



## Disciplinary Policy

### Policy Aim

York St John Students' Union (YSJSU) firmly believes that in most cases, a carefully considered conversation at the right time between the appropriate level of management and an employee is all that is necessary and is often a more appropriate way to encourage employees to achieve and maintain required standards of conduct and behaviour than immediate formal disciplinary action. Accordingly minor cases of misconduct will, in the first instance, be dealt with informally. This may involve any one or a combination of counselling, coaching, training and mediation.

The policy:

- Applies to all employees regardless of level or position or length of service in the Students' Union.
- Is designed to help York St John Students' Union employees to achieve and maintain acceptable standards of conduct and behaviour.
- Supports prompt resolution on the grounds that issues not dealt with become harder to resolve or manage effectively.
- Applies to the conduct of employees whilst engaged in any aspect of work-related activity including attending conferences and network events, social networking and social work-related functions
- Complies with the ACAS Codes of Practice on Grievance and Disciplinary procedures.

This policy **does not** cover:

- Serious concerns or suspicions regarding significant wrongdoing (in which case the Whistleblowing Procedure should be considered).
- Concerns about work performance which should be dealt with using YSJSU performance management mechanisms, such as the Capability Procedure.

### General Principles

The principles of this policy are to:

- Ensure fair and equal treatment, appropriate in individual circumstances in disciplinary matters for all YSJSU employees, by adhering to the principles of best practice.
- Ensure all disciplinary matters are treated as a priority and dealt with, quickly and efficiently to avoid any undue stress and disruption to the student experience or services.
- Ensure a consistent, objective and sensitive approach. It is essential that those involved in using the procedure are appropriately trained to understand their rights and responsibilities and understand the serious nature of their responsibilities.

- Ensure the highest level of confidentiality at all stages of the informal and formal procedures. This will apply to verbal and written communication. Other than in exceptional circumstances only those colleagues directly involved with the investigation will be informed of the matter.
- Ensure employees have the right to be accompanied at any formal disciplinary or appeal hearing by a union representative or workplace colleague.
- Ensure arrangements are made to meet any disability-related access needs.

## **Disciplinary Procedures**

### **1. Informal procedure**

When an employee's conduct has resulted in a failure to meet the standard of conduct required the line manager will meet with them to discuss the concern and what improvement is necessary. This should be done at a scheduled one-to-one meeting or sooner if appropriate, and a written note of the discussion made. Additional training and coaching may be needed and the employee will be made aware that the formal processes will be instigated if there is no improvement or if improvements fail to be maintained.

### **2. Formal procedure**

The formal procedure provides for temporary redeployment or suspension where appropriate; an investigation if necessary and a disciplinary hearing, if appropriate. Before any process is started the appointed line manager must familiarise themselves with the disciplinary policy and procedures.

#### **2.1. Suspension**

Suspension is not a disciplinary penalty and should not be viewed as such. Suspension should only be used if it is deemed that the employee's presence at the workplace will be of detriment or a risk to either:

- The investigation and/or
- The student experience or effective service delivery and/or
- Any party, including themselves and only after considering if the employee could be placed in an alternative post.

It is imperative all efforts are made to ensure suspension is kept to a minimum. Where appropriate, the employee may be temporarily redeployed elsewhere within the Students' Union as an alternative to suspension or have their duties restricted.

Prior to taking the decision to suspend, an employee must be given an opportunity to explain themselves and their response should be listed to and considered by the line manager. In exceptional circumstances where this has not been possible, the reasons for the suspension need to be fully explained to Chief Executive who will endorse or otherwise the decision to suspend.

The authority to suspend an employee lies with Chief Executive (or senior manager in their absence) and their decision must be received prior to suspending.

The employee will be suspended from work on full pay but excluding any additional allowances which are only due to be paid when duties are actually performed. The period of suspension should be kept to a minimum and regular contact made with the employee throughout. In most situations the suspension will remain in effect until the disciplinary process has been concluded.

Whilst suspended or redeployed an employee should refrain from work related contact with students and other colleagues from Students' Union.

An employee who is suspended is required to co-operate with the investigation and is expected to be available throughout the suspension period to attend any interviews at the request of the line manager and any subsequent disciplinary hearing. Any previously agreed annual leave will be honoured but new requests made after the start of the suspension will be subject to consideration.

