

Disciplinary Procedure for

Support, Research, Teaching and Scholarship and Casual Staff Groups

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Statement of Policy

Whilst the School does not intend to impose unreasonable rules of conduct on its employees, certain standards of behaviour and performance are necessary to maintain good order and discipline, in the interests of both employees and employer.

The School prefers that discipline is voluntary and self imposed, and in the majority of cases it is. However, from time to time it may be necessary to take action against individuals if behaviour or performance is not acceptable.

The purpose of this Disciplinary Procedure is to provide a formal means of helping and encouraging employees to achieve and maintain acceptable standards of conduct, attendance and job performance.

The procedure is designed to enable individual cases to be resolved fairly, consistently and in a timely manner. Wherever possible, help and encouragement, including formal training, will be provided to allow staff to meet standards specified as a result of disciplinary action taken against them.

At every stage in the procedure, the employee will be kept advised of the nature of the complaint against him/her, and will be given the opportunity to prepare and present their case before any decision is made.

Once this procedure has been instigated, the employee will have the right to be accompanied by a colleague or trade union representative at any meeting held in connection with the *formal* stages of the procedure (i.e. not at the informal stage, or when a manager and member of staff are discussing work progress).

It is the responsibility of managers to ensure that staff have the opportunity to be acquainted with this procedure, and that they themselves are aware of both the procedure and their delegated responsibility within it.

Formal disciplinary action in respect of misconduct or poor performance by these staff groups must always be dealt with in accordance with this procedure. To ensure consistency of its application, it must be applied in conjunction with the advice of an appropriate member of Human Resources.

Part One – Basic Principles

Scope

This procedure applies to all full time and part time support, research, teaching and scholarship and casual staff groups. The procedure for employees during their probationary period or during fixed term contracts will follow the same procedure as detailed below. All employees must be treated equably and fairly.

Documentation relating to employees will be treated with the utmost confidentiality and related documentation will be subject to the provisions of the Data Protection Act 1998 (DPA) as appropriate. Employees will have the right to feedback and to access any documentation held on them that fall within the scope of the DPA. Those responsible for maintaining disciplinary records must ensure that the records are held in a secure place and made available to authorised personnel.

In majority of cases, to enable employees to improve their behaviour or performance, matters should be dealt with promptly when they arise and on an informal basis in the first instance, escalating up the stages of the formal disciplinary procedure where the problems persist.

Any disciplinary proceedings should be instituted as promptly as is reasonably practicable, and normally within ten working days of the allegations coming to light and HR being informed of them.

In exceptional cases, where more than one allegation arises relating to the same matter or where several complaints or allegations are received about the same person, either as part of the original allegations or complaint or as a result of the investigation of the original allegations or complaint, the School reserves the right to deal with these matters as part of a single disciplinary process.

Members of staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions, without placing themselves in jeopardy of disciplinary proceedings and the policy expressed here should be interpreted in a manner compatible with legislation and School policy concerning freedom of expression, particularly as it applies in the teaching context.

However, employees should be aware that the right of freedom of expression attaches only to *lawful* conduct (e.g. it does not confer a right to incite others to violence or racial hatred nor does it confer the right to harass or bully other members of staff or students who happen not to share particular views or beliefs). The School expects that staff will always exercise the right of freedom of expression with due consideration for others' feelings and opinions.

Human Resources Management Advice

Managers are responsible for ensuring that disciplinary decisions are consistently applied in accordance with the disciplinary procedure. All managers will have access to training to ensure consistency of application.

The senior members of the Human Resources Directorate are responsible for advising management on all disciplinary matters and for helping maintain this consistency and they must be consulted at all stages under the formal procedure.

The Role of the Colleague/Trade Union Representative

If the employee is to be accompanied, at disciplinary hearings and appeals, as a "representative", their role is to put the employee's case, respond on the employees behalf to views expressed at the hearing and to sum up. Their role is not to answer questions on behalf of the employee. If the person is to accompany the employee as their "colleague", their role is to support them and act as witness to the proceedings.

In cases where dismissal may be a possible outcome or in complex cases, the employee may request to be accompanied by a second representative. Such a request should be made in writing to the Director of HR at least two working days in advance of the hearing and will be carefully considered by the School taking account of the particular circumstances of the case. Normally the role of the second representative will be to take notes unless agreed otherwise by the Director of Human Resources.

