



PRIFYSGOL CYMRU
Y Drindod Dewi Sant
UNIVERSITY OF WALES
Trinity Saint David

DISCIPLINARY POLICY

1. INTRODUCTION

Disciplinary rules and procedures help to promote orderly employment relations as well as fairness and consistency in the treatment of individuals. It is fully acknowledged that employees of Trinity Saint David generally behave in an appropriate and reasonable manner. Very occasionally breaches of discipline occur and it is essential for the conduct of the University's affairs and for the safety and well being of all its employees, that disciplinary action, when necessary, will be applied fairly and equitably and without discrimination.

2. SCOPE

2.1. This Disciplinary policy covers **all** employees of Trinity Saint David with the exception of:

- Staff still within their probationary period of employment
- The Vice Chancellor, for whom separate provision applies (see Statute X – Annex).

Part time employees are subject to this policy regardless of the number of hours that they work for the University. This policy will be followed when an employee's conduct or work performance is such as to warrant the use of disciplinary procedures and **will include** breaches of health and safety rules, attendance as well as abuse of the Sickness Absence Management Policy.

2.2. The University will seek to distinguish between incapability and misconduct in respect of unsatisfactory work performance. Where it is considered appropriate the issues will be dealt with under the terms of the University's Capability Policy.

2.3. In dealing with absence from work the University will seek to determine whether it is appropriate to deal with the issues under the terms of the University's Sickness Absence Management Policy. Alleged abuse of the Sickness Absence Management Policy is likely to be investigated under the terms of this Disciplinary Policy.

2.4. Trinity Saint David has a specific policy dealing with Public Interest Disclosure which seeks to protect employees who wish to raise genuine issues of malpractice. However, an individual who brings a public interest disclosure maliciously or vexatiously or who breaches policy by external disclosure will be dealt with under this Disciplinary Policy.

3. PRINCIPLES

3.1. This policy is primarily designed to help to encourage improvement and should not be seen as a process focused on punitive measures. The University will seek to deal with **minor cases** of misconduct, unsatisfactory performance, unacceptable standards of attendance or time keeping or other **minor breaches** of University standards or policy at an informal level.

3.2 Dismissal of employees shall be for **good cause**, as defined in Statute II, and consistent with section 98 of the Employment Rights Act 1996. This Disciplinary Policy has been designed to incorporate the terms of the Employment Act 2008 which repealed the Employment Act 2002. This Disciplinary Policy has been agreed with the recognised Trades Unions and with the Council of the University.

3.3. No disciplinary action will be taken against any employee until the matter has been fully investigated. The employee will be advised of the nature of the complaint, and will be given the opportunity to state his/her case before any decision to take disciplinary action is made.

3.4. The Director of Human Resources (or nominee) may be called upon in any of the procedures within this policy and should always be consulted before the Formal Disciplinary Procedure is invoked.

3.5. Formal disciplinary action will not be taken against a Trade Union representative until all reasonable effort has been made to discuss the circumstances with a full time official of the representative union. The full terms and conditions of this Disciplinary policy will otherwise apply.

- 3.6. An employee will not be dismissed or disciplined solely because he/she has been charged with or convicted of a criminal offence. In such cases the University will investigate whether the employee's conduct or conviction merits action because of its employment implications. The University need not await the outcome of the prosecution before taking fair and reasonable action.
- 3.7. Where an employee is persistently unable or unwilling to attend a disciplinary hearing without good reason a decision may be reached on the evidence available. The Director of Human Resources must be consulted.
- 3.8. Should a grievance be identified during the course of disciplinary proceedings the University will consider halting the disciplinary process in order for the identified grievance to be considered. A different manager may be asked to hear the grievance issue.
- 3.9. The definition of a week within this Policy is deemed to refer to five working days.

