



**BISHOP GROSSETESTE UNIVERSITY**

**Document Administration**

<b>Document Title:</b>	Disciplinary Policy, Procedure and Guidance
<b>Document Category:</b>	Policy, Procedure and Guidance
<b>Version Number:</b>	2
<b>Status:</b>	Approved
<b>Reason for development:</b>	Minor update
<b>Scope:</b>	This procedure applies to all Staff
<b>Author / developer:</b>	HR Adviser
<b>Owner</b>	Head of HR
<b>Assessment:</b> (where relevant)	Tick relevant assessments <span style="float: right;">Tick if not applicable</span> <input checked="" type="checkbox"/> Equality Assessment <input type="checkbox"/> Legal <span style="float: right;"><input type="checkbox"/></span> <input type="checkbox"/> Information Governance <span style="float: right;"><input type="checkbox"/></span> <input type="checkbox"/> Academic Governance <span style="float: right;"><input type="checkbox"/></span>
<b>Consultation:</b> (where relevant)	<input checked="" type="checkbox"/> Staff Trade Unions via HR <input type="checkbox"/> Students via Bishop Grosseteste University Students' Union <input type="checkbox"/> Any relevant external statutory bodies
<b>Authorised by (Board):</b>	Dec 15 revision; Jan 16 JCC (final ratification Feb 16 CLT)
<b>Date Authorised:</b>	January 2016
<b>Effective from:</b>	January 2016 (last version February 2015)
<b>Review due:</b>	December 2018
<b>Document location:</b>	University Website
<b>Document dissemination / communications plan</b>	All Staff via upload to SharePoint
<b>Document control:</b>	All printed versions of this document are classified as uncontrolled. A controlled version is available from the University Website.

**BISHOP GROSSETESTE UNIVERSITY**  
**DISCIPLINARY POLICY, PROCEDURE AND GUIDANCE**

Responsibility for updating the document is with Human Resources.

This Policy takes account of the ACAS Code of Practice which came into force on 6 April 2009. It is compatible with the principles of the Instrument and Articles of Government of the University effective from 1 April 2010 which are available from the Library and BGU website.

Manager responsible for policy	Head of HR
Forum for initial approval (as delegated by the Governing Body)	SLT
Date revised/updated	February 2015; January 2016
Equality Impact Assessment Completed	April 2010; January 2016

Any records made during this procedure shall be kept in accordance with the Data Protection principles which are set out in the Data Protection Act 1998 and its subsequent revisions. The University and its staff or others who process or use personal information must ensure that they follow these principles at all times. A copy of the University Data Protection Policy is available on the BGU website.

## BISHOP GROSSETESTE UNIVERSITY

### DISCIPLINARY POLICY, PROCEDURE AND GUIDANCE

	<b>Page</b>
1. Purpose and scope	3
2. Principles	3
3. Procedure	3 – 4
4. Gross misconduct	4 - 5
5. Raising an issue	5
6. Determining major and minor issues	5 - 6
7. Suspension	6
8. The investigation process	6 - 8
9. The Hearing	8 - 9
10. Appeals	9 - 11

## **1. Purpose and scope**

BGU wishes to ensure that fair and effective arrangements exist for dealing with disciplinary matters. The procedure is designed to help and encourage all employees to achieve and maintain the required standards of conduct.

## **2. Principles**

Informal action will be considered where appropriate to resolve problems.

No disciplinary action will be taken against an employee until the case has been fully investigated.

Where formal action is considered the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made at a disciplinary hearing.

Reasonable notice of any meeting will be given.

Employees will be provided, where appropriate, with written copies of evidence and any witness statements in advance of a disciplinary meeting.

Records relating to disciplinary matters would be classed as personal data within the meaning of the Data Protection Act and will be treated in accordance with the University Data Protection Procedure, a copy of which is available on the website.

At all stages of the formal procedure employees will have the right to be accompanied by a trade union representative or work colleague.

No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty may be dismissal without notice or payment in lieu of notice.

An employee will have the right to appeal against any disciplinary action.

