



## Disciplinary

At some point during their employment with BSU any line manager may be required to deal with performance issues as a result of an employee's capability or conduct. When considering whether to instigate capability or disciplinary (informal or formal) proceedings, it is important to carefully consider the perceived reasons for the employee's decline in performance or conduct and to ensure you understand the differences between the two.

### Capability vs conduct

It is important to understand and make the distinction between (prolonged) poor performance that may be due to a lack of capability/competence (skills, ability, aptitude or knowledge), and which the employee is willing to, or 'can', address through support and training, as opposed to misconduct, where the employee has the ability to improve but fails to, or won't, attain the required standard(s) of behaviour or performance.

A lack of capability exists where despite an employee's best efforts, he or she is simply unable to perform the job to the required standard as set by the University. In this scenario it is the agreed University standard that is relevant, and not the manager's personal opinion of the employee. BSU recognises that employees do not choose to perform their work badly, to make mistakes, and fail to complete tasks or to have poor relationships with others. However where such issues do arise it is the line manager's role to discuss these concerns with the employee as early as possible.

Further clarification on the differences between capability and conduct can be found in the University's Capability Procedure as follows:

"Conduct is within the employee's control and as such, issues of conduct will be dealt with via the Disciplinary Procedure. Capability, on the other hand, refers to the capacity and ability of the employee to perform their job. Without adequate capability, the best efforts and motivation from the individual will not be enough".

Some examples of behaviour(s) that may be dealt with under the Capability Procedure are:

- Sustained decline in volume of work
- Noticeable decline in the quality of work i.e. errors, mistakes, omissions
- Decline in attendance due to intermittent sickness, exceeding BSU trigger points

- Regular instances of poor timekeeping
- Concerns about teaching quality

## Misconduct vs gross misconduct

Some examples of misconduct and gross misconduct can be found below. Please note that the examples given are not intended to be exhaustive but rather to give an indication of a number of issues and/or concerns that could be the subject of capability or disciplinary (informal or formal) proceedings.

### Misconduct

The following list provides some examples of offences which are normally regarded as misconduct. **Please note this list is not exhaustive.**

- Unauthorised absence from work without reasonable cause
- Failure to comply with the procedures for the notification of sickness absence
- Unsatisfactory attendance at work, e.g. unauthorised absenteeism, lateness, leaving work without permission, overstaying lunch or tea breaks
- Poor performance including inaccurate and unsatisfactory standard of work
- Unacceptable appearance, dress and personal hygiene
- Unauthorised private activities during working hours without permission
- Unauthorised private use of University property or equipment
- Unacceptable standards of interpersonal behaviour to other employees, students, or members of the public
- Minor breaches of Health and Safety regulations (including breaches of car parking rules)
- Speeding offences committed whilst driving a BSU vehicle on duty resulting in the issue of a fixed penalty or summons
- Some other substantial reason, or “good cause” (as described in the Articles of Government)

## Gross misconduct

The following list provides some examples of offences which are normally regarded as gross misconduct. **Please note this list is not exhaustive.**

- Theft or fraud and deliberate falsification of records
- Physical violence or bullying, or serious verbal abuse to other employees, students, or members of the public
- Deliberate and serious damage to property
- Serious misuse of the University's property or name
- Serious breaches of the University Policies, Codes of Practice, Financial Regulations
- Deliberately and without good cause accessing internet sites containing pornographic, offensive or obscene material
- Serious insubordination/refusal to carry out reasonable instructions
- Making a dishonest, malicious, frivolous or vexatious claim against another member of staff or the University
- Unlawful discrimination or harassment
- Bringing the University into serious disrepute
- Serious incapability at work brought on by alcohol or illegal drugs
- Causing loss, damage or injury through serious negligence
- Serious breach of health and safety rules
- Serious breach of confidence (subject to Disclosure Policy).

