

May 2016

## **DISCIPLINARY PROCEDURE**

### **1. SCOPE**

- 1.1 Middlesex University is committed to professional management and to equitable, fair and practicable disciplinary procedures.
- 1.2 These disciplinary procedures apply to all staff employed by Middlesex University other than the Vice-Chancellor, Executive, the Clerk to the Board of Governors, senior staff as defined by the Board of Governors, staff employed on casual contracts, self employed staff working at the University and consultants.

### **2. PURPOSE**

- 2.1 The aim of this disciplinary procedure is to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary.
- 2.2 It is our policy to ensure that any disciplinary matter is dealt with fairly and quickly and that steps are taken to establish the facts.

### **3. OPERATING PRINCIPLES**

- 3.1 The existence of this procedure is not to be taken as interfering in any way with the fact that there will be circumstances where it is more appropriate for a line manager to raise informally with an employee a matter which gives cause for concern without recourse to these formal procedures and without a specific note being made. In these circumstances an employee shall have every opportunity to discuss the apparent deficiency/cause for concern.
- 3.2 All matters relating to the application of these procedures will be confidential.
- 3.3 Standards for work performance and the University's [Code of Conduct](#) shall be made explicit to all staff members.
- 3.4 In circumstances which relate to an individual's inability to perform work within his/her contract of employment, the [Managing Underperformance](#) procedure will be used. In circumstances which relate to an individual's sickness absence the [Sickness Absence and Ill Health](#) policy should be used. If an employee refuses to co-operate with these procedures, then that would be considered a disciplinary issue.

### **4. ROLE OF HR**

- 4.1 HR must be consulted on all formal disciplinary matters. HR will advise the line manager (the "Investigating Manager") on investigatory protocols; may attend investigatory meetings and will attend any hearing which may lead to formal disciplinary

action. HR shall be responsible for ensuring that disciplinary procedures operate equitably throughout the University, that time limits set for disciplinary procedures are followed and that no arbitrary local variations exist which may lead to unfair treatment of any individuals.

## **5. DEFINITION OF MISCONDUCT/GROSS MISCONDUCT**

- 5.1 Please see Appendix 1.

## **6. INVESTIGATIONS**

- 6.1 All potential disciplinary matters shall be properly investigated as necessary without reasonable delay to establish the facts of the case.
- 6.2 The investigation will usually be carried out by the employee's immediate line manager (the investigating manager), unless the line manager is implicated or there is a conflict of interest. The investigating manager will be advised by HR as appropriate. The investigating manager must inform their Dean/Director that an investigation is taking place. If the investigating officer is the Dean/Director they must inform their Executive line director.
- 6.3 The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve an investigatory meeting and taking statements from the employee and any witnesses, and/or collating evidence. Employees must cooperate fully and promptly in any investigation.
- 6.4 Investigatory meetings are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.
- 6.5 The investigating manager will then present the results of their investigations together with their conclusion of whether a disciplinary hearing is appropriate to their Dean/Director. Where the investigating manager is the Dean/Director then the results of the investigation will be sent to their Executive line director. If the Dean/Director/Executive concludes that there is no case to answer the investigating manager will inform the employee in writing. If the Dean/Director/Executive concludes that a disciplinary hearing is appropriate HR will convene a hearing.

## **7. SUSPENSION**

- 7.1 Suspension is not a disciplinary sanction. Suspension may be used where there are allegations of gross misconduct and/or urgent cause relating to the University's aims and objectives which could potentially amount to gross misconduct. Suspension will allow time to ensure appropriate investigation of the allegations. Such investigations will be conducted without avoidable delay. Suspension shall be on full pay i.e. that which the employee would have normally received, excluding non contractual payments such as casual overtime, had he/she not been suspended. The formal notification of, and the reasons for, suspension will be given to the individual. No discussion of the detail of disciplinary allegations will occur at the time of suspension.
- 7.2 The Vice-Chancellor (or person acting in his/her absence) must authorise all suspensions. A suspension will be reviewed by the University on an ongoing basis every 10 working days to determine whether its continuation is necessary. The suspended employee will be formally notified (in writing) of the outcome of any such review.

## **8. NOTICE OF DISCIPLINARY HEARING**

8.1 Employees will be required to attend a disciplinary hearing where:

- following investigation (as set out in section 6), there are grounds to believe that there has been misconduct which may merit a formal sanction; or
- there are grounds to believe that there has been a recurrence of unsatisfactory conduct; and
- Following earlier discussions of an informal nature or following a previous disciplinary hearing the required improvement or change in behaviour has not occurred.