The procedure may be implemented at any stage if the employee's alleged misconduct warrants this.

Prior to taking any disciplinary action in the case of an employee who is an accredited representative of a trade union, consultation will take place with an official employed by the union.

## **3. Procedure**

### **3.1 Informal stage**

Minor lapses from acceptable standards of conduct will usually be dealt with by the employee's line manager. This will normally result, if warranted, in an informal reprimand which will not be recorded on the employee's personal file. However, the manager will note all instances of this type of action in writing, as a series of such occurrences may require action under the formal disciplinary procedure.

### **3.2 First written warning**

A first warning will be given for misconduct if conduct does not meet acceptable standards. This will be in writing and will set out the nature of the misconduct and the change in behaviour required. The warning will inform the employee that a final written warning may be considered if there is a further offence of misconduct or no satisfactory improvement or change during the period specified. There will be a right of appeal.

A record of the warning will be kept on file but will be disregarded for disciplinary purposes after a period as specified of 6 to 12 months.

### **3.3 Final written warning**

If an offence is sufficiently serious or if the employee commits a further offence of misconduct a final warning may be given. This will be in writing and give details of the complaint, the improvement required and the timescale. It will also warn that a failure to improve or change behaviours may lead to dismissal and will refer to the right of appeal.

A copy of the final warning will be kept on the personal file but will be disregarded for disciplinary purposes after a period as specified of 12 to 18 months.

### **3.4 Dismissal**

If there is still further misconduct or conduct is sufficiently serious, the final stage in the procedure may be dismissal or some other action short of dismissal (such as demotion). Dismissal notice will be issued in writing with the reasons for the dismissal, the date on which employment will end and the right of appeal.

Dismissal decisions for holders of senior posts including the Vice Chancellor may only be taken by the University Council. The Vice Chancellor will be responsible for preparing recommendations for consideration by the Council members for the suspension and dismissal of the holders of senior post. (Senior post holders are defined as any member of SLT and other holder of such senior posts as the Council members may determine from time to time).

The Vice Chancellor may dismiss any member of staff other than the holder of a senior post.

## **4. Gross misconduct**

Gross misconduct is defined as misconduct of such a serious nature that the University is justified in no longer tolerating the employee attending work. An allegation of gross misconduct may result in immediate suspension pending investigation. If, on completion of the investigation and a disciplinary hearing, the institution is satisfied that gross misconduct occurred the result will be summary dismissal without notice or payment in lieu of notice. The employee will receive written reasons for the dismissal and advised of the right to appeal.

Examples of gross misconduct are listed below. This list is not exhaustive. The gravity of the offence may also depend on the seniority of the post, or the frequency, impact or severity of the action.

- wilful disregard for procedures which renders the University in breach of any of its statutory obligations
- theft of property from the University
- malicious damage or sabotage of property
- actions which bring the University into disrepute
- disclosure or misuse of confidential information, including authorised access to any computer based information
- a serious breach of health and safety rules
- serious negligence
- wilful failure to observe rules relating to the handling of, or accounting for, cash, good or assets
- wilful falsification of documents or claims for payment including invoices, expenses, time sheets or other work records
- provoking, instigating or taking part in violent or abusive behaviour, whether verbal or physical
- sexual misconduct at work
- misrepresentation of qualifications or statements of false particulars to secure employment at the University
- misuse of University property for personal gain
- accepting bribes, other inducements or undertaking other corrupt practices
- computer fraud or misuse, including breaches of the IT, e-mail and Internet policies
- the misuse of alcohol or drugs
- unlawful discrimination or harassment
- being convicted of a criminal offence which could adversely affect the level of trust and confidence between employer and employee
- holding other unauthorised paid employment which conflicts with the University opening hours.

## **5. Raising an issue**

There are a number of circumstances in which an employment issue may be raised. Managers may become aware of issues through a number of channels and it is better to deal with them as soon as they arise.