Consistent with the fact that a disciplinary hearing or an appeal is an internal procedure, such attendance is restricted to other employees of the School or officials of trade unions. Solicitors,

family members and other non-employees will be excluded from appeal hearings except in exceptional circumstances i.e. it may be appropriate for a family member to attend if the employee has a disability.

Cases of Poor Performance

Whilst recognising that this will not in every case be appropriate, the School will normally seek to resolve matters of poor performance by means of the informal procedure. In the first instance managers should refer to the Performance Monitoring Management Guidelines (available from the Human Resources website) for guidance before taking any action, and should seek further advice from their designated HR Manager where necessary.

Particular attention will be paid to setting out **and discussing** the performance problem **in a structured way**, identifying the performance improvement that is required, **clearly** defining the timescales for achieving this improvement, agreeing a review date and identifying any support that the School will provide to assist the employee.

At the review meeting, the employee's performance will be reviewed, and a decision taken as to whether any further action is necessary. This review will be documented and a copy will be given to the employee. If the performance has not fully improved, the action will be either to extend the review period or to move to the formal procedure described below.

Review periods will not be extended indefinitely, and will normally only be allowed when some improvement has already been shown, but more time is needed to reach the appropriate level of performance commensurate with the grade and post.

In addition to identifying performance improvements, consideration will also be given to identifying and providing training and other developmental opportunities that will help the employee reach the level of performance specified. Exceptionally, a change in duties or location, within the same organisational unit, may also be agreed with the employee. The School recognises however, that this will not always be an appropriate or realistic way forward.

Every support will be given to the employee during the review period, however, in cases where it becomes apparent that the level of performance required cannot be achieved within the agreed timescales, it may be necessary to proceed to an appropriate stage of the formal procedure ahead of the end of the review period. **Evidence of the failure to meet the standards within at least one structured review in accordance with agreed management guidance will usually be expected before a referral into the formal Disciplinary Procedure takes place.**

Once the formal procedure has been initiated, further failure to meet performance improvements required will lead to further disciplinary action at the next level of the procedure (see Part 3).

Suspension from Work

Suspension is not a disciplinary act, and does not imply that there has been any misconduct. It is a neutral act to allow, in the interest of all or any of the parties concerned, for an effective investigation to take place.

Suspension will be on full pay until either a disciplinary hearing is convened, or the investigation discontinued. It will normally occur within *one working day* of the start of a disciplinary investigation, and be for as short a period as possible. Suspension will usually only be considered in cases of very serious allegations, usually those consisting of potential gross misconduct.

There may be exceptional circumstances where suspension or temporary redeployment is required in order to separate parties or where there is a need to relieve the employee on a temporary basis of some, or all, of their duties, pending investigation. In such cases, suspension or temporary redeployment is a neutral act, does not imply that there has been any misconduct and is in the interest of all or any of the parties concerned to allow an effective investigation to take place. In such circumstances, there is an additional requirement for the School to act as promptly as possible during the investigation.

When an employee is to be suspended, their line manager will first consult Human Resources. The manager will then meet the employee, who may be accompanied by a colleague or trade union representative, and explain the reasons for the suspension.

Any suspension will be confirmed in writing within three working days.

When a suspension lasts for more than 10 working days, the suspended employee may request a formal review of the suspension. Such a review will be conducted by the investigating officer and the employee has the right of representation at the review meeting. The Review will consider whether or not continuation of the suspension is still justified in the circumstances of the case and the investigating officer's decision in this respect will be final. If the decision is that the suspension will be lifted, the employee will return to work as soon as is reasonably practicable, having due regard to any adjustments to the working patterns of staff in the area where the employee works that may be necessary.

Police or Legal Proceedings

A member of staff will not be dismissed or otherwise disciplined merely because he/she has been charged with or convicted of a criminal offence or is absent through being in custody. Where subsequently a member of staff is convicted of a criminal offence, consideration will be given to whether the offence is one that makes the member of staff unsuitable for his/her type of work or **unacceptable to other members of staff**, and if so whether suitable alternative work is available. The School reserves the right to take appropriate disciplinary action before the outcome of the police investigation or legal proceedings is known.

Gross Misconduct

Gross misconduct is conduct serious enough to destroy fundamentally the contract between employee and employer, making any further working relationship or trust impossible. In normal circumstances if on completion of an investigation and the full disciplinary procedure, the School is satisfied that gross misconduct has occurred; the result will normally be summary dismissal without notice or pay in lieu of notice. In exceptional cases (see Exceptional Cases of Gross Misconduct) the School reserves the right to use a modified disciplinary procedure.