8.2 The employee will be given 5 working days' written notice<sup>1</sup> to attend a disciplinary hearing. They will also be informed in writing of the allegations against them and the basis for those allegations. The written notice of the hearing will normally include:

- a summary of relevant information gathered during the investigation;
- documents which will be used at the disciplinary hearing;
- witness statements which will be used at the hearing, except where a witness's identity is to be kept confidential, in which case as much information as possible will be given while maintaining confidentiality.
- a copy of this procedure

It will also advise:

- of the possible outcomes, e.g. if the matter is gross misconduct, advise that this may lead to summary dismissal.
- that the employee may be represented at the hearing.
- who will chair the hearing, and who will present the management case (plus any witnesses they intend to call).
- that the employee may provide evidence in advance and call witnesses

## **9. RIGHT TO BE ACCOMPANIED**

9.1 The employee will be advised by the University of their right to be accompanied at the disciplinary hearing. The chosen companion may be a fellow University employee, a trade union representative, or an official employed by a trade union. If the trade union representative is not an employee of the University they must be certified by their union as being competent to accompany a worker. Middlesex University shall encourage an individual to be accompanied by an official from one of the recognised unions (either UCU or UNISON), but s/he is free to choose an official from any trade union whether or not the trade union is recognised. . The choice of companion may be turned down if it is felt that s/he may prejudice the hearing or may have a conflict of interest. If the companion is unavailable for the scheduled hearing date, the hearing may be postponed for up to five working days after the original date.

9.2 The companion will be allowed to address the hearing to 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 companion does not, however, 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.

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<sup>1</sup> The term working days does not include the employee's pre-booked and approved annual leave.

- 9.3 Under the ACAS Code the employee does not have a right to be accompanied at investigatory meetings. However, the University will grant requests where this does not unreasonably delay the scheduled meeting.

## **10. DISCIPLINARY ACTION AGAINST AN ELECTED TRADE UNION OFFICER**

- 10.1 The University recognises the special position of recognised trade unions and early discussion in advance of disciplinary action against an accredited Trade Union representative (who is on the list of accredited representatives held by management) should take place with a full-time official. Disciplinary allegations against officers will be dealt with at a hearing at which a permanent/full-time official of the appropriate union is reasonably able to accompany the individual concerned.

## **11. THE DISCIPLINARY HEARING**

- 11.1 The employee should inform the Chair immediately if s/he or his/her companion cannot attend the hearing and an alternative time within the following five days will be arranged. Failure to attend a hearing without good reason may be treated as misconduct in itself. If an employee fails to attend without good reason, or is persistently unable to attend, the hearing will go ahead in his/her absence using the available evidence.
- 11.2 A disciplinary hearing will usually comprise: the Chair, an HR adviser, the Investigating manager (who is usually the line manager) the member of staff against whom the allegation is made, and their companion (another University employee or a trade union official if they have chosen one), and a note-taker. Witnesses may also be called by the employee or the Investigating Manager.
- 11.3 The Investigating Manager will be invited to go through the allegations against the employee and the evidence that has been gathered. The employee will be able to respond and refer to any evidence of his/her own. His/her companion may make representations and ask questions, but should not answer questions on the employee's behalf. The employee and companion may confer privately at any time during the hearing.
- 11.4 The Investigating Manager and employee may ask relevant witnesses to appear at the hearing, provided advance notice is given to arrange their attendance. The employee will be given the opportunity to respond to any information given by a witness. The disciplinary hearing may be adjourned if further investigation is required in the light of any new points being raised at the hearing, or if further clarity is sought.
- 11.5 The Chair may invite both sides to sum up and will then adjourn to consider whether a disciplinary penalty is appropriate. Wherever possible the Chair will reconvene the meeting on the same day to give their decision.
- 11.6 The Chair will write to the employee within five working days of the disciplinary hearing providing a brief summary of the case and give justification for coming to the final decision. The employee should also be advised of their right of appeal. Where possible the Chair will also explain this information to the employee in person.

## **12. OVERLAPPING COMPLAINT AND DISCIPLINARY CASES**

- 12.1 Where an employee raises a complaint during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the complaint. Where the complaint and disciplinary cases are related it may be appropriate to deal with both issues concurrently.
- 12.2 If conduct, absence and/or performance problems are happening at the same time, the line manager must deal with all issues. They can be discussed at the same formal meeting and sanctions can be issued under all of these procedures if necessary and any further action to address the issues should be dealt with under the appropriate policy and procedure.

## **13. DISCIPLINARY PENALTIES**

### **FORMAL WARNINGS**

All formal warnings will be confirmed in writing and will state the details of the complaint, any improvement required and any time scale within which an improvement is expected. The written confirmation will warn about the possible consequences if there is a failure to improve or where there is a further incident warranting disciplinary action. In the case of a Final written warning this will warn that further disciplinary action could lead to dismissal.