## **2.2. Investigation**

- 2.2.1. It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In most cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing.
- 2.2.2. The line manager will normally assume the role of Investigating Officer unless there are specific reasons for someone else carrying out this role. There may be situations where it is advantageous for the Investigating Officer to have no connection to the employee and/or team involved, leaving the line manager to manage and support the affected colleague and/or team through the process.
- 2.2.3. Once nominated, the Investigating Officer will be the 'owner' of the case, until its conclusion, and will be accountable for regular progress reports on the case and adherence to timescales.
- 2.2.4. The Investigating Officer will confirm in writing to the employee that an investigation is to take place and the nature of the allegations. The investigation should commence within 5 working days of the alleged act of misconduct coming to light. There is no automatic right to be accompanied at investigatory meetings, however should the employee wish to be accompanied by a colleague or appropriate trade union representative (or they have a specific need due to disability or language), the Investigating Officer should be informed before the meeting and every attempt will be made to arrange a time and date which is suitable to all parties.
- 2.2.5. Investigations will normally be concluded within 20 working days. In exceptional circumstances time scales may need to be extended due to the need for a highly detailed investigation, particularly in cases of gross misconduct.
- 2.2.6. The Investigating Officer will produce a report summarising the investigation undertaken, facts established, conclusion(s) reached and recommendations for future action, if any. Should a disciplinary hearing be considered an appropriate course of action then a copy of the report will be provided to the employee with the invitation to the disciplinary hearing

## **2.3. Disciplinary Hearing**

Where the Investigating Officer has concluded that a disciplinary hearing is required they will then pass the case to another manager who will act as the Disciplinary Officer. The Disciplinary Officer will then write to the employee to invite them to the hearing, providing at least 10 working days' notice. A copy of the YSJSU Disciplinary Policy, investigation report, all witness statements and any other documentation referred to in the investigation report will be sent to the employee with the invitation.

In order to allow time for exchange and consideration of documents prior to the hearing, the employee should submit any written information upon which they will rely at the hearing to the manager conducting the hearing at least 5 working days prior to the hearing.

The manager acting as Disciplinary Officer will have no previous involvement in the case, whenever possible.

The Investigating Officer will attend the hearing to present their report and findings and to respond to any questions from the Disciplinary Officer or employee relating to their investigation and findings.

The employee has the right to be accompanied at the disciplinary hearing by a recognised trade union representative or workplace colleague.

The Disciplinary Officer will consider all the evidence, before adjourning the meeting to make their decision.

Where the allegation is found to be proven the Disciplinary Officer will be advised of any previous disciplinary sanction or any type of misconduct which was live at the time the alleged misconduct took place and will take into account when determining the relevant sanction.

The hearing should be reconvened to notify the employee of the decision. Where this is not possible on the same day, the employee should be told the decision of the Disciplinary Officer, as soon as possible after the disciplinary hearing. The decision should be confirmed in writing within 3 working days. If there is to be a delay a written explanation will be sent to the employee giving a date when a decision will be made and communicated.

## **2.4. Formal Warnings**

### **Written Warning**

This level of warning would normally be used if conduct does not meet acceptable standards, or for repeated minor offences, where misconduct fails to improve through the informal procedure or following an informal warning. The written warning, papers relating to the investigation and disciplinary hearing will be held on file for **12 months** but disregarded for disciplinary purposes thereafter if there is no further misconduct.

### **Final Written Warning**

This will be issued in the following circumstances:

1. If the misconduct is sufficiently serious to warrant a final written warning but insufficiently serious to justify dismissal
2. where the misconduct would usually be serious enough to warrant dismissal but mitigating circumstances are taken into account
3. If conduct fails to improve following a previous written warning issued in the last **12 months**, where Sustained improvement in conduct is not evident after a written warning.

The final written warning, papers relating to the investigation and disciplinary hearing will be held on file for **12 months** but usually disregarded for disciplinary purposes thereafter if there is no further misconduct. The YSJSU reserves the right in exceptional circumstances and depending on the severity of the misconduct to issue a final written warning to last up to **18 months**.