Examples of the kind of conduct normally regarded by the School as gross misconduct are set out in Appendix 1 of this procedure and are available from Human Resources. It should be noted that the list is for illustrative purposes and is not intended to be exhaustive or exclusive.

Confidentiality

Documentation relating to employees will be treated with the utmost confidentiality and related documentation will be subject to the provisions of the Data Protection Act 1998

(DPA) as appropriate. Employees will have the right to feedback and to access any documentation held on them that fall within the scope of the DPA.

During the formal stages of the procedure, all parties need to respect the rights of all concerned. In particular, the employee who is the subject of the disciplinary process, any complainants or witnesses should not discuss any aspect of the disciplinary case with any other colleagues or parties to the disciplinary process than their line manager, their representative/trade union representative or human resources.

Definition of terminology

Area: the term area means the relevant Academic or Service Department.

Line manager: the line manager will be the individual nominated by the Dean of Faculty/Head of Service Area to have supervisory responsibility over the employee.

Senior manager: Head of Academic Department or Centre; or Manager of **Service Section or equivalent**.

Service Area: administrative department such as the Library, Finance or Information Technology.

Head of Service Area: e.g. Head of Library Services, Head of Finance, Director of Human Resources.

Manager of Service Section: a manager of a team or section which forms part of a service area. The manager will normally report to the Head of Service Area.

Investigating Officer: the employee's line manager or another manager, at the same level, appointed to conduct the investigation.

Disciplining Officer: the manager considering the Investigation Report and where appropriate, conducting a disciplinary hearing. This manager will also act as Responding Manager during an Appeal Hearing where appropriate.

Appeal Officer: the manager conducting an Appeal Hearing, who will normally be the more senior manager of the Disciplining Officer. The Appeal Officer will normally be the Head of Academic Department/Centre or Manager of Service Section.

Appeal Panel; Appeals against dismissal will be heard by a committee comprising three managers at an appropriate level, appointed by the Director of HR, who have not previously been involved in the case where practicable. The Chair of the Appeal Officer will normally be the more senior manager of the Disciplining Officer.

Gross Misconduct: This is when an employee's conduct or behaviour seriously and fundamentally breaches the contract of employment and irreconcilably damages the employment relationship and trust between the School and the employee. See Appendix 1.

Serious misconduct: this, like gross misconduct, is a serious breach of the employee's contract of employment. However, there may be mitigating circumstances which lead to the employee's contract being terminated with notice rather than summarily.

Misconduct: This is conduct or behaviour that contravenes an employee's contract of employment and may breach some of its terms and conditions. An improvement by the employee is required to address the employment relationship.

Performance: This is an employee's achievements measured against specified and defined objectives. Examples of poor performance can include inaccurate work or a failure to meet deadlines.

Statutory dismissal procedure: This statutory procedure was introduced in October 2004 in the Employment Act 2002 (Dispute Resolution) Regulations 2004 and applies to most types of dismissals. The statutory procedure consists of three steps which form part of the normal stages of the School's disciplinary procedure:

- Step 1 Write to the employee notifying them of disciplinary allegations against them and the basis of the allegations and invite them to a meeting to discuss the matter
- Step 2 Hold a meeting with the employee to discuss the allegations and notify the employee of the decision to dismiss.
- Step 3 The employee has the right to appeal against their dismissal.

In the event of a School restructure the equivalent posts in the new structure will replace the above posts.

Monitoring and Review of the Policy

Regular reports on trends and statistics relating to disciplinary issues will be provided to the Senior Management of SOAS and the Trade Union Representatives.

This policy will be reviewed regularly in line with any changes in employment legislation.

Equality and Diversity

The procedures outlined here should be carried out with due regard to any diversity issues which may have affected either the original situation or the current process. The School's Diversity Adviser and diversity specialists within the Human Resources Directorate are available to support colleagues in this area. Where a diversity issue (e.g. a disability including chronic physical or mental health conditions) has been disclosed to the School, whether prior to the situation which triggered this process or during the process, the line manager co-ordinating the process is responsible for checking with the employee to determine their needs and for making the appropriate arrangements. Employees who have not previously disclosed a diversity issue which may be relevant to this process are encouraged to do so, as early as possible, so that it can be taken into account.

Publication of the Policy and results of assessment and monitoring

The policy will be publicised widely within SOAS in electronic and paper formats to ensure its profile and impact is highlighted in full. Significant trends arising from assessment and monitoring may also be published.