#### **1. Oral Warning**

For minor infringements of University rules, the procedure will be for an oral warning to be issued in the first instance, and for that warning to be effective for twelve months.

#### **2. Written Warning**

In instances other than minor breaches of University rules the issuing of a written warning may be appropriate without prior oral warning. If during the currency of an oral warning an individual commits a further disciplinary offence then, following a disciplinary hearing, a written warning may be issued. The written warning shall be effective for twelve months.

#### **3. Final Written Warning**

In instances of serious breach of University rules it may be appropriate for a final written warning to be issued without prior warnings.

If during the currency of an oral or written warning an individual commits a further disciplinary offence, then following a disciplinary hearing, a final written warning may be issued.

A final written warning shall normally be effective for twelve months and further breach (es) during this period may, following a disciplinary hearing, lead to dismissal. In certain circumstances, warnings may be subject to review and extension. Any such review will be carried out by either the chair of the original hearing (or if this is not possible someone of similar standing) and there must be good and proper reason for any extension, which will be specified in writing to the member of staff concerned.

## DISMISSAL

In some cases the decision to dismiss may be the outcome of an unsatisfactory disciplinary record over a period of time, in which no (one) particular matter warrants immediate dismissal. In such cases the formal disciplinary procedure will have been followed and an offence during the twelve months currency of a final warning may lead to a further disciplinary hearing which may result in dismissal. Where a disciplinary dismissal is a possible outcome the hearing will always be chaired by either a member of Executive, a Dean or a Director. Such a dismissal will be with notice or pay in lieu of notice.

### DISMISSAL FOR GROSS MISCONDUCT

In exceptional circumstances a member of Executive, a Dean or Director may dismiss any member of staff if the circumstances are such that he/she is entitled to do so by virtue of the gross misconduct of that member of staff (see Appendix 1). This dismissal will only take place after a full investigation and hearing has taken place. The dismissal will take effect immediately with no notice.

## 14 APPEALS

14.1 A member of staff against whom disciplinary action has been taken shall have the right of appeal. When submitting an appeal the member of staff is required to state in writing the basis which must relate to the following:

- A belief that the manager did not follow the relevant **procedure** properly, and that this significantly affected the decision. (A small procedural flaw that would not have significantly influenced the decision is not sufficient grounds for upholding an appeal).
- A belief that the manager made a decision about a significant **fact**, which it wasn't reasonable for him or her to take. (For example, where a manager unreasonably decides that a particular event must have taken place.)
- A belief that the **outcome** of the hearing was one which no reasonable person could have come to. (The fact that the employee disagrees with the manager's outcome is not a sufficient ground for upholding an appeal.)
- The fact that **new evidence** has come to light, which the employee could not have introduced at an earlier stage, and which could have a significant effect on the decision taken. (Employees cannot present new evidence which was previously available and they could have presented at an earlier stage.)