4. **THE RIGHT TO BE ACCOMPANIED**

An employee subject to disciplinary proceedings has a right to be accompanied **at all stages** of the procedures contained within this policy by a 'Companion' i.e. a recognised Trade Union representative or a work colleague. This 'Companion' will be permitted to address the meeting in order to put the employee's case, to sum up the employee's case, to confer with the employee or to respond on their behalf to any view expressed at the meeting. The 'Companion' **will not have** the right to answer questions on the employee's behalf. The employee will have the right to ask for meetings arranged as part of this Disciplinary Policy to be postponed for up to one week if the 'Companion' cannot attend on the date given. The request for a postponement should be made in writing and a response will be confirmed by the University, in writing.

5. **INVESTIGATION PROCESS**

- 5.1. Following the identification of a potential disciplinary matter an investigation will be conducted into the allegations against the employee. The investigation will be dealt with promptly, wherever possible within a timescale of 10 working days (from the date of the disciplinary matter being identified), or as soon as reasonably practical, unless otherwise mutually agreed and confirmed in writing.
- 5.2. The investigation will normally be conducted by the appropriate line manager (the Investigating Officer). However, where the line manager may have knowledge of the case, another appropriate independent manager will be designated to undertake the investigation. For repetitious or more serious situations it is likely that an investigating team will be established from managers within the University or from Staff Governors. As appropriate these managers or Staff Governors could be from independent departments/faculties. The HR department will provide relevant support. Appendix 1 sets out the schedule of officers of the University authorised to take action under this policy.
- 5.3. The employee should be advised that an investigation will be undertaken and that any meetings held during this period are of an investigatory nature designed to ascertain the facts. The employee has the right to be accompanied at any meetings held at this stage, in accordance with section 4: 'the right to be accompanied'.
- 5.4. The investigation process will seek to ascertain the facts associated with the allegations and a record will be made. Notes taken during the investigation may be transcribed into statements by the Investigating Officer(s), or the Director of Human Resources (or nominee). Relevant signatures should be obtained on any resulting statements.
- 5.5. On completion of the investigation the Investigating Officer(s) will consider the evidence presented and make a recommendation to:

Drop the matter entirely as there is no case to answer; or
Deal with the matter at the informal stage, by providing advice, guidance and support or training to the employee; or
Deal with the matter at the formal disciplinary stage.

- 5.6 On consideration of the recommendation of the Investigating Officer(s) member(s) of Senior Management, in consultation with the Director of Human Resources, must sanction a recommendation to proceed to the informal or to the formal disciplinary stages.
- 5.7 As soon as possible after the investigation has concluded, and normally within five working days, the University will write to the employee to inform them of the decision to proceed to the informal stage, or to proceed to the formal stage of the disciplinary procedure, or if it has been decided that there is no case to answer.

6. INFORMAL STAGE

- 6.1 It is expected that the decision to proceed on an informal basis will occur where the investigation has revealed issues of a minor nature in respect of misconduct, unsatisfactory performance, attendance or timekeeping.
- 6.2 It is anticipated that the majority of cases can be dealt with informally, by the appropriate line manager. Action under the informal stage can often be dealt with by a word of guidance or counselling, and an explanation of the standard of conduct, performance or attendance that is required. Training or support will be options for consideration.
- 6.3 The line manager should ensure that the employee is aware of:
- The behaviour that is causing concern;
 - An agreed plan of action to attain the improvements required;
 - The timescales within which improvements must be made;
 - Review date(s).
- 6.4 The line manager must make the employee aware that a written record will be taken of any meetings, agreed actions and agreed outcomes. It is important that the line manager informs the employee that if the required improvement is not achieved within the specified time scale the matter may be moved on to the formal disciplinary stage. The employee may be accompanied at any meetings within this stage, in accordance with section 4: 'the right to be accompanied'.