Breach of the Policy

SOAS will take seriously any instances of non-adherence to the Data Protection legislation and this policy by its staff.

The appropriate Dean of Faculty, Head of Service Area, or other line manager, as appropriate, will investigate any instance of breach of the policy. Where appropriate, action will be considered under the relevant disciplinary policies for staff

Approval

This Procedure was agreed with UCU and UNISON on 30 January 2007.

The Procedure was formally approved by Staffing Committee on 1 March 2007.

Part Two – Disciplinary Procedure

Informal Stage

The School recognises that in many cases of unsatisfactory conduct or work performance, informal counselling or warning of the employee by their immediate line manager will quickly resolve the problem, thus reducing or eliminating the need for formal action. Managers should refer to the Management Guidelines on dealing with performance monitoring or on Informal Counselling meetings for unacceptable conduct or behaviour at work.

In these instances, the manager will make a record of the discussion and agree a further course of action with the employee. Specific and measurable improvement objectives will be agreed with the employee, and reasonable timescales set for each objective, which should be included in the record of the meeting. The employee will be warned about the possible consequences of failure to meet or sustain objectives or a repetition of the unsatisfactory conduct or poor performance. A copy of the record will be given to the employee. It must be made clear to the employee that this action is informal and if at any time during the discussions the employee feels that the actions taken have gone into the formal stage then the meeting can be stopped to enable them to consult with a trade union representative or a work colleague.

Where informal counselling is not considered appropriate, or if after an informal warning an employee fails to improve, or to maintain improvement, the formal disciplinary procedure may be applied.

Formal Disciplinary Process

If following the earlier stages an employee's line manager feels that an act of misconduct has taken place, or there is evidence of poor performance a disciplinary investigation will be conducted to establish the facts. If disciplinary action is to be instigated which could lead to dismissal or demotion then s/he will follow the Standard 3 Steps as detailed in the Employment Act (Dispute Resolution) Regulations. Human Resources Directorate must be consulted before any form of disciplinary action is taken. Human Resources will attend any disciplinary meetings at any stage of the process to advise on matters of procedure.

Disciplinary Investigations

The investigation will be conducted by a line manager/investigating officer, supported and advised by an adviser from HR, who is required to fully investigate and establish the facts of the case promptly. This is Stage 1 of the Disciplinary Procedure. This may comprise formal discussions with the employee, interviewing and taking statements from any relevant witnesses, evidence of poor performance and collecting any other relevant documentary evidence.

During the investigation, the line manager/investigating officer will consult, as necessary, with Human Resources, who will advise on which stage of disciplinary action may be appropriate.

In certain cases e.g. if the line manager is involved in any allegations, it will not be appropriate for the line manager to conduct the investigation and another investigating officer will be appointed.

An investigation will normally be completed within *ten working days* of the date that the employee was first notified of the complaint against him/her. If an extension of this period proves necessary, this will be agreed by the line manager/investigating officer with Human Resources and communicated to the employee along with reasons for the delay. The delay must be kept to a minimum.

On completion of the investigation, the line manager/investigating officer and the HR Adviser will submit a written report of their findings to the manager who is to hear the case, (the Disciplining Officer), and all supporting documentation will be appended to the report. The Disciplining Officer will then decide on a course of action; to hold the disciplinary hearing or that there is no case to answer. An investigation needs to be fully completed before disciplinary action commences.

Written Notification to the Employee

This would constitute Step 1 of the Statutory Dismissal procedures where disciplinary action may result in dismissal or demotion.

Following an investigation where it is decided that there is a disciplinary case to answer, the employee will be asked to attend a disciplinary hearing. With the notice of the disciplinary hearing, the employee will also be given any relevant documentation necessary to prepare their response. This will normally comprise the line manager's investigation report, witness statements and any other appropriate documentation.

In the notification of the hearing, the employee must be advised in writing of:

- The nature of the allegation(s) and the fact that the hearing is to be a disciplinary one
- The date, time and location of the hearing. At least five working days notice will be given. This will be agreed with the employee.
- The right to be accompanied by a trade union representative or colleague.
- The names and roles of the people who will be present at the hearing.
- The names of any witnesses to be called by the management side.
- The requirement for him/her to arrange for his/her witnesses, if any, to attend the hearing and to ensure permission has been obtained for them to be released from their workplace. The employee must inform the Human Resources Directorate representative at least two working days prior to the hearing of any witnesses that he/she intends to call.
- The requirement to supply management side with any documentation, including witness statements, which he/she intends to present the disciplinary interview, at least two working days prior to the hearing.
- The disciplinary actions that may be taken as a result of the outcome of the hearing.
- In cases of serious/gross misconduct that the outcome of the disciplinary interview could be dismissal

Managers will be expected to release staff that are required as witnesses for both sides.