Once it has been established that there is a capability or disciplinary issue which requires attention and/or action please refer to either the relevant further guidance on the [Capability Procedure](#) or the Disciplinary Policy and Procedure.

## Purpose and scope

This policy is designed to help and encourage all employees to achieve and maintain the appropriate standards of conduct, behaviour, attendance and performance necessary to the conduct of the University's affairs and for the well-being of all employees. BSU also

believes that management have a positive role to play in encouraging all employees to perform professionally and to the expected standard whilst at work. Please note that this policy shall not apply to redundancy dismissals or the non-renewal of fixed term contracts. The University's policies and procedures are available on the website and apply to all employees. The aim is to ensure consistent and fair treatment for all.

The disciplinary policy will not apply during a period of probationary service.

## Principles

Initially, informal action will be considered, where appropriate, to resolve problems. No formal disciplinary action will be taken against an employee until the case has been fully investigated. Where formal action is being taken, the employee will be advised of the nature of the complaint against them beforehand. Disciplinary action may be considered when an issue is of a serious nature, or after a number of minor complaints have arisen. Advice will be sought from the HR department before any formal disciplinary action can be taken.

Employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary meeting. At the hearing, the complaint will be explained to the employee, together with the evidence gathered, as presented by the investigating officer. The decision will be made by a panel consisting of a senior line manager for the employee, not previously involved in the proceeding, who will act as Chair, a second senior line manager or delegated representative and a member of Human Resources to advise on process. Employees will be given a reasonable opportunity to ask questions, present evidence and to call relevant witnesses. At all stages of the procedure the employee 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 University recognises the rights of academic staff with regard to their role in testing and questioning received wisdom and current opinion.

Formal disciplinary action will not be taken against a Trade Union official until the circumstances of the case have been discussed with a full-time Trade Union officer.

Any disciplinary action against the Senior Post Holders (appointees of the board of

governors), will be dealt with by a nominated panel of the board of governors.

The procedure may be implemented at any stage if the employee's alleged misconduct warrants this. Examples of misconduct and gross misconduct have been provided above as an indicative guide to the seriousness of alleged behaviour.

This policy and procedure may be subject to alteration to reflect future changes in legislation or Trade Union negotiation.

## Informal process and investigations

If a line manager is concerned over an employee's conduct, this will first be addressed through normal daily processes, including one-to-one meetings, catch ups or, if considered appropriate by the University, mediation. If a line manager is unable to resolve a problem informally, an investigation may be required to establish the facts relating to any allegations before deciding whether to proceed with a disciplinary hearing.

The employee will not normally have the right to bring a companion or Trade Union representative to informal discussions with the line manager, however to overcome any disability or difficulty in language this may be permitted at the University's discretion. Where the line manager conducts a formal investigation the employee has a right to be accompanied by a Trade Union representative or colleague. The nature of the investigation will depend on the case but it may include fact finding interviews and examination of relevant documents. Where the line manager has been involved directly in an alleged disciplinary incident a line manager who has had no involvement in the case will investigate the matter.

## Formal procedure

At each stage of the procedure the Chair will write to the employee inviting them to a meeting to discuss the problem. The letter will provide the employee with the reason for the meeting and give a minimum of 5 working days' notice to the employee. The line manager will also notify the employee of their right to representation at the hearing by either a Trade Union representative or a work colleague. If the employee wishes to bring a representative or provide additional evidence at the hearing the employee should submit this to the Human Resources Department. Any evidence which either the line manager, or the employee wishes to submit as evidence should be provided 3 working days before the meeting.

In exceptional circumstances, the panel may decide to extend warnings beyond the normal periods identified below. The panel may also take expired warnings into account when considering the reasonableness of any sanction given. Any expired warnings, within a reasonable period of time, would have to have a direct bearing on the current allegation and would only be considered when making a decision about the penalty.

