

# **Disciplinary Procedure APT&C Staff**

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# 1. Purpose and Scope

- 1.1 The University is obliged to maintain high standards of conduct amongst all its employees to ensure it is not brought into disrepute and to prevent public confidence in its operation being undermined. It is recognised that good conduct, attendance and job performance is essential for the safety and well-being of all employees. It is equally important that disciplinary action should be considered and applied fairly and consistently, with regard to all the circumstances of any particular case.
- 1.2 This agreement is made between the University and the Trade Unions recognised by the University and is designed to ensure that disciplinary matters are dealt with thoroughly, promptly and equitably. This agreement applies to all APT&C employees of the University unless excluded in section 1.4 below.
- 1.3 This agreement supplements the general provisions contained in the Articles of Government of De Montfort University.
- 1.4 The procedures in this agreement shall apply to all APT&C employees with the exception of:
  - a) Those who are serving a period of probationary service and dismissal arises from unsuitability for confirmation of appointment.
  - b) The expiry of a fixed term contract of employment with the University.
  - c) The termination of casual or temporary contracts of appointment.
  - d) Redundancy.
  - e) Those who are neither employed on a full time, nor a pro-rata contract. Cases relating to this group of staff will be dealt with under the Institutional Disciplinary Procedure.
  - f) Those against whom complaints of inadequate performance are made other than wilful refusal to undertake duties (see [paragraph 3.3 - Incapability](#)).
  - g) Those suffering from ill-health (see Procedure on Capability/Ill-health).

# 2. General Principles

No disciplinary action will be taken until the matter has been adequately investigated.

At all stages of the formal disciplinary procedure employees have a right to the following:

- 2.1 The employee must be informed of his/her right to be accompanied at a disciplinary hearing by an officially recognised union representative or fellow employee, with management reserving the right to provide a hearing in the absence of an employee after one adjournment, with the employee to be represented at the hearing after the adjournment if so desired.

- 2.2 An employee must be made fully aware in writing in advance of any hearing of the allegations made against him/her and be given an adequate opportunity to explain or defend himself/herself, including the right to call witnesses and produce documents as appropriate.
- 2.3 A copy of any written disciplinary action taken against an employee must be provided for the information of his/her representative if the employee so requests.
- 2.4 No disciplinary action shall be taken against a recognised trade union representative without prior discussion with an accredited officer of the appropriate union.
- 2.5 All rights and facilities under this agreement shall be made available to all staff irrespective of race, sex, marital status or disability.
- 2.6 An employee has the right to appeal against any disciplinary penalty.
- 2.7 The procedure is designed to establish the facts quickly and to deal consistently with disciplinary issues.
- 2.8 No provision within this procedure shall be seen as inhibiting an employee's right to make a complaint under appropriate employment legislation where applicable.
- 2.9 The Human Resources Team must be informed prior to any Disciplinary hearing taking place.

### **3. Procedure**

- 3.1 In many cases informal counselling may be appropriate in the first instance. It should take the form of a discussion with the objective of encouraging and helping the employee to improve. If during the meeting it becomes obvious that the matter is more serious, the discussion should be pursued under the formal disciplinary procedure. A brief note should be kept of any counselling for reference purposes. It should not be confused with action taken under the formal disciplinary procedure.

#### **3.2 Formal Procedure**

Other than in cases of serious or gross misconduct the following sequence of warnings will apply except where otherwise stated:

Stage 1 - Oral Warning - If conduct is unsatisfactory, the employee will be given a formal oral warning, which will be recorded. He or she will be advised of the reason for the warning and of his or her right of appeal. A brief note will be made on record that such an oral warning has been given.

Stage 2 - Written Warning - If a further offence occurs, a written warning will be given which will include the reason for the warning and a note that further misconduct within a specified period may result in a Final Written Warning.

Stage 3 - Final Written Warning - If further offences related to conduct occur or if the misconduct is sufficiently serious to warrant a final warning as the first and only stage short of dismissal but insufficiently serious to justify dismissal, then the employee will receive a Final Written Warning. This Final Written Warning will make it clear that any recurrence of the offence within a specified period will render the employee liable to dismissal.