An employee who cannot attend a meeting should inform the Disciplining Officer in advance whenever possible. If the employee fails to attend through circumstances outside of their control and unforeseeable at the time the meeting was arranged (e.g. illness) the School will arrange another meeting. If the employee fails to attend the re-arranged meeting, without good reason, the hearing may be held in their and/or their representative's absence and a decision may be taken at that hearing. If an employee's trade union representative or colleague cannot attend on a proposed date, the employee can suggest another date so long as it is reasonable and not more than five working days after the date originally proposed by the School. This five day limit may be extended by mutual consent.

Disciplinary Hearing

It is the responsibility of the Disciplining Officer to:

- Convene a disciplinary hearing as soon as is reasonably practicable. This should normally be within ten working days of notification of the outcome of the investigation, sooner if possible.
- Ensure that the necessary investigations have been carried out;
- Ensure that the meeting is conducted fairly, in line with this procedure;
- Ensure that all parties behave in an appropriate, professional and courteous manner towards all parties
- Ensure that the questioning of any complainant or witness is not carried out in an aggressive or confrontational way and that there is no behaviour which is harassing, intimidating or bullying
- Intervene to prevent any aggressive or intimidating questions and to warn the perpetrators about their behaviour and adjourn the hearing if necessary
- Intervene if questioning is repetitive or irrelevant to the allegations or if time is being wasted
- Ensure that, as far as possible, all relevant facts relating to the allegations come out at the meeting;
- Decide what action, if any, is reasonable and necessary based on the facts.

Any procedural issues raised during the hearing, should be recorded in the notes of the meeting, including any interventions by the Disciplining Officer to prevent questions outlined above (e.g. aggressive or intimidating questions). The reason for the intervention should be explained to all parties and recorded in the notes of the hearing. The Disciplining Officer and the senior member of the Human Resources Directorate, depending on the circumstances of the case, will make a decision as to how the disciplinary hearing will be structured. In most cases the employee and their representative will be present throughout the hearing and witnesses only present whilst they are giving evidence and being questioned.

In very exceptional cases, and with agreement of the Disciplining Officer and the senior member of the Human Resources Directorate, the evidence of witnesses, such as those involved in harassment cases, may be heard 'in camera' (i.e. without the employee and their representative being present). The employee and their representative will be provided with anonymous statements. In cases where witnesses are unwilling to provide anonymous statements or attend the hearing then their evidence could be discounted.

The Disciplining Officer will introduce those present and explain the reason for their attendance, the purpose of the hearing, the nature of allegations and the format of the hearing.

The case against the employee will be outlined by the line manager/investigating officer by the way of presentation of evidence and the calling of witnesses. A HR Adviser will be present, whose role is to support the line manager/investigating officer. Under normal circumstances, the HR Adviser

will not cross examine witnesses or present the case. However, the HR Adviser may as appropriate, question witnesses on points of clarification or raise points of procedure. In exceptional circumstances (e.g. where the line manager/Investigating Officer is unable to attend disciplinary hearing), the HR Adviser will present the case and cross-examine witnesses.

The employee and/or his/her representative will be allowed to present his/her case and respond to the allegations, calling any witnesses as required.

The Disciplining Officer may question both parties and their witnesses.

The Disciplining Officer will offer the opportunity for both parties to ask questions of each other.

If witnesses are called, they may only be present for the period of their statements and questioning.

If at any time evidence arises which needs further investigation then the hearing will be adjourned and reconvened later. In the event that further time is required for consideration of the case the employee will be informed of this decision both orally and in writing.

Once the Disciplining Officer is satisfied that both parties have had the opportunity to fully state their case, both sides will be asked to summarise their cases and then leave the hearing.

The Disciplining Officer and the senior member of the Human Resources Directorate will consider the case, and make a decision based on the balance of probability and, if applicable, the level of disciplinary action that should be taken.

The factors to be taken into consideration when making a decision are:

- The gravity of the case – is disciplinary action warranted and, if so, at what level?
- Any guidance offered by the Disciplinary Procedure and the Human Resources representative;
- Any precedents;
- The employee's disciplinary and service record;
- Any mitigating circumstances:

The hearing will then be reconvened, ideally on the same day, and the employee informed of the decision. In instances where this is not possible it will be reconvened within two working days. The employee will then, within three working days of the disciplinary hearing, be written to formally confirming the decision.