It is in everyone's interest that issues relating to an employee's conduct are dealt with informally where possible and at as low level as possible. To achieve this employees should be able to discuss matters openly with their line manager as they occur. The aim is to resolve routine complaints in this informal manner.

There may be occasions when a more formal approach is required, and where appropriate an investigation should begin as soon as possible.

## **6. Determining major and minor issues**

On becoming aware of an employee's alleged misconduct the relevant line manager will make initial enquiries into the incident, problem or complaint as soon as possible. This will normally involve a private discussion with the individual concerned in order to establish if there is a simple explanation for their conduct or behaviour. In certain cases (e.g. where current or ongoing fraud is suspected) it may be appropriate not to inform the employee at this stage in order to allow the necessary collection of data.

Determining if an issue is a major or minor one will depend on the seriousness of the complaint/allegation and its impact. Please see above for examples of gross misconduct.

The preliminary discussion should be run along the following lines:

- the manager will outline the apparent facts of the misconduct or concern to the employee
- the employee will be given the opportunity to respond and explain any factors affecting his/her conduct
- the manager will give thorough consideration to the responses made by the employee and decide what action is required.

### **6.1 Minor issues – informal stage**

If the matter is of a minor nature, the manager may decide to deal with it immediately during the one to one discussion. Notes should be taken throughout except in the most minor cases; the outcome of the meeting including any remedial action will be clearly stated in writing by the manager. A copy will be given to the employee and a copy retained by the manager. (Only letters relating to the formal procedure should be on the employee's personal file).

### **6.2 Major issues**

If the manager judges that the matter cannot be dealt with by informal action a decision will be taken on how to proceed.

At this stage managers should seek further advice from Human Resources.

## **7. Suspension**

Employees may be suspended on full pay to allow an investigation to take place, or where there are risks to people or property. Suspension may also be considered when there is a prima facie case for believing the conduct is so serious that dismissal is a possible outcome. Suspension is not a disciplinary matter and the decision should only be taken after careful consideration. Approval to suspend an employee will be the responsibility of the Council members in the case of senior post holders and the Vice Chancellor in the case of all other staff.

Every effort will be taken to ensure the suspension is for a short time as possible. The suspension will be reviewed after 21 days and at each review consideration will be given to whether there is an alternative to suspension.

Employees who are suspended may not for the period of the suspension enter any building or premises occupied by the University or contact any member of staff without the express permission of the Vice Chancellor or nominated deputy. Permission to enter the premises in order for an employee to contact or consult their trade union representative or work based colleague will not be unreasonably withheld.

## **8. The investigation process**

Each investigation is different and the approach taken will depend upon the nature of the allegations being investigated.

The following post holders may need to be involved in decisions about how to proceed, but not limited to the examples illustrated.

- the Vice Chancellor (if suspension is being considered)
- Director of Resources (if the matter relates to fraud)

- Deputy Vice Chancellor (if the matter relates to academic standards)
- Registrar and Secretary (if the matter relates to diversity and equality)

Human Resources will always need to be made aware.

At the outset there will be agreement on the scope of the investigation and the most appropriate person to conduct it. The overriding aim of the investigation is to establish whether there is any evidence to support the allegations.

The lead person managing the investigation process may be the line manager of the employee or some other appropriate person. The lead and investigator roles may be combined if appropriate. At all times the independence of the investigation must be protected.

### **8.1 Investigation interviews**

There is an expectation that all employees will cooperate with an investigation, and provide honest answers to the questions put to them. If an interviewee finds it difficult or distressing, everything will be done to support that person. There is generally no requirement for witnesses to be accompanied at an interview but they can bring along a work colleague or trade union representative if they wish. The supporter cannot take part in the interview or answer questions on behalf of the employee and will be bound by the same confidentiality requirements.

Evidence given by witnesses may be included in the outcome report; their statements will not be released unless the matter is to be considered at a hearing.

The employee who is the subject of the investigation will generally be interviewed towards the end of the investigation, after the investigator has interviewed all potential witnesses. They will be kept informed of progress and when they might reasonably expect to be seen.