Stage 4 - Dismissal - If further serious misconduct occurs, then Dismissal will normally result. The employee will be provided as soon as reasonably practicable, with written confirmation including the reason(s) for the dismissal, the date on which employment will terminate and the right of appeal.

NB: Except in agreed special circumstances breaches of disciplinary rules should be disregarded after a specified period of satisfactory conduct. This specified period should be indicated at the time the warning is issued. The Human Resources Team will monitor such cases to ensure that there is some consistency in determining timescales, whilst permitting the flexibility that is necessary depending on the circumstances of a particular case.

Matters involving an individual's capability should be dealt with under the separate procedure for Capability/Ill-health.

### **3.3 Incapability**

#### **3.3.1 Definition**

- a) Each employee is expected to be qualified for and competent to undertake the work for which she/he is employed. Where an individual develops an inability to meet the requirements due to health, physical ability or mental quality the procedure below should be applied.
- b) Where the problem/situation is initially identified by the supervisor, this will then be brought to the attention of the Line Manager. (A supervisor is a person who has the task of controlling and organising the work of at least two employees, none of whom have subordinates).
- c) In all discussions and decisions, both the organisation's needs and the fair treatment of the individual should be taken into account.
- d) Where an individual's spoken or written English is limited, assistance may be obtained for interpretation of the facts, to ensure the individual fully understands the nature of the problem.
- e) This procedure is not intended to cover cases of misconduct, eg wilful neglect or unprofessional conduct, which are covered by the appropriate disciplinary procedure. However, there may be circumstances where, within this procedure, the relevant disciplinary procedure is the appropriate machinery to use.

### 3.3.2 Declining Standard of Performance

- a) Where the supervisor believes a problem resulting from incapability exists in the level of performance achieved by the individual, she/he will bring this to the attention of the Line Manager who must firstly examine the evidence available. To assist in this the Line Manager will need to study records available, such as training and job descriptions, etc. By determining the standard required for the job and the qualitative and quantitative standards by which the individual is being measured, the shortfall between required and actual performance will be determined and clearly set out.
- b) The Line Manager should arrange to see the individual to explore the reasons for the shortfall in performance, explaining precisely what is required of the individual and where this is not being achieved. The individual may be represented by their trade union representative or accompanied by a work colleague/friend.
- c) The individual and their representative should be given every opportunity to answer or dispute the shortcomings identified or offer reasons for the situation.
- d) After the consultation process in (b) and (c) above the following arrangements should be implemented:
  - Identification of measures to be taken and/or support to be given by the department to enable the gap to be closed between the achieved and required levels. This may include training, closer supervision, temporary changes of hours, etc.
  - The agreement of a review date (not exceeding 3 months) with regular feedback sessions between the line manager and member of staff.
  - A clear statement that where failure to improve has occurred this may lead to formal disciplinary action being followed.
- e) At the end of the review period the individual should be seen by the line manager:
  - Where the improvement is acceptable, the individual should be advised of this fact and that no further review is necessary, or
  - Where the improvement is slight but not completely acceptable, a further extension may be necessary, or
  - Where no improvement has occurred or performance remains unsatisfactory at the end of the review period, the matter will be moved into the formal disciplinary procedure, normally at Stage 2.

### **3.3.3 Incapability through Ill-health**

Incapability through ill-health leading to one of three categories:

- a) Prolonged absence.
- b) Short, frequent absences.
- c) Development of a condition which affects performance in post held but does not, necessarily, affect attendance at work.

The assistance of a member of the Human Resources Team be requested by departments, the trade unions or the individual at any stage.

- d) The matter should be dealt with under the separate procedure for Ill Health.

## **3.4 Gross Misconduct**

Gross misconduct is misconduct of such a nature that the University is justified in no longer tolerating the continued presence at the place of work of the employee who commits such an offence.