If the allegations have been upheld the letter will specify:-

- The level of disciplinary warning and the supporting reasons;
- The timescale that any warning will remain current;
- The improvement required of the employee;
- The time scale within which improvement must be achieved, if applicable;
- The consequence of further unsatisfactory performance or misconduct;
- In the case of dismissal, the notice due, details of outstanding payments and the last day of service. For summary dismissal, the effective date of termination;
- The right of appeal, the procedure and deadline for lodging an appeal.

On receiving the written letter of confirmation of the decision a letter of receipt will be required from the employee.

A copy of the letter will be placed on the employee's personal file, and then expunged after the stipulated time limit of the warning.

Appeal Hearing

See Part 4

Authority to Discipline

The four levels of disciplinary action (see Part 3) are designed to allow a case to progress through the normal management chain. Action may be initiated at any level, depending on the seriousness of the case. In most cases, disciplinary action will be in sequential steps up the level.

First line managers will have the authority to discipline at level 1 of the formal procedure. Levels 2, 3 and 4 of the procedure should be carried out by the next most senior manager who has not been involved at an earlier stage. Within departments with flatter reporting structures, it may not be possible for a different manager to hear each stage of the early parts of the procedure. In such cases, clarification should be sought from Human Resources.

Where a manager is directly involved in the substance of an allegation concerning cases of alleged misconduct, the case will be heard by another manager of the same or higher grade, from the same department or service area if possible.

Trade Union Representatives

The circumstances of any action to be taken against a representative of a recognised trade union will be notified to a full time officer of that union.

Part Three – Action available under the Formal Procedure

Levels of Disciplinary Action

There are four levels of disciplinary action available under the formal procedure:-

- Level 1 – Formal Oral Warning
- Level 2 – First Written Warning
- Level 3 – First & Final or Final Written Warning
- Level 4 – Dismissal or Summary Dismissal

Examples of the kinds of misconduct and poor performance normally regarded as falling into each category are set out below, though these are for illustrative purposes only and are not intended to be an exhaustive list. Managers may invoke the disciplinary procedure at any of the four levels depending on the seriousness of the allegations if such action is deemed to be reasonable in the circumstances. A senior member of the Human Resources Directorate will advise the manager accordingly and will have the authority to override the manager if necessary.

Level 1 – Formal Oral Warning

If, after a disciplinary hearing, a line manager finds that poor performance or minor misconduct has occurred, a formal oral warning will be issued. The employee will be advised of the reason for the warning, the improvements required and that action under Level 2 will be considered if there is no satisfactory improvement.

A note of the warning will be placed on the employee's personal file. A copy of the note will be given to the employee.

Level 2 – First Written Warning

This level applies to more serious acts of misconduct or poor performance, or to a repetition of misconduct or poor performance for which the employee has already received a formal oral warning.

The written warning will give details of the misconduct/poor performance, the improvements required and timescales. It will warn that action under Level 3 will be considered if there is no satisfactory improvement and will advise of the right to appeal.

Level 3 - First & Final or Final Written Warning

This level applies to acts of misconduct or poor performance so serious that the School would wish to dismiss the employee were they to be subsequently repeated. In such circumstances the warning would constitute a first and final written warning.

Level 3 also applies to repetition of an act of misconduct or poor performance for which the employee has previously received a written warning under Level 2. In these circumstances it would constitute a final written warning.

A final, or first and final, written warning will give details of the misconduct/poor performance, the improvements required, and timescales. It will then warn that dismissal under Level 4 of the procedure will be considered if there is no satisfactory improvement, and will advise of the right to appeal.

Level 4 - Dismissal and Summary Dismissal

There are two ways in which employment can be terminated under this procedure, dismissal and summary dismissal.

Dismissal

If conduct or performance is still unsatisfactory after a warning under Level 3 of the procedure, a further disciplinary hearing will be held. If it is apparent that the employee has failed to meet required standards, a dismissal will normally result.

The decision to dismiss will be made by the manager who is conducting the disciplinary hearing (this would normally be Dean of Faculty/Head of Service Area). The employee will be provided with a written explanation of the reasons for dismissal and their right to appeal against the dismissal by the hearing manager within *5 working days*.