The purpose of note taking during the investigation is not to record verbatim what is said, the intention is rather to capture the main points. The interviewee will be given the opportunity to check the notes and make amendments should anything be missed or recorded incorrectly – the amendments will be agreed by those present. The record will be signed by all parties present.

### **8.2 Outcome of the investigation**

A written report will be prepared after the investigation. This will:

- show the facts/evidence obtained
- highlight all the relevant circumstances to the allegation
- explain why the evidence supports the allegation, or does not support it.

The report will be considered by the lead manager/investigator and HR representative who will consider what the next steps will be. The possible outcomes are:

- no further action
- informal action
- a formal hearing.

#### **8.2.1 No further action**

It may be concluded that the issue does not justify further action. If the employee is

suspended, the manager will contact them immediately and arrange for them to return to work. The manager will need to carefully plan the reintegration of the previously suspended employee if they have been away from work for some time.

### **8.2.2 Informal action**

A record of any management action taken should be made by the manager and a copy given to the employee.

### **8.2.3 Formal Hearing**

Where a formal hearing is deemed appropriate HR will arrange for this to take place.

## **9. The Hearing**

A hearing should be held as soon as possible after the investigation is concluded. Arrangements for the hearing will be confirmed in writing giving at least 5 days notice.

Notification of the hearing will include the following:

- a clear statement of the allegations
- the date, time and location
- the names of the Chair and panel members
- the employees right to representation
- the potential outcomes
- the right of appeal
- the fact that the hearing will go ahead in the employee's absence if they fail to attend.

All the documents to be included in the hearing will be sent to all parties. The employee should be given a copy of the investigation report. Both the management representative and the employee should provide advance notification of the number of witnesses (if any) they intend to call.

It is important to remember that the hearing is a formal process but is not intended to be adversarial. All parties will be encouraged to reflect this in their behaviour on the day. Employees may bring a colleague or trade union representative to the hearing. They will be able to participate as fully as possible, but have no legal right to answer questions on the employee's behalf. He or she has the right to address the hearing and will be allowed to ask questions. The colleague/trade union representative will also be given reasonable time to confer privately with the employee.

If the employee wishes to attend the hearing but is absent due to sickness, or some other reason or their colleague/trade union representative is unable to attend, the meeting may be postponed and will be rearranged within 5 days or as soon as practicable. If the employee or their colleague/trade union representative is unable to attend on the second occasion their case and/or representation by their colleague/trade union representative will be considered based on written documentation. Advice should be sought from HR before deciding to proceed with a case in the absence of the employee and/or their representative.

If the colleague is an employee of Bishop Grosseteste University, reasonable paid time off will be granted to attend the hearing and meet with the employee before and afterwards.

### **9.1 Roles and responsibilities at the Hearing**

Panel Chair. This will be a relevant senior manager. The Chair must be the Vice Chancellor if dismissal is a potential outcome.

A second independent manager

An HR Adviser

His/her prime role will be to contribute specialist knowledge of procedural issues, relevant policies and employment matters. He/she will participate fully in the discussions about the case, but will not be party to the final decision.

A note-taker

The complete background of a case may be requested at an appeal hearing or at an employment tribunal. It is therefore essential that comprehensive records are made of any hearing. Notes will not be verbatim.

N.B members of the panel must not have played any previous part in any aspect of the case.

The Chair will introduce the parties present and clarify the procedure.

Both parties then present their case, and then all parties withdraw to allow the panel to make their decision. If further clarification is needed then all parties must be invited back into the room. At the end of the hearing the Chair of the panel makes a written summary of the decision. All parties are recalled and the Chair reads out the panel's decision and any related action plans. This is confirmed to the employee in writing.

### **9.2 Possible outcomes**

The panel will consider any evidence and reach a decision based on the balance of probability.