Definition: "Gross Misconduct means misbehaviour which is deliberate, reckless or grossly negligent in regard to persons or property and which is against the interests of an employee's fellow workers, students and/or the employers".

If an employee is accused of an act of gross misconduct, they may be suspended from work normally for no more than 5 working days, whilst the alleged offence is investigated. If on completion of the investigation and full disciplinary procedure the Vice-Chancellor is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice. If special mitigating circumstances are present, the Vice-Chancellor may issue or authorise the issue of a final written warning which shall not be subject to a time limit and which shall continue to remain in effect unless the employee is informed otherwise after a review.

## **3.5 Appeals**

An employee wishing to appeal against a disciplinary decision other than dismissal should inform the Director of Human Resources in writing within seven working days. An appeal will normally be heard by the immediate superior of the person taking the disciplinary decision.

Where an appeal is against dismissal or against other disciplinary action taken by the Vice-Chancellor then such an appeal should be made to the Clerk to the Board of Governors in writing within 7 working days. The Chairman of the Board will nominate a Governor or Governors to hear the appeal and those so nominated shall have the power to determine the matter. In the event of an appeal against a decision to dismiss, the dismissal will not take effect until the appeal has been determined. If,

however, the decision to dismiss is upheld, the effective date of termination shall be established by reference to the original decision.

### **3.6 Precautionary Suspension**

The Vice-Chancellor may suspend from duty, with pay, any member of the staff of the University, for suspected or alleged misconduct or other good and urgent cause. Anyone who is suspended from duty shall be entitled to receive from the Vice-Chancellor or other senior nominated officer to whom the right to suspend has been delegated written notification of the suspension, setting out the grounds on which the decision to suspend has been taken.

Any person under suspension for three weeks or more may appeal in writing to the Clerk to the Board of Governors or person so designated against the suspension. This appeal should be heard as soon as practicable and the suspension shall continue to operate pending the determination of the appeal.

### **3.7 Content of Warning Letters (and Oral Warnings)**

Any oral or written warning issued under the formal procedure shall state:

- a) The reason for the warning.
- b) The period of time during which the warning will remain in force.
- c) The disciplinary action being taken and any consequences which may follow from such action in the event of a further disciplinary offence being proved during the currency of the warning. In the case of a final written warning there should be a statement that any further misconduct will lead to dismissal.
- d) The employee's right of appeal.

And shall be signed by the appropriate disciplinary authority, with a copy forwarded to the Human Resources Team.

### **3.8 Representation at Disciplinary Interview**

At a disciplinary interview at Stage 4 or where gross misconduct is being considered which could result in dismissal, the employee concerned may be accompanied by an officially recognised union representative or fellow employee.

## **4. Disciplinary Authority**

### **4.1 Dismissal**

The Articles of Government confer on the Vice-Chancellor the power to dismiss. The Vice-Chancellor has the right to delegate such power, and where such delegated power is exercised the dismissed employee shall have the right of appeal to the Vice-Chancellor before the decision to dismiss is confirmed. Notice of intention to exercise this right must be given to the Vice-Chancellor in writing within seven working days of the date of the original decision having been handed to the



employee or been dispatched to the employee by recorded delivery or registered post.

The current approved delegations are shown in the [Appendix](#) to this procedure.

## **4.2 Other Disciplinary Action**

Formal disciplinary action may be taken in accordance with this procedure by the following staff:

### **Staff**

Administrative, Professional, Technical and Clerical Staff within Faculties.

Faculty Manager or Head of Department, as appropriate or, in the case of more serious or repeated disciplinary matters, the Dean of Faculty of where unavailable, the appropriate member of the Executive.

Administrative, Professional, Technical and Clerical Staff within Central Divisions.

The immediate manager or his/her superior or in the case of more serious or repeated misconduct the appropriate Head of Cost Centre or the member of the Executive to whom they report.

All Other Staff

The Head of Section who directly reports to a member of the Executive or in the case of more serious or repeated misconduct the appropriate member of the Executive.

## **4.3 Appeals against Disciplinary Warnings**

An appeal against any disciplinary action, short of dismissal, should be heard by the next level of authority to whom the person carrying out the disciplinary action reports.

