

DISCIPLINARY POLICY AND PROCEDURE



This document sets out the University's disciplinary policy and procedure.

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Officer Responsible for Policy/ Procedures	Richard Billingham, Executive Director of Human Resources and Organisational Development
Consultation Process	Joint Union Consultative Committee
Date of Approval and Committee and/or Executive Officer	Joint Union Consultative Committee

1. PURPOSE AND SCOPE

This procedure has been agreed by the Joint Unions Consultative Committee in consultation with the University.

The University expects appropriate and acceptable standards of conduct from all its employees.

Disciplinary procedures are necessary so that employees who breach the rules of conduct expected by the University are treated fairly and consistently.

This policy will apply to all staff, except for academic staff defined in Section XXV of the Statutes of the University.

It is the responsibility of the manager to ensure that the procedure is followed and that staff are aware of this procedure. All staff can access the policy on the Aston University intranet. Employees involved in the Disciplinary Procedure will be provided with a copy.

2. WHAT IS MISCONDUCT?

Misconduct would not normally result in dismissal for a first offence. The severity and frequency of the breach will be taken into account when determining the level of warning.

The following list, which is neither exhaustive nor exclusive, gives some examples of the offences the University deems to be misconduct:

- Poor timekeeping
- Unauthorised absence
- Wilful failure to carry out a reasonable management instruction
- Failure to wear protective clothing/equipment provided
- Failure to adhere to University policies and procedures, rules and regulations
- Minor breach of health and safety
- Smoking in non-designated areas
- Misuse of University facilities
- Failure to disclose a criminal offence where it has an impact on role

3. WHAT IS GROSS MISCONDUCT?

Gross misconduct is a serious breach of the University's rules, and which amounts to a fundamental breach of trust and confidence between the employee and the University. The following list, which is neither exhaustive nor exclusive, gives some of the offences the University deems to be gross misconduct:

- Any form of assault or physical violence
- Abusive or threatening behaviour
- Acts of discrimination, bullying, harassment or victimisation of employees, students or visitors to the campus
- Theft of either University property or property belonging to members of staff
- Malicious damage to University property
- Deliberate falsification of documents, for example timesheets or expense claims
- Bringing the University into serious disrepute
- Deliberate and serious breach of financial regulations
- Serious breach of health and safety regulations

- Serious negligence
- Deliberate misuse of internet, email and other University facilities
- Incapacity to work due to being under the influence of alcohol or illegal substances
- Using or dealing in illegal substances on University premises
- Continued period of unauthorised absence
- Wilful Failure to disclose any potential conflict of interests
- Serious insubordination which could lead to severe consequences
- Deliberate breach of Aston University's 'Our Principles'
- Serious breach of Information Security legislation and policy

4. REPRESENTATION

Although employees do not have a statutory right to be accompanied at an investigation meeting, the University will allow employees to be accompanied by a work colleague or trade union representative wherever possible. There may be circumstances where this may not be possible, for example where evidence needs to be gathered urgently and without delay such as where the allegations could have a regulatory impact.

Employees have the statutory right to be accompanied by a work colleague or trade union representative of their choice at formal disciplinary and appeal hearings.

The representative may address the meeting/hearing, sum up the case, confer with the employee and respond to views expressed in the meeting/hearing on behalf of the employee; however they do not have the right to answer questions on behalf of the employee.

Witnesses do not have the right to be accompanied, however if requested, permission will not be unreasonably withheld.

5. WITNESSES

Employees can supply the names of any witnesses. The Investigating Officer / Decision Maker / Appeal Manager will confirm which witnesses are to be called. Witnesses are defined as people who have seen or heard events or know facts which a member of staff relies on as part of their case. Employees cannot call character witnesses.

Employees are responsible for making arrangements for their own witnesses to attend.

6. ATTENDANCE

The employee (and representative where applicable) must make every effort to attend the meeting/hearing, which will only be re-arranged in exceptional circumstances. If the chosen companion will not be available at the time proposed for the hearing it may be rearranged provided that the alternative time is both reasonable and not more than five working days (working days will usually be regarded as Monday to Friday) after the date originally proposed.

