the employee does not do so within the required time the investigation will proceed based on the unsigned notes.

viii. The investigation may also include meeting with appropriate persons who may have witnessed the alleged misconduct or may be able to provide contextual information. Any statements included as evidence will be agreed and dated where possible.

ix. There may be exceptional circumstances where the identity of witnesses (including the individual who first raised the allegation) will not be revealed as part of the investigation report i.e. where that individual may be put at risk.

x. The employee will be advised in writing should any additional allegations arise during an investigation.

xi. The Investigation Team will prepare a report summarising the nature of the allegation or complaint, the process of the investigation and the findings and determine whether there is a prima facie case to answer and if the matter should be dealt with formally.

The outcome of an investigation which is recommended to the Disciplinary Officer may be:

xii. There is no case to answer and therefore no disciplinary action is taken.

xiii. The matter is dealt with informally.

xiv. There is a disciplinary case to answer, and a disciplinary hearing is to be arranged.

xv. The report will be submitted to Group Human Resources to forward onto an appropriate Disciplinary Officer.

#### **b. Investigations into an Allegation of Safeguarding**

i. Where an allegation is made against an employee that involves the safeguarding of a student, the Safeguarding Team will be advised of the situation, in accordance with the provisions of Keeping Children Safe in Education (2023), and as amended. An Investigating Officer will be appointed and will be responsible for the investigation of the allegation/s in accordance with the processes detailed in this Procedure.

ii. Should any safeguarding concerns about one or more students become known at any given stage during an investigation, a case conference will be held with appropriate representatives from the Safeguarding Team to ascertain further steps or additional actions required due to the circumstances, and whether the police and the LADO should be involved.

iii. Where the allegation is a safeguarding issue and relates to a child aged 18 or under or a vulnerable adult, the record of the investigation will be kept for ten years or until the retirement date of the employee, whichever date is the longest, unless the allegation/s is/are considered to be deliberately invented or malicious. Where such a record is kept, the employee will be informed of the record being kept on their personal file and will be invited to add a file note to the record, should they so wish.

### **3.3 Disciplinary Hearing**

a. Where a decision is made to convene a disciplinary hearing, the hearing will be attended by:

i. The Disciplinary Panel: which will comprise of a senior manager (Disciplinary

- Officer) authorised to undertake disciplinary action in accordance with this procedure, who will be assisted by a Human Resources representative.
- ii. The Investigation Officer: who will present the case. In exceptional circumstances the management case may be presented by an alternative manager or Human Resources representative.
  - iii. The employee and their chosen representative.
- b. Employees will be given a minimum of five working days' notice in writing of the requirement to attend a disciplinary hearing, to include:
- i. Details of the allegation or complaint.
  - ii. The date, time, and place of the hearing.
  - iii. The right of the employee to be represented or accompanied.
  - iv. Details of the Disciplinary Panel and who will present the management case.
  - v. Any documentation that will be referred to in the hearing in the form of the investigation report.
- c. The employee will be invited to submit to the Disciplinary Panel any documentary evidence they wish to have considered, not less than three working days before the date of the hearing, where reasonably practicable, to allow for an exchange of documents between the parties.
- i. The employee may make a request for witnesses to attend the hearing to the Disciplinary Officer. The Disciplinary Officer has the discretion to grant any such request if they are satisfied the evidence is relevant to the case and will not ordinarily turn down reasonable requests for a witness to attend.
  - ii. The Disciplinary Officer may as an alternative, request that witnesses submit a statement for consideration rather than attend e.g. in instances where an individual is making statements of character rather than has witnessed any incident(s) which formed the basis of the disciplinary case being considered.
  - iii. Any witness will only attend for the section of the hearing where he/she is required to give evidence.
- d. The purpose of the hearing is to provide the opportunity for the employee to respond to the allegations made under this procedure and to allow the Disciplinary Panel to consider the facts of the case before making a final decision. The format of the hearing is detailed in Appendix 2.
- e. The employee's representative will have an opportunity to address the hearing, put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. The representative does not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it, or prevent the employer from explaining their case.
- f. Where the chosen companion is not available at the time proposed for the hearing, the employee has the right to request that the hearing be postponed and suggest an alternative time within five working days of the original hearing date. If the chosen representative is unable to attend a re-arranged hearing within a suitable timeframe, the employee is expected to decide to be accompanied by an alternative representative.
- g. Employees must make all reasonable efforts to attend a disciplinary hearing. If the employee fails to attend a re-arranged hearing this will proceed in the employee's absence. Employees will be given the opportunity to put their case in writing for consideration by management in their absence. Alternatively, an employee's representative may attend and present the case in their absence.
- h. After the hearing, having fully considered the circumstances of the case, the Disciplinary Panel will decide if, on the balance of probabilities, the allegation(s) are

proved and if so, what level of disciplinary sanction, including and up to dismissal, is appropriate.