The employee will receive pay in lieu of their contractual notice, and any other outstanding monies due to them. For calculation purposes, the employee's last day at work will be deemed to have been the date of the disciplinary hearing at which their dismissal was confirmed.

Summary Dismissal

See Appendix 1

Summary Dismissal applies to acts of gross misconduct only.

Because of the nature of alleged acts of gross misconduct, the employee will normally be suspended from work on full pay, whilst their line manager completes an investigation.

A disciplinary hearing will then be convened. If at that hearing the manager conducting the hearing finds that an act of gross misconduct has taken place, a decision to dismiss the employee summarily will be taken by the manager conducting the hearing. The employee will be summarily dismissed without notice, or pay in lieu of notice. The employee will be provided with a written explanation of the reasons for dismissal and their right to appeal by the hearing manager within *5 working days*. The last day of service will be the date of the disciplinary hearing at which their dismissal was confirmed.

Duration of Warnings

Written warnings will be retained on the employee's file, as will notes of Formal Oral warnings. However, for the purposes of further disciplinary action, they will have a specific duration, after which they will be removed from the employee's file.

The duration of warnings is as follows:-

- Formal Oral Warning – 6 months
- Written Warning - One Year
- First and Final Written Warning - Two Years
- Final Written Warning - Two Years

Exceptional Cases of Gross Misconduct Dismissals

The School reserves the right in some exceptional misconduct dismissals to use the modified disciplinary procedure in line with [ACAS Code of Practice](#) as follows:

Step 1

The employee is dismissed. The employee is sent a written explanation of the alleged misconduct that led to their dismissal – including evidence for this decision and notifying the employee of their right to appeal.

Step 2

If the employee wishes to appeal they must follow the appeal procedure as defined below.

Part Four – Appeals against Disciplinary Action

Employees have the right to appeal against any disciplinary action taken under the Disciplinary procedure, and to be represented at the appeal hearing by a trade union representative or work colleague.

The Purpose of the Appeal

An appeal hearing is the means by which the School, acting as a reasonable employer, provides those employees who wish to do so, with a consistent forum in which to present a case arguing that disciplinary action taken against them has been unfair.

If they are able to do this effectively, the appeal is the means by which such disciplinary action may be formally withdrawn or amended. If they are unable to do so, it is the means by which the fairness of the disciplinary action is confirmed and upheld.

Notification of Appeal Hearings

An employee wishing to appeal against disciplinary action taken against them should inform the Director of Human Resources in writing. They should state the full grounds of their appeal, the basis for the appeal (procedural, new evidence, severity of sanction etc) and provide all necessary supporting documentation. This should be done within seven working days of receipt of written confirmation of the disciplinary action.

An appeal hearing will normally be convened within ten working days of receipt of notification by the Director of Human Resources of the employee's decision to appeal. The employee will be notified of the date, time and place of the hearing and their right to representation at the hearing. A copy of the employee's written statement will be passed to the Disciplining Officer.

The Disciplining Officer will prepare a written response to the appeal, which s/he will present at the appeal hearing acting as Responding Manager. A copy of this statement will be sent to the employee not less than *five working days* prior to the hearing.

If the appellant wishes to be accompanied at the appeal, it will be their responsibility to provide Human Resources with the name of their representative, and to provide that person with all information and documentation relating to their appeal. This will include the date and time of the hearing.

Delays caused by the unavailability of the employee or their trade union representative/colleague to attend on given dates without good reason will not be acceptable grounds for postponing the hearing, provided the specified notice has been given. If they cannot attend on the suggested date then they must provide an alternative time within 5 working days of the suggested date.

Authority to Hear an Appeal

Appeals against disciplinary action will be normally be heard by an Appeal Officer who will normally be the more senior manager of the Disciplining Officer. This will usually be the Head of Academic Department/Centre or Manager of Service Section. In cases relating to more senior staff or whether senior managers have previously been involved in the case, the appeal may be heard by the Dean of Faculty/Head of Service Area or Director of Finance and Administration/Pro-Director.

Appeals against dismissal will be heard by a committee (Appeal Panel) comprising three managers at an appropriate level, appointed by the Director of HR, who have not previously been involved in the case where practicable. The Chair of such a panel will be the appropriate person identified in the paragraph above.

Roles and Responsibilities of Other Participants in an Appeal Hearing

The Employee

Having set out the written grounds of their appeal beforehand, the employee must concentrate on the issue that the appeal has been called to consider. They must not attempt to present all the facts of the case afresh.