If the employee unreasonably fails to attend the re-arranged meeting/hearing, it may take place in the employee's absence. If the chosen representative cannot make the re-arranged meeting/hearing, a replacement must be sought. Individual circumstances will be taken into consideration.

7. NOTES

If the employee considers that the notes do not properly reflect the discussion, the employee has the right to propose amendments. Where these are agreed, they will be amended. If the proposed amendments are not agreed, the employee's comments will be attached to the record.

Notes will be kept with the case file and may be used as evidence in formal stages.

Audio and video recording of meetings is not permitted (other than as a reasonable adjustment for a disability).

8. EQUALITY AND DIVERSITY

The Investigating Manager / Decision Maker / Appeal Manager should check if there are any special arrangements e.g. support for a disability, that an employee or their representative may require to enable them to participate fully in the procedure.

The Investigating Manager / Decision Maker / Appeal Manager should understand that the employee may be concerned and anxious throughout the proceedings. Sources of support for employees include Occupational Health / Chaplaincy / relevant charities or agencies e.g. MIND.

9. INFORMAL PROCEDURE

Cases of minor misconduct will normally be dealt with informally by the employee's manager. The manager will normally speak to the employee in private and highlight:

- a) The nature of the concerns
- b) The expected standards of conduct
- c) Any necessary actions required for improvement
- d) Details of any support available
- e) Timescales and review dates
- f) Possibility of a referral to the formal procedures should this approach fail to resolve the issue, or repeated minor breaches of discipline occurs

Following a satisfactory outcome, the matter will be considered resolved.

It is advisable to confirm the outcomes of any discussions in writing to the employee.

The manager should retain notes of these informal discussions or meetings and provide a copy to the employee.

10. FORMAL PROCEDURE

Where the informal procedure 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.

a) Investigation

- The purpose of the investigation is to:
 - a) Establish the nature of the allegations
 - b) Gather evidence to enable a decision to be taken on whether there is a disciplinary case to answer
- The employee will be normally informed when an investigation is being carried out apart from in exceptional circumstances e.g. alleged fraud.
- The employee will be informed promptly of any allegation and an investigation will be carried out. Investigation will normally involve inviting the employee to an investigation meeting, although there may be some circumstances where the University will proceed directly to a formal disciplinary hearing.
- An Investigation Officer will be appointed.
- The investigation process will not be unduly delayed and where possible staff will be provided with 24 hours' notice of the investigation meeting or if the employee wishes to have a representative present up to five working days' notice will be provided. A member of HR will be present. A note-taker may be in attendance.
- Where appropriate, witnesses will be interviewed.
- The Investigation Officer will compile a report of their findings. The report will be sent to the Commissioning Manager who will determine what (if any) action is to be taken.
- The investigation report and all supporting documentation (i.e. notes) will be sent to HR.

b) Disciplinary Hearing

i. Before the hearing

- A decision maker will be appointed.
- The employee will be given at least five working days' notice in writing to attend a disciplinary hearing. Any documentation referred to in the hearing will be made available to the employee, as well as names of any witnesses who will be called at the hearing.
- The employee will be provided with details of the allegation(s), and an indication given as to whether the alleged misconduct is considered to be gross misconduct and therefore one potential outcome could be dismissal.
- The employee will be invited to make any written submissions, and /or provide documents and the names of witnesses who will support their case. Where submitted, documents should be received by the Decision Maker and HR at least two working days in advance of the hearing.

ii. During/after the hearing

- A member of HR will be in attendance and a note-taker may be present.
- The Investigating Officer may be called to present their findings.
- The employee or their representative will be given an opportunity to present his/her case, question witnesses and raise any issues s/he wishes to have considered.
- Prior to making a decision the hearing will be adjourned to consider all relevant information.
- If clarification or additional information is required, the employee will be advised of the new information and given a reasonable time to respond to it prior to a decision being made.