i. The decision will normally be provided to the employee orally following adjournment. Written confirmation of the outcome of the hearing, with full reasoning for the decision, will be sent to the employee within a reasonable timeframe.

j. Where a warning is given, support will be identified to help the employee achieve the standard of conduct required, which may include a development plan, staff development etc.

k. Records will be kept of the disciplinary outcome for the period of any warning or a minimum of 12 months in the case of a dismissal and /or any Safeguarding related misconduct matter.

### **3.4 Formal Levels of Disciplinary Action**

Levels of disciplinary action are as follows:

**a. Stage 1 - Formal Verbal Warning**

i. A Formal Verbal Warning will normally be issued if the conduct of an employee has fallen below an acceptable standard.

ii. The member of staff has committed a minor offence.

iii. This will be a 'live warning', a copy of which will remain on the employee's personal file for six months, after which it will be disregarded for disciplinary purposes, subject to no further misconduct during this period.

**b. Stage 2 – Written Warning**

A Written Warning will normally be issued if:

i. There is no improvement in conduct about which the employee has previously been warned or.

ii. Another instance of misconduct has occurred during the currency of a previous warning or.

iii. The employee's misconduct, although not considered to be serious enough to justify a Final Written Warning, is sufficiently serious to warrant a Formal Written Warning.

iv. A Written Warning will be retained on the employee's personal file for 12 months, after which it will be disregarded for disciplinary purposes, subject to no further misconduct during this period.

**c. Stage 3 – Final Written Warning**

A Final Written Warning will normally be issued if:

i. A Written Warning has already been issued and another instance of misconduct has occurred while it is current or.

ii. There is no improvement in the conduct about which the employee has previously been warned or.

iii. The employee's misconduct, although not considered to be serious enough to justify summary dismissal, is sufficiently serious to warrant only one written warning (in effect both the first and final written warning).

iv. A Final Written Warning will be retained on the employee's personal file, for 18 months, after which it will be disregarded for disciplinary purposes, subject to no further misconduct during this period.

**d. Stage 4 – Dismissal**

Dismissal will normally occur if:

i. There is no improvement in the conduct within the specified period which

has been the subject of a Final Written Warning or.

- ii. Another instance of misconduct has occurred during the currency of a previous warning and a Final Written Warning has already been issued or.
- iii. An allegation of gross misconduct is found to be proven (see Appendix 1 for examples of gross misconduct).

Where a member of staff is dismissed, they will receive a written statement to include:

- i. Reasons for dismissal.
- ii. The date on which the employment contract will end.
- iii. The appropriate period of notice or payment in lieu, if applicable.
- iv. Any outstanding payments to be made.
- v. The right of appeal.
- vi. If, after investigation, an employee is found to have committed an act of gross misconduct, the normal consequence will be summary dismissal without any notice or pay in lieu of notice.

### **3.5 Alternatives to Dismissal**

a. Actions short of dismissal, as an alternative to dismissal, may be considered in exceptional circumstances and at the absolute discretion of Activate Learning. Alternatives to dismissal may include extending the period of the existing Final Written Warning, demotion to a lower graded role or loss of seniority. The alternatives are not exhaustive, and the organisation reserves the right to take any action it considers reasonable and appropriate in the circumstances.

b. If issued with a warning, an employee will receive written confirmation within a reasonable timeframe. This letter will include:

- i. The nature of the misconduct.
- ii. The disciplinary sanction awarded and duration of the warning.
- iii. A summary of evidence considered.
- iv. The improvement expected.
- v. The consequences of a failure to improve and sustain any improvement for at least the duration of the warning, including the possibility of further disciplinary action up to and including dismissal.
- vi. Relevant details and timescales relating to the employee's right of appeal.

### **3.6 Abuse of the Disciplinary Procedure**

Where an employee's record shows a pattern of abuse of the disciplinary policy, e.g. repeated misconduct occurring once a live warning has lapsed, Activate Learning may consider as an outcome to a disciplinary hearing, extending the duration of any warning from those indicated above, or escalating any new action against the employee, to the next stage of the policy (i.e. as if the prior live warning had not lapsed).