## **4.4 Human Resources Team**

At formal stages Authorised Officers may be accompanied by a member of the Human Resources Team or, where appropriate, the Director of Human Resources.

## **4.5 Alternative Disciplinary Action**

Circumstances may arise where, as an alternative to dismissal, another penalty may be considered. Such penalties include a period of suspension (without pay), this will not normally be for more than 5 working days. Other alternative disciplinary action may be taken following appropriate consultation with a senior officer of the constituent trade union. If awarded the employee has the right to appeal against the penalty imposed, through the normal appeal procedure.

# **5. Discrimination**

The disciplinary procedures will be applied equitably irrespective of race, ethnic origin, nationality, sex, marital status or disability. Employees who are accused of sexual or racial

harassment at work will be liable to disciplinary action under the University's Disciplinary Procedures and may be subject to warnings, compulsory transfer (without protection of salary or wages) or dismissal.

## **6. Absence and Timekeeping**

- 6.1 A distinction should be made between certified or self-certified absence on grounds of illness or injury and other absences for reasons which may justify disciplinary action, e.g. poor timekeeping. In cases of unauthorised absence the normal disciplinary procedures should be used. Where the employee is absent because of certified illness or injury these matters should be dealt with separately under the Procedure for Capability and Ill-health. If an individual has amounted a degree of absence due to periods of less than 4 days, an individual's manager will request future absences are covered by a medical note, before agreeing to accept the absence as valid sickness under the rules for SSP purposes.
- 6.2 Where an employee has been absent from work on an unauthorised basis the following general procedure will apply:
- a) A letter will be issued by the Human Resources Team to the employee confirming that the unauthorised absence has been noted, with a request that either the employee return to work immediately or contact his/her supervisor with an explanation for the continued absence.
  - b) If after a period of seven days the employee has:
    - Not returned to work.
    - Not contacted his/her supervisor or other person in authority.
    - Not produced a medical certificate.

A further letter will be sent to the employee by the Human Resources Team. This letter will specify a date, by which time the employee must either return to work or provide satisfactory reasons for the absence. Consideration will be given at this stage to the cessation of pay, and where a decision to suspend pay is taken this shall be recorded in the letter.

- c) If after one further week the employee has still failed to contact the University authorities with a satisfactory reason or returned to work then a final letter will be sent by the appropriate disciplinary authority stating that in view of the continued absence, the University considers that the employment is at an end and that the employee is dismissed.
- d) If an employee returns to work during this procedure the employee's explanation for his/her absence will be sought and, if appropriate, disciplinary action instituted.

## **7 Conclusion**

The Human Resources Team shall be informed of all cases in which this formal procedure is to be involved. The Human Resources Team may also produce guidance notes from

time to time to deal with specific aspects of this procedure. Normally following consultation with the constituent trade unions, copy of the guidance notes will be issued.

## **Appendix - delegated authority for dismissals and appeals under the Disciplinary Procedure APT&C Staff**

### **Dismissals (with or without notice in accordance with this procedure)**

The right to dismiss can be delegated by the Vice-Chancellor to:

- The Deputy Vice-Chancellor;
- The Chief Operating Officer (or equivalent lead professional services officer);
- A Pro Vice Chancellor or
- A dean or director.

### **Appeals against dismissal**

The table below sets out the appropriate delegated authority to determine appeals.

<b>Where the decision to dismiss was taken by:</b>	<b>The appeal will be heard by:</b>
Dean/Director	Pro Vice Chancellor or  Chief Operating Officer (or equivalent lead professional services officer) or Associate Chief Operating Officer (or equivalent)
Associate Chief Operating Officer (or equivalent)	Chief Operating Officer (or equivalent lead professional services officer)
Pro Vice Chancellor or  Chief Operating Officer (or equivalent lead professional services officer)	Deputy Vice-Chancellor
Deputy Vice-Chancellor	Vice-Chancellor
Vice-Chancellor	Board of Governors