- If the Decision Maker is satisfied that all relevant information has been gathered and properly considered, the employee can be advised verbally after the hearing, of the outcome and any action to be taken.
- In any event the decision and any action will be confirmed in writing within at least five working days of the hearing.
- Whilst every endeavour will be made to comply with timescales, due to the complexity and or specific circumstances of cases, timescales may be extended by agreement. In such circumstances the employee will be advised of the reasons for the delay and an indication of expected timescales.
- The employee will be advised of their right to appeal against any decision.
- In the event that the decision is taken to dismiss the employee, the letter will include the reasons for dismissal and the date the employment will terminate, together with details of any notice arrangements.

11. SUSPENSION

If considered appropriate and necessary, an employee may be suspended from their duties, on full pay, while an investigation is undertaken. Suspension will normally be used in cases of potentially serious or gross misconduct and may be considered in the following situations:

- To provide the opportunity for a full investigation to be undertaken
- Where there are grounds to believe that the employee may intentionally disrupt the day-to-day work in the School/Support Department and/or not work to agreed standards during the course of the investigation
- Where the presence of the employee presents a risk to themselves or to the welfare of other employees, or may increase the likelihood of further misconduct
- Where there is a serious risk to the University's reputation or business in allowing the employee to remain at work during the investigation.

The suspension will be confirmed in writing to the employee.

The employee will not be allowed onto University premises (or if so will be accompanied), or contact with colleagues, students or customers or other external University contacts without prior consent of the manager. Email facilities and systems access to the University will also be suspended. Arrangements will be made to access systems to allow an individual to prepare their case.

The employee will be required to cooperate fully with any investigation and to be available to meet during normal office hours. Annual leave requests and sickness should be submitted/reported in the usual way.

Suspension does not imply guilt or blame and will be for as short a period as possible. Suspension is not considered to be a disciplinary action. The ongoing need for suspension will be regularly reviewed to determine if appropriate and necessary. Alternative options will be considered, for example, redeployment to another building or off site.

12. COOLING OFF PERIODS

There may be occasions where managers need to address a situation at work quickly. This could include asking any employees involved in the situation to stop work and go home for the day to allow a 'cooling off period' before a decision is taken on how to handle the matter. This is not classed as suspension from work or annual leave and will be paid time off which does not have to be made up afterwards.

13. CRIMINAL OFFENCES

Conviction or being charged with a criminal offence outside the workplace may be deemed as misconduct or gross misconduct depending on the nature of the offence, and impact on the employee's ability to do the job. Staff should notify their line manager wherever possible. Otherwise a member of staff should notify their Head of Department or Executive Dean. A risk assessment process will be carried out in conjunction with HR to assess the impact on the role requirements.

14. FORMAL OUTCOMES

14.1 Warnings

Depending on the severity and circumstances of the case, the Decision Maker may apply, at their discretion, either:

Stage	Disciplinary Action	Expiry Period
1	First Written Warning (which may include suspension of the next incremental progression along the scale)	6 months
2	Final Written Warning* (which may include suspension of incremental progression along the scale for a period of one year from the date of the warning)	12 months

*In circumstances where the conduct is deemed not serious enough to warrant a dismissal the warning may be both a first and final warning

Existing active warnings will be taken into account when deciding the appropriate level of warning to give.

The warning issued will state the reason(s) for the warning, how long it will remain live on the file, and if appropriate the improvements required and timescale for achieving this, outlining any support the University will provide. It will also confirm that further disciplinary action will follow if the problem is not satisfactorily rectified or there is further misconduct.

On expiry of the warning, providing no further unacceptable conduct has occurred this warning will be marked as 'spent' and be disregarded for the purposes of any subsequent disciplinary action that may occur. The 'spent' warning will however remain on the employee's file.

14.2 Dismissal

In cases where it is concluded that gross misconduct has taken place, the Decision Maker may summarily dismiss without notice, with notice or with payment in lieu of notice.