## **4. Right of Appeal**

Employees have the right to appeal against any formal disciplinary penalty imposed. The appeals procedure is detailed in Appendix 3.

## **5. Suspension**

- Suspension is a neutral act and is not a disciplinary sanction or an assumption of guilt and as such suspension will be with pay.
- At any stage in the procedure, if appropriate, an employee may be suspended to provide the opportunity for a full investigation to be undertaken.



- A suspension risk assessment should be completed in all cases by the Investigating Officer and signed off by a Group Director/Executive Director and a member of the HRBP Team. This will then be kept as a record on the employee file. This should be updated if circumstances change throughout the investigation process until an outcome is determined based on the allegations.
- Careful consideration must be given, considering the individual circumstances of a case before a decision to suspend is taken. Suspension will usually be considered in the following situations:
  - a. When an allegation of a serious offence or gross misconduct is made against a member of staff.
  - b. Where it is considered possible that the employee may influence witnesses or interfere with relevant evidence and the investigation.
  - c. Where there is a clear concern that the employee, or others, may be placed at risk if the employee remains on site pending an investigation.

**This list is not  
exhaustive.**

- Suspension can be carried out by a member of the Group Leadership Team or Human Resources or a nominated member of the Group Executive Team. Employees will be given the opportunity to have someone present (a work colleague) with them at the suspension meeting. However, there is no official right of representation, and a failure to find a suitable representative quickly, will not prevent the suspension of an employee.
- The facts and conditions of the suspension will be confirmed in a letter to the employee at the time of suspension. Whilst suspended, the employee will not be entitled to access any College campus or premises or complete any work activities; access to IT systems and networks will also be suspended.
- The duration of the suspension will vary according to the situation, but timescales will be as short as reasonably possible and reviewed on a regular basis. Regular contact will be made with the employee during any period of suspension and an individual manager will be identified as a contact point.
- During the period of suspension, the employee will be required to cooperate fully with the investigation and be available to meet during normal working hours.
- During the period of suspension, the employee is to have no contact with any employee or student of the organisation (other than their union representative), or any third parties which they regularly meet as part of their work, unless agreed by the Investigation Team. If the employee is related to a student or an employee of the organisation, they should declare this to the Suspending Officer as it is recognised in these circumstances that contact is likely. However, they are required not to discuss the case. The employee will be responsible for ensuring relatives they live with and who he/she discloses his/her circumstances to do not interfere in the investigation process and maintain confidentiality to prevent allegations of victimisation of any witnesses.
- If the employee becomes ill or wishes to take annual leave during the period of suspension, the normal procedures for reporting and authorising such leave will still be applicable. It is imperative that the employee's wellbeing, and those involved in the case is considered and supportive measures put in place either by the line manager or Investigating Officer.
- In some circumstances, as an alternative to suspension, alternative working arrangements may be considered pending a full investigation, for example, temporary redeployment, additional supervision, or the restriction of duties, as is deemed suitable in the circumstances.

## **6. Concerns and or allegations that do not meet the harm threshold (low-level concerns)**

The term 'low-level' concern does not mean that it is insignificant. A low-level concern is any concern

– no matter how small, and even if no more than causing a sense of unease - that an adult working in or on behalf of Activate Learning may have acted in a way that is inconsistent with the Professional Conduct Policy, including inappropriate conduct outside of work, and which does not appear to meet the harm threshold or is otherwise not serious enough to consider a referral to the LADO.

Examples of such behaviour could include, but are not limited to:

- Inadvertent or thoughtless behaviour
- Being over friendly with students
- Having 'favourite' students
- Taking photographs of students on their mobile phone
- Engaging with a student on a one-to-one basis in a secluded area or behind a closed door
- Humiliating students
- Using inappropriate sexualised, intimidating or offensive language

Low-level concerns may arise in several ways and from several sources. For example: suspicion; complaint; or disclosure made by a student, parent or other person within or outside of the organisation, a complaint received in line with the Allegations Against Staff Procedure, or as a result of vetting checks undertaken such as previous employment references.

### **Reporting Low-Level Concerns**

It is crucial that all low-level concerns are shared responsibly with the right person and recorded and dealt with appropriately. Ensuring they are dealt with effectively should also protect those working at Activate Learning from becoming the subject of potential false low-level concerns or misunderstandings.

Staff do not need to be able to determine whether the concern is a low-level concern or meets the harm threshold requiring referral to the LADO. Once a member of staff has shared their concern the action required will be made by Group Human Resources and the DSL.