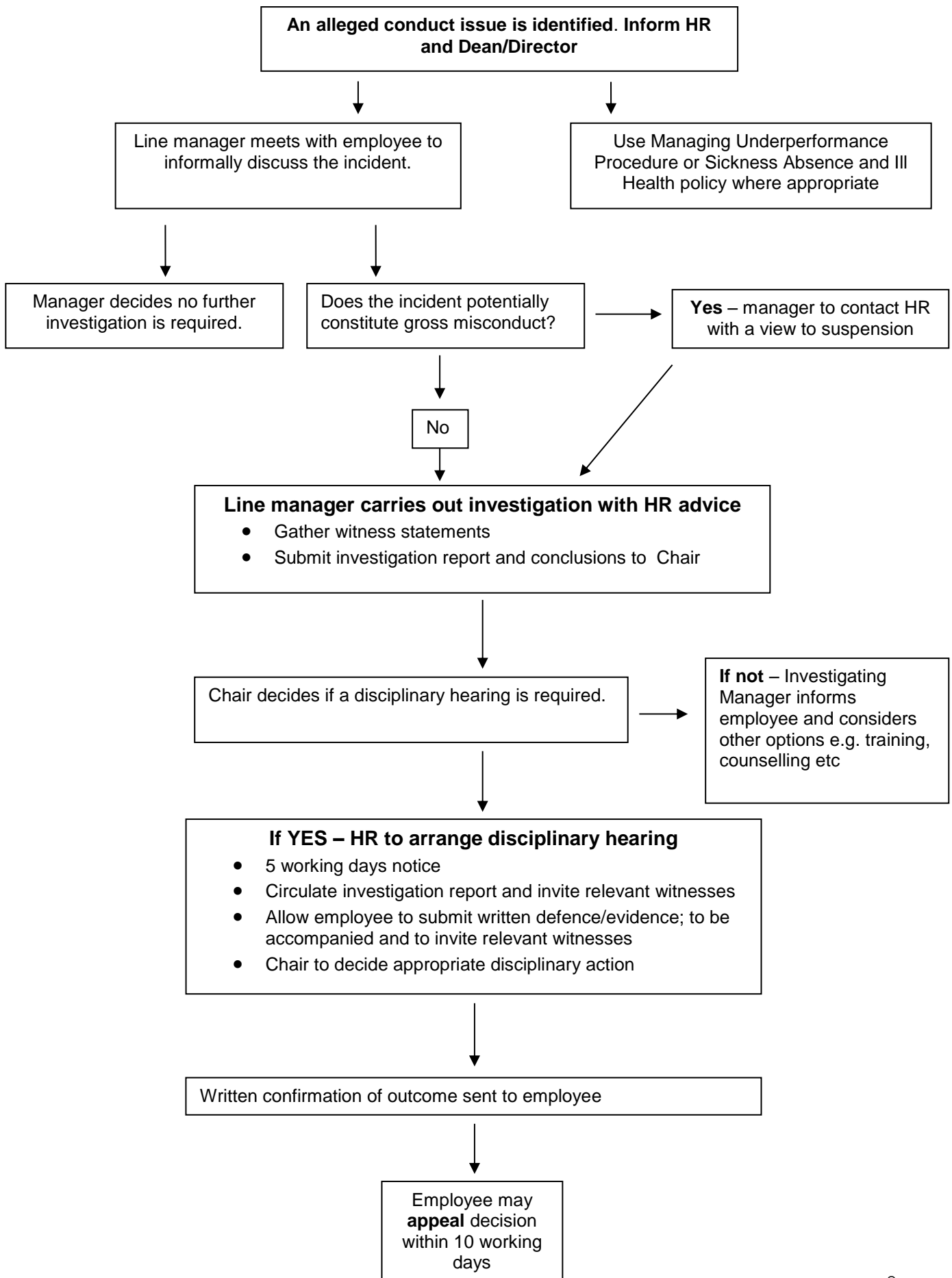
14.2 In the case of dismissal, the [Appeal Against Dismissal procedure](#) must be followed.; in all other cases appeals shall be heard by the immediate line manager of the chair of the original hearing (or, where this is not possible by an appropriate substitute of the same level) and, together with an Human Resource Services advisor will be independent of the original hearing. All disciplinary appeals must be lodged in writing within 10 working days of receipt of written confirmation of the disciplinary action. Appeals will be heard as soon as is reasonably practicable (see scheme of delegation below).

## 15 SCHEME OF DELEGATION FOR CHAIRING HEARINGS AND APPEALS AGAINST DISCIPLINARY DECISIONS

| <u>Level of Warning</u> | <u>Chair of Hearing</u>                          |
|-------------------------|--|
| Oral                    | Member of Executive/Dean/Director/Senior Manager |
| Written Warning         | Member of Executive/Dean/Director                |
| Final Written Warning   | Member of Executive/Dean/Director                |
| Dismissal               | Member of Executive/Dean / Director              |
| <u>Appeals against</u>  | <u>Chair of Appeals Hearing</u>                  |
| Oral Warning            | Member of Executive/Dean/Director                |
| Written Warning         | Member of Executive/Dean/Director                |
| Final Written           | Member of Executive                              |
| Dismissal               | 2 x Executive Members and HR Director            |

*This Discipline Procedure has been developed through consultation and agreement with the recognised trade unions in accordance with the principles set out by the Board of Governors. It constitutes part of the individual's contract of employment and specifies certain rights and responsibilities. This procedure was agreed by Executive at its meeting on 8 October 2009. It was reviewed in April 2012 to reflect changes in the Articles of Government and the Appeals Procedure.*

### Flowchart showing disciplinary procedure





## DEFINITION OF MISCONDUCT/GROSS MISCONDUCT

No list of misdemeanours/offences can be exhaustive and judgement as to whether an instance of misconduct or gross misconduct has occurred will rest with University Management with advice from Human Resources. The notes below are given as a general guide:

### Misconduct

Breaches of the University's [Code of Conduct](#); failure to meet performance standards; poor timekeeping; poor attendance record; failure to declare a criminal conviction (but not offences which have been dealt with by prompt payment of a fixed penalty notice or a penalty notice for disorder) etc will be regarded as examples of "misconduct" and will normally be dealt with within the formal warning mechanisms as set out in the disciplinary procedure. Misconduct may lead to a verbal, written or in more serious cases a final written warning. If conduct does not improve following a verbal or written warning, it may result in a final written warning or even dismissal.