In cases of repeated misconduct, the Decision Maker may dismiss with payment of lieu of notice (unless it is concluded that the offence constitutes gross misconduct in which case the employee may be summarily dismissed).

14.3 Alternative action to dismissal

Gross misconduct cases may not always result in dismissal. Depending on the circumstances of the case and any mitigating factors, the Decision Maker may issue the following:

- Demotion and/or transfer
- Final written warning (including suspension of incremental progression along the scale for a period of one year from the date of the warning).

15. APPEALS

- Employees have the right to appeal against any formal action under the Disciplinary Procedure, except for a decision following an appeal hearing.
- Appeals must be lodged in writing within 10 working days of receipt of the written confirmation of the disciplinary outcome, to the Director of HR. The employee is required to provide grounds of their appeal, and any relevant details.
- Appeals can be made on the following grounds:
 - a) There is new evidence not already considered. The employee should say why it was not produced at the original hearing.
 - b) The severity of the outcome.
 - c) The correct procedure was not followed.
 - d) The decision was unfair because the evidence did not support it.
- An Appeal Manager(s) will be appointed and will have had no prior involvement in the case. The appeal manager will be of an equivalent or more senior grade than the decision maker.
- The employee will be given at least five working days' notice to attend an appeal hearing.
- If the employee has any further written submissions, and/or documents to provide, these should be received by the Appeal Manager and HR at least two working days in advance of the meeting.
- Any documentation referred to in the appeal will be made available to the employee, at least two working days in advance of the meeting.
- A member of HR will be present and a note-taker may also be present.
- The Decision Maker may be called to explain the decision being appealed.
- On appeal, the Appeal Manager will have the power to uphold, overturn or reduce the penalty imposed. The decision is final.
- The appeal decision is final and shall be confirmed in writing to the employee within five working days of the hearing. A copy of the notes will be provided if required.
- Whilst every endeavour will be made to comply with timescales, due to the complexity and/or specific circumstances of cases, timescales may be extended. In such circumstances the employee will be advised of the reasons for any delay.

16. ROLES AND RESPONSIBILITIES

Name	Definition
Employee	The person who is the subject of the disciplinary action
Representative	The person who the employee appoints as their 'support' at formal meetings (see Section 6)
Witness	People who have seen or heard events or know facts which a member of staff relies on as part of their case
Manager	The person that the employee reports to i.e. the immediate line manager
Commissioning Manager	The person who manages the investigation but is not directly involved. This person appoints the investigation officer.
Investigating Officer	The person appointed to be responsible for an investigation into the alleged misconduct
Decision Maker	The person responsible for chairing any disciplinary hearing and for making the disciplinary decision. The Decision Maker should be more senior than, or equivalent to, the Investigating Manager
Appeal Manager(s)	The person who chairs any appeal hearing and for making the appeal decision. The Appeal Manager should be more senior than, or equivalent to, the Decision Maker.

HR, namely the HR Advisor for the School/department, should be consulted before appointing an Investigating Officer/Decision Maker/Appeal Manager(s). There will be a representation of HR present at each formal stage of the process and at each hearing.

17. LEVELS OF AUTHORITY

Action	Manager Level	HR Level
Suspension	Head of Administration / Department or nominee	Associate Director of HR / HR Manager or nominee
Informal	Line Manager/ Manager or nominee	N/A
Action less than dismissal	Manager or nominee	HR Business Partner
Dismissal	Head of Administration / Department or nominee	Associate Director of HR or nominee
Appeal for action less than dismissal	Deputy Dean / Head of Department or nominee (who has had no prior involvement with the case)	Associate Director of HR or nominee
Appeal for dismissal	Executive Dean / Senior Manager* or nominee and one other Senior Manager*	Executive Director of HR & OD or nominee (who has had no prior involvement with the case)

	(who has had no prior involvement with the case) And a lay member of council	
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*Senior Manager will normally be Grade 10 or above following agreement from Associate Director of HR. When determining the manager level, seniority of both the manager and the individual under consideration will be taken into account when determining the appropriate level of decision maker.



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2020
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