All low-level concerns should be reported in one of the following ways:

- Email a HR Business Partner: [HR Business Partnering Team](#)
- Email the Safeguarding Team on [safe@activatelearning.ac.uk](mailto:safe@activatelearning.ac.uk)
- Complete a safeguarding record of concern form on SharePoint: [Link to record of concern form](#)

The report should include details of the concern, the context in which the concern arose, and action taken. The name of the individual sharing their concerns should also be noted, if the individual wishes to remain anonymous then this will be respected as far as reasonably possible.

Low-level concerns will be held confidentially and in compliance with the Data Protection Act 2018 and UK General Data Protection Regulation. Low-level concern data will be retained for the length of the individual's employment and beyond where deemed appropriate.

### **Responding to low-level concerns**

If the concern has been raised via a third party, Activate Learning will collect as much evidence as possible by speaking:

- directly to the person who raised the concern, unless it has been raised anonymously, and
- to the individual involved and any witnesses.

The information collected will determine what further action may need to be taken. This information will be recorded in writing along with the rationale for the decisions and action taken.

Most low-level concerns are likely to be minor and will be managed through guidance, training etc. This will be approached in a sensitive and proportionate way; in many cases this will require a

conversation with the individual about whom the concern has been raised.

Records will be reviewed so that potential patterns of concerning, inappropriate, problematic or concerning behaviour can be identified. Where a pattern of such behaviour is identified, the DSL and HR should decide on a course of action, either through the disciplinary procedure, or where a pattern of behaviour moves from a low-level concern to meeting the harm threshold, in which case it will be referred to the LADO.

### **Self-reporting**

Occasionally a member of staff may find themselves in a situation which could be misinterpreted or might appear compromising to others. Equally, a member of staff may, for whatever reason, have behaved in a manner which, on reflection, they consider falls below the standard set out in the Professional Conduct Policy.

Self-reporting in these circumstances can be positive for several reasons, and staff are encouraged to self-report on the basis that:

- it is self-protective, in that it enables a potentially difficult issue to be addressed at the earliest opportunity;
- it demonstrates awareness of the expected behavioural standards and self-awareness as to the member of staff's own actions or how they could be perceived; and
- crucially, it is an important means of maintaining a culture where everyone aspires to the highest standards of conduct and behaviour.

Activate Learning aims to create an environment where staff are encouraged and feel confident to report any low-level concerns.

## **7. Criminal Offences**

Criminal charges or convictions may result in disciplinary proceedings being taken against the employee up to and including summary dismissal. This will occur where, in the opinion of the organisation the existence of the charge or conviction is such as to affect, or has the potential to affect:

- The suitability of the employee for the position in which he / she is employed or.
- The business or reputation of the organisation, or
- The trust and confidence that the organisation has in the employee.

Where criminal proceedings are pending against an employee, the organisation will determine whether disciplinary action is appropriate. Where it is deemed appropriate, the disciplinary procedure will be carried out objectively and will not normally be delayed or deferred because of any such proceedings, unless advised to do so by the Police or other regulatory body.

## **8. Movement between Procedures**

If after commencing this procedure, the Investigation Team, in conjunction with Group HR, considers that the case in question should have been dealt with under an alternative procedure the case may be transferred and dealt with accordingly. In some circumstances procedures may be run concurrently e.g. performance capability, sickness capability and disciplinary.

## **9. Record Keeping**

Accurate and timely records must be kept of all meetings and correspondence. As far as possible, notes of investigatory and disciplinary meetings will be agreed with the employee concerned. Where agreement is not possible, both sets of the notes will be kept on the investigatory or disciplinary file. Records must include details of the matter raised, the employee's response, any action taken and the reasons for it together with all correspondence.

Whilst records will be kept of investigation and disciplinary meetings, no electronic recording will be made of such meetings, unless it has been expressly agreed by all parties present beforehand.

Warnings will be kept on file but will be disregarded for disciplinary purposes following the time limits of 6, 12 and 18 months as described earlier in the policy.

These records must be kept confidential and retained in accordance with the Data Protection Act 2018 (as amended). Copies of any meeting records should be given to the individual concerned, although in extreme circumstances specific information may be withheld. In certain cases, anonymised statements may be used (for example to protect a witness where there is a concern that their safety may be compromised by disclosure of their identity). Appropriate legal or professional advice will be taken in such cases.