The Chair, in conjunction with the Human Resources Department, will notify the employee of the panel's decision and the reasons, in writing, normally within ten working days. The notification will include the details of any sanction or review period and how long any sanction is applicable for. It will include the employee's right to appeal within ten working days from the date of the letter confirming the disciplinary decision.

At the Human Resources Department's absolute discretion, where a grievance procedure is instigated and is linked to a disciplinary procedure, the two procedures may be more effectively resolved through their merger. In these circumstances, the decision would be heard by a panel, the employee's rights will not be affected and this will be confirmed to the relevant parties prior to any hearing taking place. The Human Resources Department will keep on file a record of the hearing, together with the minutes and outcome.

## Suspension and gross misconduct

If an employee is suspected of an act of gross misconduct, they may be suspended from work on full pay pending a disciplinary investigation. On the Vice Chancellor's, or her delegated representative's approval, suspension would be confirmed in writing, setting out the grounds on which the decision has been taken. The investigation must be carried out within a reasonable time, typically within 3 weeks, or if an extension is required an explanation will be provided to the employee with alternative proposed timescales. During the period of suspension the employee will not be entitled to access any of the University's premises or resources, without the prior consent of the University.

An employee suspended for more than three weeks (subject to the Article of Government 10.4) may appeal to the Board of Governors against the suspension, by applying in writing to the Clerk to the Board of Governors. The suspension shall remain valid during the process of the appeal. If, on completion of the investigation and the full disciplinary procedure, the University is satisfied that gross misconduct has occurred, the result will normally be summary dismissal, without notice or payment in lieu of notice.

## Written warning (first stage of the formal procedure)

Following a meeting, if conduct is found not to meet acceptable standards, a first warning for misconduct may be issued. This will be in writing and set out the nature of the misconduct and the change in behaviour required as well as the right of appeal. The warning will also inform the employee that a final written warning may be considered if there is a repetition of the same or similar behaviour. A record of the warning will be kept by the Human Resources Department on the employee's personnel file, but it will be disregarded for disciplinary purposes after a specified period; normally six months.

## Final Written warning (second stage of the formal procedure)

If the first offence is sufficiently serious, or if there is further misconduct during the currency of a prior warning, a final written warning may be given to the employee, following a meeting with the Chair, who will be a more senior manager. This will give details of the nature of the misconduct, the improvement required and the timescale. It will also warn that failure to improve conduct may lead to dismissal (or some other action short of dismissal) and will refer to the right of appeal. A copy of this final written warning will be kept by the Human Resources Department on the employee's personnel file but will be disregarded for disciplinary purposes normally after 12 months, subject to achieving and sustaining satisfactory conduct or performance.

## Dismissal (third stage of the formal procedure)

If the first offence is sufficiently serious, or if there is a further act of misconduct, the final step in the procedure may be dismissal with notice. Dismissal decisions can only be taken by the Vice-Chancellor, or her delegated representative, and the outcome of a meeting and reasons for dismissal will be provided in writing to the employee, including the date on which the employment will terminate, and the right of appeal.

## Alternative sanctions short of dismissal

In appropriate cases the University may consider some other sanction short of dismissal, such as demotion, a transfer to another department or job, loss of seniority or a reduction in pay. These sanctions may be used in conjunction with a written warning and may be authorised by the Vice Chancellor, or her appointed representative.

## Appeals

An employee who wishes to appeal against a disciplinary decision must do so in writing, to the Human Resources Department, within ten working days. Two appropriate, senior managers will hear the appeal and their decision is final. At the appeal any disciplinary penalty imposed will be reviewed.

In the appeal letter the employee should state the basis of their appeal, likely to include either new evidence, or where the employee believes there has been a failure in procedure, which has affected the outcome.

An appeal will not suspend or delay any disciplinary penalty already in progress and will be held within a reasonable time frame.

Appeals against dismissal will be heard by a sub-committee of the Board of Governors. Appeals against all other disciplinary penalties will be heard by an Appeal Panel. There will be no further right of appeal.