7. FORMAL DISCIPLINARY STAGE

- 7.1 In situations where:-
- The investigation has revealed that the matter cannot be dealt with at the informal stage due to the serious nature of the offence; **or**
 - A number of minor complaints are made which together represent a **serious** breach of discipline; **or**
 - Informal action has been tried but has failed to remedy the situation by achieving the desired improvements within the specified time frame, then the matter will be dealt with under the **Formal Disciplinary Procedure.**
- 7.2 The University will write to the employee inviting them to attend a disciplinary hearing. The format for the disciplinary hearing is set out in Appendix 2. The schedule of officers of the University authorised to conduct a formal disciplinary hearing is set out in Appendix 1.
- 7.3 The University will advise the employee, in writing, of the allegation(s) against them and will provide sufficient information so that the employee understands the allegation(s.) The University will share the formal investigation report which they determine establishes a prima facie case for pursuing disciplinary action and at least three working days before the hearing will provide all the relevant information which the University intends to rely upon in the disciplinary hearing; this may include witness statements, or a summary of witness evidence. It is important that the style of the

communication takes into account the needs of the individual. The employee must be advised of their right to be accompanied at the meeting as explained in section 4 of this policy.

- 7.4 It is **crucial** that the employee advises the University, in advance if they are unable to attend the hearing. In circumstances where non attendance is unforeseeable such as illness the University will arrange another hearing. Where non attendance is not notified in advance the University may proceed to hear the matter in the absence of the employee.
- 7.5 Where appropriate notification is given and it is reasonable to do so the hearing may be deferred for up to five days to allow the chosen 'Companion' to attend. In special circumstances this time limit may be extended, by mutual agreement, confirmed in writing. Section 4 refers.
- 7.6 Within five working days following the disciplinary hearing the decision will be confirmed to the employee, in writing. The letter to the employee will indicate the **employee's right of appeal** against the decision and details of how to submit an appeal. Further details regarding the right of appeal are set out in section 10.

8. **DISCIPLINARY ACTION UNDER THE FORMAL DISCIPLINARY PROCEDURE**

- 8.1 The following list, which is not exhaustive, provides examples of the offences which are normally subject to formal disciplinary action:

- Unacceptable levels of absence or time keeping
- Abuse of the Sickness Absence Management procedure
- Misuse of University facilities or equipment
- Inappropriate or abusive behaviour
- Failure to comply with University policies or procedures
- Conduct damaging to the reputation of the University
- Bribery offences under the Bribery Act 2010

Appendix 1 sets out the schedule of officers of the University authorised to take disciplinary action under this policy.

8.2 **Stage 1 - First Written Warning**

- 8.2.1 If following a formal disciplinary hearing the employee is found to be **guilty of misconduct**, he/she should be issued with a written warning setting out:

- The nature of the misconduct;
- The change in behaviour required;
- The timeframe for the change of behaviour;
- Review date(s);
- Any support which will be provided to assist the employee;
- That action under Stage 2 of the formal procedure will be considered if there is no satisfactory improvement within the specified time scale;
- The right of appeal.

OR

- 8.2.2 If following a disciplinary hearing the employee is found to be **performing unsatisfactorily** he/she should be issued with a written warning setting out:

- The performance problem;
- The improvement that is required;
- The time frame for achieving the improved performance;
- Review date(s);
- Any support which will be provided to assist the employee;
- That action under Stage 2 of the formal procedure will be considered if there is no satisfactory improvement within the specified time scale;
- The right of appeal.

- 8.2.3 A copy of the **First Written Warning** will be kept on the employee's personal file for a period of **nine months** after which it will be disregarded for disciplinary purposes subject to satisfactory conduct and performance.

8.3 **Stage 2 – Final Written Warning**

- 8.3.1 If, following a disciplinary hearing, the employee is found to have failed to improve or change behaviour such that conduct or performance is still unsatisfactory, or if he/she has committed a further offence within the time limits of the First Written Warning, or if the misconduct or poor performance is serious enough then a Final Written Warning will be issued. The written warning will set out:

- The details of the offence;
- The improvement that is required;
- The timeframe for improvement;
- Review date(s);
- Any support which will be provided to assist the employee;
- That any further misconduct or failure to achieve the required improvement within the specified timescale is likely to lead to dismissal;
- The right of appeal.

- 8.3.2 A copy of this **Final Written Warning** will be kept on the employee's personnel file for **twelve months**, except in exceptional cases where the final written warning is issued as an alternative to dismissal, when it may be kept for a longer period. After the specified period this final written warning will be disregarded for disciplinary purposes.