## References

- [Probation Procedure](#)
- [Allegations against Staff Procedure](#)
- [Capability Procedure](#)
- [Sickness Absence Procedure](#)
- [Grievance Procedure](#)
- [Comments, Suggestions and Complaints Policy](#)
- [Safeguarding and Child protection Policy](#)
- [Professional Conduct Policy](#)

## Appendices

- Appendix 1 Examples of Misconduct and Gross Misconduct
- Appendix 2 Disciplinary Hearing Process
- Appendix 3 Appeals Process

## **GUIDANCE ON WHAT CONSTITUTES MISCONDUCT AND GROSS MISCONDUCT**

Examples of acts and behaviour, which render an employee liable to disciplinary action, fall into two broad categories, namely misconduct and gross misconduct. In the case of gross misconduct, Activate Learning may summarily dismiss the employee, that is, dismissal without notice or pay in lieu of notice. Examples of misconduct and gross misconduct are given below, but it must be stressed that this list of examples is not exclusive and there will be other offences of similar gravity that are not listed. Gross misconduct is generally seen as misconduct serious enough to overturn the contract between the employer and the employee thus justifying dismissal without notice or payment in lieu of notice.

### **Examples of Misconduct and Gross Misconduct**

Examples of misconduct warranting disciplinary action include:

- Failure to maintain acceptable standards of timekeeping.
- Absence from work without prior permission or authorisation given in accordance with Activate Learning procedures.
- Failure to follow working practices, procedures, and instructions.
- Failure to maintain an adequate and acceptable standard of work because of negligence and carelessness.
- Failure to take reasonable care of organisational property, goods and vehicles.
- Failure to maintain acceptable standards of interpersonal behaviour.
- Minor breaches of health and safety regulations (including breaches of car parking rules);
- Unauthorised use, destruction, mutilation, alteration or disclosure of official information, documents or records including those held electronically.

### **Gross Misconduct**

The following list is recommended by ACAS as being examples of offences which are normally regarded as gross misconduct:

- Theft, fraud, deliberate falsification of records.
- Fighting, assault on another person;
- Deliberate damage to organisational property;
- Incapability through alcohol or being under the influence of illegal drugs;
- Serious negligence which causes unacceptable loss, damage or injury;
- Serious act of insubordination; Unauthorised entry to computer records;
- Physical violence or bullying;
- Deliberately accessing internet sites containing pornographic, offensive or obscene material;
- A serious breach of health and safety rules;
- A serious breach of confidence on the part of the employee.

In addition, Activate Learning would normally regard the following offences as being gross misconduct:

- Bribery or corruption including taking and giving inducements;
- Deliberate falsification of Activate Learning documents such as timesheets, bonus sheets, claims for reimbursement of expenditure and self-certificate forms;
- Deliberate failure to comply with statutory or regulatory requirements or Activate Learning rules, policies or procedures that has a major impact on the organisation's business;

- A criminal activity or offence (whether committed during or outside normal working hours) that impacts on the employee's employment so that they are obviously unable or unsuitable to continue to carry out the duties for which they are employed.
- Serious unauthorised disclosure of confidential information (subject to the Public Interest [Disclosure] Act 1998) or any serious breach of duty, which is prejudicial to the organisation;
- Serious unauthorised use or misuse of the Activate Learning electronic systems or internet including serious data protection breaches, downloading pornography or offensive materials;
- Serious unacceptable behaviour towards students;
- Breaches of safeguarding procedures or practice
- Racial harassment and/or racially motivated bullying behaviour.
- Any form of unlawful discrimination on the grounds of, but not limited to, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation and/or conflicts with Activate Learnings policies and procedures; and discrimination on the basis of membership of a recognised Trades Union.

## SUGGESTED FORMAT OF THE DISCIPLINARY HEARING

### 1. Introduction by Chair

The disciplinary hearing will be chaired by a manager able to take disciplinary action who will be assisted by a Human Resources representative.

The chair will:

- a. Introduce those present.
- b. Explain the purpose of the hearing.
- c. Explain how the hearing will be conducted.

### 2. Management Case

The Investigating Officer will present the Management Case. The Investigation Officer will call any witnesses to give evidence.

### 3. Questioning of the Management Team (and their Witnesses)

- a. The Chair, and their Human Resources representative, will have an opportunity to ask the Investigation Officer (and their witnesses) any questions.
- b. The employee, and their representative through the Chair, will have an opportunity to ask the Investigation Officer (and their witnesses) any questions.

### 4. Employee case

- a. The employee, or their representative, will present their case including any mitigating circumstances. Only evidence submitted to the Disciplinary Panel in advance of the hearing will be considered.
- b. The employee will call any witnesses to give evidence.