The Employee's Colleague/Trade Union Representative

The role of the employee's colleague or trade union representative will be the same as at the original disciplinary hearing.

The Responding Manager

Having set out their written response to the employee's case beforehand, the role of the Responding Manager is to summarise why the employee was disciplined or dismissed, explaining why their decision was reasonable, given the circumstances. This will include the calling and cross-examination of witnesses as necessary.

The Human Resources Advisers

A senior member of Human Resources will advise those hearing the appeal on matters of procedure, Employment Law and best practice.

The HR Adviser who advised the Responding Manager during the disciplinary hearing, will also be present to support the Responding Manager. Under normal circumstances, the HR Adviser will not cross examine witnesses or present the case. However, the HR Adviser may as appropriate question witnesses on points of clarification or raise points of procedure. In exceptional circumstances (e.g. where the Responding Manager is unable to attend the appeal hearing), the HR Adviser will present the case and cross-examine witnesses.

The Clerk

An administrator will be provided solely to take the minutes of the hearing. They will be appointed by the Appeal Officer or Chair of the Appeal Panel and confidentiality will be ensured.

Conduct of Appeal Hearings

The Appeal Officer/Appeal Panel will consider the written submissions of the employee or his/her trade union representative or colleague, and the Responding Manager, together with any oral statements they might wish to make. Both sides may question each other and call and question witnesses in support of their case.

If witnesses are called, they may only remain at the hearing for the period of their evidence and questioning. At the end of the appeal, both sides will be given the opportunity to sum up.

A record of the proceedings will be given to the employee and they will be asked to sign this as a fair record of events. If they have any reservations about this record they will be invited to add their reservations to this record.

It is the responsibility of the Appeal Officer or Chair of Appeal Panel to:

- Ensure that the meeting is conducted fairly, in line with this procedure;
- Ensure that all parties behave in an appropriate, professional and courteous manner towards all parties
- Ensure that the questioning of any complainant or witness is not carried out in an aggressive or confrontational way and that there is no behaviour which is harassing, intimidating or bullying
- Intervene to prevent any aggressive or intimidating questions and to warn the perpetrators about their behaviour and adjourn the hearing if necessary
- Intervene if questioning is repetitive or irrelevant to the allegations or if time is being wasted
- Decide what action within the range of possible outcomes as listed below, if any, is reasonable and necessary based on the facts.

The appellant will receive written notification of the outcome of the appeal within *ten working days* of the hearing.

Outcomes

The available outcomes under this procedure are as follows:

Appeals Other Than Against Dismissal

- To allow the appeal and expunge the disciplinary action from the employee's record.
- To reduce the disciplinary action to a lower level.
- To dismiss the appeal.

Appeals Against Dismissal

- To allow the appeal and reinstate the employee.
- To allow the appeal and reinstate the employee giving them a written or final written warning or extending the final warning.
- To reject the appeal and uphold the dismissal.

Appendix 1 – Gross Misconduct

Certain breaches of the disciplinary rules are so serious that they constitute gross misconduct which gives rise to summary dismissal (without notice).

The following represents some examples of conduct, serious cases or instances of which might lead to an employee being immediately dismissed but this list is not exhaustive:

- Extreme violation of safety regulations, e.g. smoking in restricted areas, failure to report an serious accident/injury, etc.
- Intoxication from alcohol/non-prescribed drugs resulting in incapacity for work.
- Being in possession of illegal drugs.
- Fighting or causing a disturbance.
- Malicious damage or destruction of the School's, employees' or student's property.
- Serious bullying, harassment or abuse of a student, employee or visitor to the School.
- Transgressions under the School's Equality and Diversity Policy such as discrimination, racial abuse etc.
- Dishonesty, theft, fraud or misuse of School property including malicious damage to School property.
- Theft from, or violence to, other members of the School, students or members of the public, including malicious damage to their property.
- Obscene or indecent behaviour or sexual misconduct or the circulation of offensive material.
- Accessing or downloading unauthorised images via the internet.
- Serious misuse of any hardware, software, intranet, internet or email.
- Serious breach of security or of financial regulations and/or procedures.
- Serious breach of confidentiality or misuse of information including disclosure of confidential/personal information or any unauthorised circumstances or to unauthorised persons. This may include breach of the Data Protection Act 1998.
- Dishonest or fraudulent use of the School's name, time, facilities, services and/or suppliers for private use whether or not for financial gain.
- Extreme cases of unauthorised absenteeism.
- Serious negligence in duties resulting in any of the above.