8.4 **Stage 3 – Dismissal**

- 8.4.1 If, following a disciplinary hearing, the employee is found to have failed to improve or change behaviour such that conduct or performance is still unsatisfactory, or if he/she has committed a further offence within the time limits of the Final Written Warning, or if the offence is sufficiently serious, but not amounting to gross misconduct, then dismissal will normally result.

- 8.4.2 Dismissal will be subject to the appropriate contractual requirements appertaining to notice or payment in lieu of notice. The dismissed employee will be provided, within five working days of the hearing, with written notification stating the reasons for the dismissal, the date of termination, the appropriate period of notice and information regarding the **right of appeal**. The letter will indicate to whom the appeal should be addressed and the time frame for submission.

8.5 **Gross Misconduct**

- 8.5.1 Gross misconduct is defined as conduct so serious as to destroy the employment relationship between employee and employer. If an employee is accused of an act of **gross misconduct**, he/she may be suspended from work on full pay, wherever possible for no more than ten working days, while the investigation is conducted into the alleged offence. If, on completion of the investigation and after a disciplinary hearing at the Dismissal stage of the procedure, the University is satisfied that gross misconduct has occurred, the outcome will normally be summary dismissal without notice or payment in lieu of notice.

- 8.5.2 The following list, which is not exhaustive, provides examples of offences which are normally regarded as gross misconduct:

- Actions which breach Health and Safety or Hygiene Rules and Regulations or which endanger other employee's safety;
- Physical violence or bullying;
- Serious unlawful discrimination or harassment;
- Physical violence on another person;
- Theft, fraud, deliberate falsification of records;

Unauthorised removal of University property;
Wilful damage to institutional property; the property of other employees, or the property of the University's clients or contractors;
Causing loss, damage or injury through serious negligence;
Serious misuse of the University's property or name;
Serious incapability through alcohol or whilst under the influence of illegal drugs or other illicit substances;
Smoking in prohibited areas;
Misuse of e-mail or internet or breach of the Acceptable Use Policy, including deliberately accessing internet sites containing pornographic, offensive or obscene material;
Making false claims in job applications;
Unauthorised disclosure of information and/or in breach of the Data Protection Act 1998;
Serious insubordination;
A serious breach or breakdown of trust and confidence; and
A serious breach of the University's Work Related Driving Policy.

- 8.5.3 The dismissed employee will be provided, within five working days of the hearing, with written notification stating the reasons for the dismissal, the date of termination and information regarding the **right of appeal**. The letter will indicate to whom the appeal should be addressed and the time frame for submission.

9. **SUSPENSION**

Suspension may be considered at any stage of the investigation. It will only be undertaken where the allegations are so serious that dismissal for gross misconduct is possible, where individuals are perceived to be at risk or where the investigation process could be hampered if the suspension was not implemented. Suspension will be with pay and will be imposed only after careful consideration. Any period of suspension will be reviewed to ensure that it does not become unnecessarily protracted. Suspension is not an assumption of guilt or a disciplinary penalty in itself. The suspension of an employee can only be sanctioned by the VC (or nominee). Partial suspension may be considered.

10. **THE APPEALS PROCESS**

- 10.1 The right of appeal against disciplinary action, including dismissal, is essential to natural justice. The employee may raise an appeal on a number of grounds, including perceived unfairness of the decision, the severity of the disciplinary action, or new evidence having come to light.
- 10.2 An employee wishing to exercise their **right of appeal** should lodge their request for appeal in writing to the Director of Human Resources, within 10 working days of the date of the letter of confirmation of the disciplinary action. The **grounds for the appeal** should be clearly stated in the letter.
- 10.3 The Appeal will be considered by a manager or a panel, comprising of staff who have not been involved and preferably staff of a more senior level than those involved in the investigation and disciplinary hearing. Normally the chair will be the Vice-Chancellor or a Pro Vice Chancellor, who has not been previously involved in the particular case. An **appeal against dismissal** will be heard by a sub-committee of the University Council, members of which will not have been previously involved in the particular case.
- 10.4 The University will make arrangements for the appeal hearing to be held as soon as is reasonably possible. The employee has the **right to be accompanied** at the Appeal hearing as defined in section 4 of this policy.
- 10.5 The Appeal hearing will be sufficiently thorough and flexible to ensure justice and fairness. The Appeal hearing format is set out in Appendix 3.
- 10.6 After hearing all the facts of the case the Appeal panel will decide whether or not to uphold the disciplinary action. An Appeal panel has the power to uphold or remove the disciplinary action, or to determine a lesser penalty. If the appeal against disciplinary action is upheld then warnings