The disciplinary procedure allows for the following penalties to be applied:

- no further action
- management action – where an alleged offence is proved but an informal reprimand is an appropriate outcome
- first written warning – this is the first stage of the disciplinary procedure and will be regarded as live for disciplinary purposes on the employee's file for between 6 to 12 months
- final written warning – the warning will be regarded as live for disciplinary purposes on the employee's file for between 12 to 18 months
- dismissal – dismissal will occur where there has been gross misconduct or where the employee has a final written warning live on file and further misconduct has taken place. Unless the employee is dismissed for gross misconduct, he/she will receive the appropriate period of notice.

Re-deployment and relegation may be considered as an alternative to dismissal.

## **10. Appeals**

The employee will have the right of appeal against any formal action taken under the disciplinary procedures. If the employee wishes to appeal they must do so in writing within 10 days of the date on which the decision is confirmed in writing.

### **10.1 Grounds of appeal**

The employee must state the grounds upon which they seek to appeal. Grounds for appeal are:

- that there was a defect in the procedure
- that new evidence has subsequently come to light
- that not all the evidence was considered
- that an inconsistent or inappropriately harsh penalty was applied, or the decision appears unreasonable in light of the evidence.

An employee who wishes to appeal against dismissal should do so by writing to the Clerk to the University Council and the appeal will be heard by a panel of 3 Council Members. An employee who wishes to appeal against action short of dismissal should do so by writing to the Head of Human Resources.

Following notification an appeal hearing will be arranged giving at least 5 working days notice. The notice of the appeal will include:

- a clear, statement of the decision which has led to the appeal
- the date, time and location of the hearing
- the names of the chair and panel members
- the name of the person who will represent the management position
- the employee's right to have representation
- the potential outcomes
- that there is no further right of appeal.

A full set of documentation to be considered at the appeal including any new statements or evidence will be sent to all parties. Employees have the right to be accompanied by a work colleague or trade union representative. If the employee wishes to attend the appeal but is absent due to sickness, or some other reason or their colleague/trade union representative is unable to attend, the meeting may be postponed and will be rearranged within 5 days or as soon as practicable. If the employee or their colleague/trade union representative is unable to attend on the second occasion their case and/or representation by their colleague/trade union representative will be considered based on written documentation. Advice should be sought from HR before deciding to proceed with an appeal in the absence of the employee and/or their representative.

### **10.2 New evidence**

New evidence may be considered subject to the requirement that any evidence is submitted before the hearing. Where new evidence is submitted it should state clearly what the evidence is and why it is believed it will alter the original decision.

### **10.3 Re-hearing**

If the grounds for the appeal relate to a defect in the original hearing, it would be advisable to have a re-hearing. If the appeal Chair determines that a full re-hearing is necessary everyone will be informed in advance and the procedure will follow the same format as the original hearing and all parties and witnesses will be invited. The panel and possible outcomes will be consistent with an appeal hearing.

#### **10.4 The Appeal Panel (action short of dismissal)**

Panel Chair. This will be a relevant senior manager who has the authority to agree the outcome.

A second independent manager who has had no previous involvement with the case.

An HR Adviser/representative

His/her prime role will be to contribute specialist knowledge of procedural issues, relevant policies and employment law matters. He/she will participate fully in any discussions but will not be party to the final decision.

A note taker – The complete history and background of a case may be requested at an employment tribunal. It is therefore essential that comprehensive records are made at any level disciplinary action.

#### **10.5 The Appeal Panel (dismissal)**

The appeal panel will consist of 3 Council Members, and be advised by an HR adviser/legal representative who will contribute specialist knowledge but will take no part in the decision.

#### **10.6 Documents**

All parties to the appeal hearing will have available all of the documents presented to the original hearing plus the following:

- the record of the original hearing
- the letter of appeal and information submitted by the employee
- a statement from the original management representative in response to the grounds for appeal.

#### **10.7 Possible outcomes**

The outcome will be either:

- the case against the employee is upheld (in whole or in part); the sanction will then be the same or a lesser penalty
- the case against the employee is not upheld and the sanction is overturned.

In the case of a dismissal, the appeal does not have to take place before the dismissal takes effect although wherever possible this will be preferred. If the appeal fails, the effective date of termination will stand.

The outcome of the appeal will be confirmed in writing.