## Dismissal

Dismissal can occur in one of two ways:

1. Incrementally, following a series of informal and formal warnings for misconduct. Dismissal may follow a series of breaches in conduct which has received formal warnings. The misconduct for which the warnings were given does not have to be linked. Such a dismissal would be given with the standard notice reflecting the employee's contract, either given or paid in lieu.
2. Gross misconduct – where a disciplinary panel concludes that the employee conduct amounts to gross misconduct i.e. a fundamental breach of trust of confidence which results in a breach of contract, and then they may be summarily dismissed. This would be with immediate effect (notice not given or paid in lieu).

For the purposes of this disciplinary procedure, the term 'gross misconduct' may include cases of:

- Theft or fraud
- Physical violence or bullying
- Deliberate and serious damage to property
- Serious misuse of an YJSU's property or name
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious insubordination
- Unlawful discrimination or harassment
- Bringing the organisation into serious disrepute
- Serious incapability at work brought on by alcohol or illegal drugs
- Causing loss, damage or injury through serious negligence
- A serious breach of health and safety rules
- A serious breach of confidence

This list is not exhaustive.

### 3. Appeals Procedure

An employee has a right of appeal against any level of written warning or dismissal. An appeal hearing is not a rehearing of the case; it is a review of the disciplinary sanction imposed and process followed.

1. A member of staff may appeal against outcomes of the formal stages on the grounds of:
  - A serious procedural error that resulted in significant detriment to the employee
  - New evidence that has only come to light after the disciplinary meeting
  - The decision reached at the disciplinary was unfair and unreasonable in the circumstances having due regards to the severity of the allegations and any mitigating circumstances.
2. The employee should put their appeal in writing detailing the reason for appeal together with the relevant supporting papers. This should be submitted to the manager responsible for the outcome within 10 working days of the written confirmation of the outcome.
3. The manager will prepare a written response setting out the action that has been taken to date enclosing all supporting documentation.

4. The papers should be passed promptly to the Appeal Manager who will normally be the line manager of the manager responsible for the outcome.
5. Where possible, none of the Appeal Manager will not have had any previous involvement in the case.
6. The meeting should be scheduled as soon as reasonably practical. The employee shall be given 5 working days' notice of the meeting, along with any additional papers which will be presented. The employee should be reminded of their right to be accompanied by a trade union or work colleague at the meeting.
7. The meeting may be supported by a member of the University Human Resources team who will be in attendance to provide procedural advice. The manager responsible for the decision will also be in attendance to provide evidence to the Appeal Manager.
8. The employee should inform the Appeal Manager at least five working days before the hearing of any witnesses they want to call. The Appeal Manager may also wish to call witnesses, for example, the employee's line manager to clarify the areas of concern and actions taken to date.
9. At the meeting, the employee will be invited to outline their reasons for appeal and the Appeal Manager may ask questions of all parties.
10. Having considered the information presented the meeting will then be adjourned and the Appeal Manager will decide whether to:
  - Dismiss the appeal and confirm the sanction issued.
  - Uphold the appeal and review/reduce the level of sanctions.
  - In exceptional circumstances, instruct a re-investigation/re-hearing of the case
11. The meeting will be reconvened and the individual will be informed of the decision. Where the dismissal has been overturned, the employee will be re-instated with effect from the original dismissal date.
12. The outcome of the appeal meeting will be final and confirmed in writing within 5 working days.

#### **4. Other Procedural Issues**

Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance.

Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

Where a related grievance is raised by an employee after they are notified of the disciplinary hearing, the grievance will be considered at the disciplinary hearing to avoid undue delay. If the employee feels that this approach would have a detrimental or discriminatory effect then they may object to this approach and consideration would be given to their concerns.

YSJSU aims to proceed with all disciplinary matters with the minimum of delay. The disciplinary process may therefore continue during employee's absence. Absence will not prevent YSJSU from

invoking the formal disciplinary procedure including collecting statements and conducting interviews.

If the employee is absent due to ill health during any of the proceedings YSJSU will seek to obtain a medical opinion as to the employee's fitness to attend meeting and/or a hearing. Should consent to obtain this information be declined, YSJSU reserves the right to continue with the investigation/ hearing in the absence of the employee. If they are unfit to attend meetings/ hearings, the employee may ask their union representative or workplace colleague, as appropriate, to attend in their absence.

Where disciplinary action is to be taken against the Chief Executive the President will determine an appropriate process in consultation with the Trustee Board.