relating to the specific incident will be destroyed. The decision will be confirmed to the employee, in writing, within five working days following the Appeal hearing.

10.7 **The decision of the Appeal hearing is final.**

11. **TIMESCALES**

Other than for the duration of warnings, timescales may be varied by mutual agreement but changes must be formally recorded and authorised by both parties.

12. **NOTES AND RECORDS**

Notes and records compiled during any part of this Disciplinary Policy will be filed in accordance with Data Protection legislation.

13. **MEASURES AIMED AT REDUCING DISCIPLINARY AND GRIEVANCE ISSUES IN THE WORKPLACE**

The Management and Council of the University recognise that 'prevention is better than cure'. Whilst it is recognised that the importance of dealing with discipline and grievance issues fairly is paramount and effective it is also realised that it is more important to prevent problems arising in the first place, and the University will seek to establish sound working practices in partnership with the Trade Unions.

APPENDIX 1

SCHEDULE OF UNIVERSITY OF WALES TRINITY SAINT DAVID OFFICERS WHO ARE EMPOWERED TO TAKE ACTION UNDER THIS POLICY

Empowered Officer	Investigation	Informal Disciplinary Action	First Written Warning	Final Written Warning	Suspension	Dismissal
Chair of Governors	Yes	Yes	Yes	Yes	Yes	Yes
Staff Governors	Yes	No	No	No	No	No
Vice-Chancellor	Yes	Yes	Yes	Yes	Yes	Yes
Pro Vice Chancellors	Yes	Yes	Yes	Yes	Yes	Yes only when nominated by Vice Chancellor or Chair of Governors
Senior Managers	Yes	Yes	Yes	Yes	Only when nominated by Vice-Chancellor or Chair of Governors	No
Heads of School Heads of Support Units	Yes	Yes	Yes	No	No	No
First line managers	Yes	Yes	No	No	No	No
HR Staff	Yes	Yes	No	No	No	No

APPENDIX 2

FORMAT OF THE FORMAL DISCIPLINARY HEARING

The hearing will be held at a location which provides privacy and where there will be no interruptions. The Chair may sit alone or a panel may be formed of Officers empowered to take action under the Policy. Appendix 1 refers.