### 5. Questioning of the Employee (and their Witnesses)

- a. The Chair, and their Human Resources representative, will have an opportunity to ask the employee (and their witnesses) any questions.
- b. The Investigation Officer, through the Chair, will have an opportunity to ask the employee (and their witnesses) any questions.

### 6. Summing up

- a. The Investigation Officer will sum up the management case.
- b. The employee, or their representative, will sum up the employee case.

### 7. Adjournment

The hearing will adjourn for the Disciplinary Panel to consider the evidence presented and decide if, on the balance of probabilities, the allegation(s) are proven, and if so what level of disciplinary sanction is appropriate.

- a. **Outcome. All parties will reconvene, and the employee will be informed of the decision verbally in the presence of their representative. This will usually be done on the same day but in exceptional circumstances the parties will reconvene as soon as possible later, alternatively the outcome may be supplied in writing.**
- b. The outcome of the hearing will be confirmed in writing within a reasonable timeframe.

## APPEALS PROCESS

### 1. General Principles

- a. The employee can raise an appeal against a disciplinary sanction on the following grounds:
  - i. The procedure: the policy and procedure have not been applied correctly.
  - ii. The decision: the evidence did not support the conclusion reached.
  - iii. The penalty: this was too severe given the circumstances of the case.
  - iv. New evidence: which has genuinely come to light since the first hearing, and which may have a bearing on the outcome.
  - v. The employee should detail the grounds for their appeal in writing to the Group Director of People & Development. The grounds of the appeal will effectively form the agenda for the Appeal Hearing and determine the parties to be present.
- b. The disciplinary sanction imposed because of the original hearing will remain in force until it is modified as a result of the appeal.

### 2. Appeals against Disciplinary Penalties Other Than Dismissal

- a. An employee who wishes to appeal against a Formal Verbal Warning, a Formal Written Warning or a Formal Final Written Warning should write to the Group Director of People & Development within five working days of the date of the decision which forms the subject of the appeal.
- b. The Appeal Hearing will be heard by an appropriate Manager.
- c. The Hearing will be held as soon as possible, and not later than ten working days after the notice to appeal has been received by the Group Director of People & Development.
- d. In circumstances where the timeframe cannot be met, the employee will be informed and advised of the reasons.

### 3. Appeals against Dismissal or Notice of Dismissal

- a. An employee who wishes to appeal against dismissal, or notice of dismissal, should write to the Group Director of People & Development within five working days of the date of the decision which forms the subject of the appeal.
- b. The Appeal Hearing will be heard by an appropriate party.
- c. The Hearing will be held as soon as possible, and usually within fifteen working days after the notice to appeal has been received by the Group Director of People & Development.
- d. In circumstances where the timeframe cannot be met, the employee will be informed and advised of the reasons.

### 4. Appeal Hearing

- a. The employee will be given at least five working days' notice of the date, time and place for the appeal hearing (unless an earlier date has been mutually agreed). The employee will be entitled to be accompanied at the hearing by a trade union representative or a work colleague.
- b. The grounds of the appeal will form the agenda for the hearing and determine the parties to be present. The suggested format for the Appeal Hearing is as follows:
  - i. The Chair of the Appeal Panel will explain the purpose of the meeting, how it will be conducted and the action to be taken by the panel because of the appeal hearing.
  - ii. The employee will be asked to explain the grounds for their appeal.
  - iii. The Disciplinary Officer will set out the reasons for any sanction and evidence considered.



- iv. The Appeal Panel will have regard for any new evidence that has been introduced and will allow the employee, or their representative, to comment on this. The Chair of the Appeal Panel will summarise the findings once all of the relevant issues have been thoroughly explored.
- v. The meeting will be adjourned to allow the Appeals Panel to consider the decision.
- c. The decision of the Appeals Panel will be notified to the employee in writing within five working days of the Appeal Hearing. The decision will be final and binding and there will be no further internal right of appeal.
- d. Where an appeal against disciplinary action is upheld in full, reference to the disciplinary sanction shall be expunged from the employee's record and the employee so notified.
- e. If the appeal is not upheld but the Appeal Panel considered the sanction to be inappropriate it may reduce the sanction or deem that it be operative for a shorter period.
- f. Where an appeal against dismissal is upheld, the employee shall be paid in full for the period from the date of dismissal and continuity of service will be maintained.
- g. Where an appeal against dismissal fails, the effective date of termination of employment will be the date on which the employee was originally dismissed.