### Gross Misconduct

Gross misconduct is the kind of act or behaviour that would undermine the trust and confidence which is the basis on which all of our contracts of employment are made. Breaches which are considered to constitute gross misconduct may result in summary dismissal without notice following a formal hearing. Examples of gross misconduct are as below. This list is not exhaustive and is intended as a guide only, each case will be decided on its merits, any decision will take account of the facts of the case and any relevant mitigation.

- Theft
- Fraud
- Deliberate falsification of records
- Failure to declare an unspent criminal conviction either at the time of applying for a post or, once in employment, within 2 working days of receiving a criminal conviction and where that criminal conviction has an impact on the role.(Please see Disclosure of criminal record policy).
- Deliberate disregard in following University procedures and or guidelines when sponsoring, recruiting and or paying migrant workers e.g. Tier 4 students, Tier 2, etc.
- Misuse of the Home Office Sponsor Management System
- Fighting
- Assault on another person or threatening physical violence
- Deliberate and serious damage to University, other employees, students or visitors property
- Serious misuse of University property or its name
- Bringing the University into serious disrepute
- Serious negligence which causes unacceptable loss, damage or injury
- Serious breaches of occupational health and safety procedures including endangering others in their work or deliberately damaging or neglecting safety equipment.
- Act of Incitement or act of discrimination on the grounds of sex, race, religion, colour, ethnic origin, disability or sexual orientation.
- Bullying or Harassment of students or colleagues
- Deliberate breach of duty regarding disclosure of confidential information except where this is subject to the provisions of the Public interest Disclosure act 1998.

- Commercial activity directed against the University's financial interest (refer in the case of academic staff and Senior Management to the exclusivity clause within the appropriate handbooks.)
- Serious breach of the University's [Computer Use policy](#).
- Being under the influence of alcohol or non-prescribed drugs while at work.
- Serious insubordination
- Serious breach of confidence
- Serious breach of contract in relation to the terms as set out in the contract of employment.

## **Frequently Asked Questions**

Q1. How do I know if something is potentially misconduct or gross misconduct?

A. Use the guide above in Appendix 1. If you are still unsure consult your HR Business Partner.

Q2. If the misdemeanour is potentially gross misconduct do I have to automatically suspend the employee?

A. No. Suspension should only be imposed after careful consideration and with the permission of an Executive Member. With advice from HR you will need to weigh up the risk to the University or to others if the employee remains at work while the investigation is carried out. Suspension is usually considered for example where relationships have broken down, or where there are risks to an employee's or the company's property or responsibilities to other parties. Exceptionally you may wish to consider suspension with pay where you have reasonable grounds for concern that evidence has been tampered with, destroyed or witnesses pressurised before the meeting.

Q3. Can I discipline a member of staff for underperformance?

A. No. Where it is established that an employee is not capable of performing to the required standard, this will be managed through the Managing Underperformance Policy & Procedure. However, where poor performance is due to carelessness, a failure to observe working practices that are generally accepted to be safe, lack of application or motivation, inattention to work matters, or any other reason related to the employee's conduct, then it will be handled under the disciplinary procedure. This will include situations where it has been determined that the employee is capable of undertaking the task but knowingly fails to perform the activity.

Cases of negligence will also normally be dealt with under the disciplinary procedure but, during the investigation, it may be decided that issues are best dealt with under the underperformance procedure. Negligence is defined as lacking attention, care or concern. This could include one error that has serious consequences. It includes habitually neglecting duties, responsibilities etc. HR will be able to offer advice on a case-by-case basis.

If an employee refuses to co-operate with the management of performance issues, then that would be considered a disciplinary issue. Failure to meet standards through deliberate refusal to comply is also a disciplinary issue, and not a performance issue.

Q4. How should I deal with minor misconduct issues?

- A. The resolution of issues relating to less serious misconduct, should, where appropriate, involve the use of informal processes without recourse to the formal disciplinary procedure. Where there are possible misconduct issues, managers are expected to explore these and discuss with the employee proposed solutions to resolve the matter to the mutual benefit of the University and the employee. As part of this process of informal resolution, when confirming the way ahead with an employee, managers may advise that the limits of acceptable behaviour have been breached and that further misconduct may lead to formal action under the disciplinary procedure. Where such advice is given, it will be confirmed in writing and a copy retained by the manager, (but not placed on an individual's personal file). This record will only be relevant in the event that formal action subsequently becomes necessary.