The disciplinary hearing will normally take the following format: -

- a) The Chair will introduce the hearing, explain its purpose and how it will be conducted.
- b) The University Representative will advise the individual Employee of the full nature of the actual complaint against him/her and will present relevant evidence supporting the complaint, including the calling of witnesses, in succession.
- c) The Employee (or 'Companion') will have the opportunity to ask questions on the complaints or allegations made against him/her. The Employee (or 'Companion') will be able to question or raise points with any witnesses called by the University representative.
- d) The Chair, and where applicable other panel members, will have the opportunity to ask questions of the University representative and any witnesses.
- e) The University witnesses will be asked to leave the hearing at this point but should be advised that they may be recalled, if necessary. Where it is certain that they will not be required again, within the hearing, then they should be advised accordingly.
- f) The Employee (or 'Companion') will then be provided an opportunity to present his/her case and to call, in succession, any supporting witnesses.
- g) The University representative will have the opportunity to question any aspects of the Employee's stated case and to question or raise points with any of the Employee's witnesses.
- h) The Chair, and where applicable other panel members, will have the opportunity to question the Employee and any of his/her witnesses.
- i) The employee's witnesses will be asked to leave the hearing at this point but should be advised that they may be recalled, if necessary. Where it is certain that they will not be required again, within the hearing, then they should be advised accordingly.
- j) The University representative will be given the opportunity to sum up their case.
- k) The Employee (or 'Companion') will be given the final right of reply.
- l) The University representative, the Employee and his/her Companion should be asked to withdraw at this point.
- m) The Panel will deliberate in private but may recall the University representative or the Employee and Companion for clarification of issues already presented. Both parties should be recalled even if the clarification is sought from only one of the parties. The Chair may adjourn the hearing if it appears necessary or desirable to do so, including for the purpose of gathering further information.
- n) After hearing all the facts of the case the Chair/Chair and panel will decide whether or not disciplinary action is justified and the employee will be advised accordingly. Where disciplinary action is justified the Chair/Chair and panel will take account of any mitigating or special circumstances, any explanations presented by the employee, the employee's disciplinary and general record, and/or previous sanctions. The selected disciplinary action should meet the test of reasonableness under the circumstances.
- o) This decision will be confirmed to the employee, in writing, within five working days following the disciplinary hearing. The letter to the employee will indicate the **employee's right of appeal** against the decision and details of how to submit an appeal. If the outcome is dismissal, but not summary dismissal, then the appropriate period of notice must be included in the letter. If the dismissal is classified as summary dismissal this must be clearly stated in the letter advising of the outcome.

Note 1: *The Chair has discretion, in exceptional circumstances, to amend the normal format of the hearing, for example, but not limited to allowing the questioning of witnesses through the Chair only rather than directly. The reason for any amendment will be made known to the University representative, the Employee and his/her Companion. No amendments will be made without first consulting the Director of Human Resources.*

Note 2: *If the Employee exercises the right to be accompanied by a 'Companion' there are certain protocols that should be maintained. The 'Companion' can present the case, can ask questions, can sum up the employee's case but **cannot answer questions** on behalf of the Employee. Section 4 of this policy defines the right to be accompanied.*

APPENDIX 3

FORMAT OF THE APPEAL HEARING

The hearing will be held at a location which provides privacy and where there will be no interruptions.

The Appeal hearing will normally take the following format: -

- a. The Chair will introduce the hearing, explain its purpose and how it will be conducted.
- b. The employee (or 'Companion') will be given the opportunity to present his/her grounds for appeal and to state any mitigating factors.
- c. The University Representative will respond.
- d. The employee (or 'Companion') will have the opportunity to ask questions of the Employee Representative.
- e. The Chair, and where applicable other panel members, will have the opportunity to ask questions of the employee and the University Representative.
- f. The Chair, and panel, will fully explore the issues raised by the employee (or 'Companion'). As appropriate the Chair may conduct a thorough review of all the evidence presented at the disciplinary hearing. The Chair may decide that it is appropriate to recall witnesses to give evidence directly to the Appeal hearing.
- g. The employee (or 'Companion') will be given the opportunity to comment on any fresh evidence which has come to light after the disciplinary hearing.
- h. The Chair may adjourn the proceedings if it appears necessary or desirable to do so.
- i. The employee (or 'Companion') will be given the opportunity to sum up their case.
- j. The University Representative will be given the opportunity to sum up their case.
- k. The University Representative, the Employee (and 'Companion') and any witnesses will be asked to withdraw at this point.
- l. The panel will deliberate in private but may recall the University Representative or the Employee (and 'companion') for clarification of any facts already presented. Both parties should be recalled even if the clarification is sought from only one of the parties.
- m. The decision will be confirmed to the employee in writing within 5 working days.



Document Version Control

Document reference: HR Policies - Dispute Resolution category

Document title: Disciplinary Policy

Original Policy Document	July 2012
Submission to JCC	November 2012
Submission to HR Committee	March 2013
Submission to full Council	July 2013
Date of implementation	1 August 2013 (date of merger TSD-SMU)

Related documents

Grievance Policy
Sickness Absence Management Policy
Capability Policy
Change Management Policy