



Guidelines to the University College of Dublin National University of Ireland Statute 28

Disciplinary Statute

Universities Act, 1997

This document is for information purposes only.

The Disciplinary Statute is the main source of information on any investigation, disciplinary or appeal procedure.

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General Principles

1. Disciplinary statute 28 is the disciplinary procedure that has been collectively agreed by the university and the three recognised trade unions, SIPTU, IFUT and UNITE.
2. Underperformance and behaviour issues in the first instance should be managed informally prior to advancing through to the disciplinary procedures. It is recognised, that in some cases, the informal option is not suitable, and the behaviour will need to be addressed through the formal disciplinary procedure
3. At all times an employee is entitled to fair procedures and natural justice, such as;
 - The right to be informed and to be provided with the details of any allegations;
 - The right to be accompanied at any investigation, disciplinary or appeal by a colleague of their choice, by a whole time official of a recognised trade union or a local trade union representative;
 - The right to submit suggestions for witness(es) to be met with for consideration;
 - The right to respond fully to the allegations, which can include oral and written submissions;
 - The right to a fair and impartial determination of the issues concerned, taking into account any representations made by, or on behalf of the employee and any other relevant or appropriate evidence, factors or circumstances;
 - The right to appeal the decision to issue a disciplinary sanction.
4. At least 5 working days' notice of the requirement to attend a disciplinary investigation meeting will be given.
5. The University will ensure, in so far that it is aware, that any decision maker assigned to any stage within this procedure will be an objective party with no conflict of interest. Decision makers can include, the President of the University, the Human Resource Director or a Line Manager. A Line Manager can be, the employees' direct manager, a more senior manager, which includes, the Head of School/Head of Unit, College Principal/Director or manager of a department.
6. Employees are required to cooperate with all aspects of an investigation and or disciplinary investigation meetings. If an employee fails to engage or attend a disciplinary investigation meeting, the University has the right to proceed and issue an outcome based on the information that is available to them.
7. The Disciplinary Statute applies to all full and part time employees on permanent and temporary contracts.
8. The Disciplinary Statute does not apply to an employee serving in their probationary period.

The Disciplinary Procedure

General Management of Conduct and Performance

Management Guidelines

- Managers are expected to bring any concerns in relation to underperformance or conduct to the employee's attention. It is the preferred approach to try and resolve the concerns, where appropriate, through informal methods before advancing to the formal disciplinary procedure.
- Managers should clearly outline where the employee's performance or conduct is below the expected standards of the University and outline the required improvements.
- Managers should provide the necessary supports, such as coaching or training to support the employee in meeting the expected standards.
- If the employee does not improve within a reasonable timeframe, managers may proceed to address the concerns of underperformance or conduct through the formal disciplinary procedure.
- Managers are required to keep records of meetings

Employee Guidelines

- Employees are required to perform their duties to the required standard in accordance with their job description.
- Employees are expected to engage with their manager when a performance or conduct issue arises.
- If an employee feels that they need training or more support in a certain area they should bring this to the attention of their manager.

Formal Disciplinary Procedures

The following guidelines should be followed for any manager or employee preparing for a disciplinary investigation meeting.

Management Guidelines

Before the disciplinary investigation meeting

- In situations where an employee's performance or conduct falls below the required standard and informal resolutions have not been successful or appropriate, depending on the circumstances, then appropriate remedial action would be to instigate the formal disciplinary procedures
- When the decision has been made to instigate disciplinary procedures, all relevant information and documentation should be gathered and provided to the employee in advance of the disciplinary investigation meeting taking place.
- The line manager will determine if there is need for witnesses to be called to the disciplinary investigation meeting
- The notice of hearing will include the following information:
 - Date, time and location
 - At least 5 working days' notice

- The purpose of the disciplinary investigation meeting
- The areas of concern outlined as “*allegations*”
- The right to be represented by work colleague or trade union representative
- All relevant documentation appended

In preparation for the meeting, the manager should:

- Read the Disciplinary Statute
- Consider the key points that they want to discuss during the meeting
- Review the supporting documentation
- Ensure they understand the disciplinary procedure and what the possible next steps are
- Book a private and confidential meeting room
- Be objective and not make any decisions until after the disciplinary investigation meeting takes place

During the disciplinary investigation meeting managers should:

- Introduce everyone in attendance
- Explain the purpose of the meeting
- Highlight the importance of confidentiality
- Go through the allegation(s) in detail
- Ensure the employee is given a full opportunity to respond to the allegations
- The employee should be given the opportunity to put forward any mitigating circumstances
- Take a record of what is said during the meeting
- Be objective and open minded

After the disciplinary investigation meeting managers should:

- Give due consideration to the matters discussed
- Engage in further deliberations, if required
- Issue the outcome of the meeting in writing within 10 working days

If a sanction is determined to be appropriate, then the following information should be included within the outcome letter.

- Whether the sanction is a verbal warning, written warning, or final written warning
- The justification as to why a formal warning is necessary
- State the length of time that formal warning is to remain on the employees file
- State the improvement in performance or conduct that is required and the timescale for improvement
- It should be stated clearly that failure to improve will result in further disciplinary action
- The right to appeal the decision, to the Human Resource Director, within 10 working days from the date of the notification of the decision

If it is deemed that no sanction is warranted, then no further action should be taken.

Deciding on an appropriate level of sanction

The Line Manager should be objective and fair when deciding an appropriate level of sanction. The level of sanction should be fair and proportionate in the circumstances.

The following can be taken into consideration when determining the appropriate level of sanction:

- Impact of the breach of the policy on the School/Unit
- Level of support previously given to the employee
- Awareness or training carried out by the School/Unit
- The responses that the employee gave during the disciplinary investigation meeting
- The likelihood of the offending behaviour being repeated
- The impact that the underperformance or conduct has had on the School/Unit
- If there any live warnings on file already
- Has a similar situation previously been managed by the School/Unit, and if so, how was it previously managed?

Employee Guidelines

Before the disciplinary investigation meeting

An employee will be notified in writing of the requirement to attend a disciplinary investigation meeting. At least 5 days' notice of the requirement to attend will be given.

The purpose of the disciplinary investigation meeting is to give the employee a full opportunity to respond to the allegations that have been put to them.

To prepare for the disciplinary investigation meeting, an employee should,

- Make the necessary arrangements with the relevant trade union representative or work colleague, if they so wish
- Read the Disciplinary Statute
- Ensure they understand the allegations and the supporting documentation provided
- Prepare for the responses that will be required during the meeting,
- Gather any relevant documentation that they feels supports their case,
- If there are any relevant witnesses, suggest that they are called as part of the procedure
- Confirm attendance at the meeting, at least 3 working days in advance
- Confirm if anyone will be accompanying them to the meeting

During the disciplinary investigation meeting

- Ask any questions regarding the procedure or anything that they are unsure of
- Ensure to answer any questions that are put to them and if they do not understand, ask to rephrase the question
- Respond to the allegations with any relevant information that they have

After the disciplinary investigation meeting

- Maintain confidentially
- If dissatisfied with outcome, utilise the right of appeal
- Follow any instructions issued, as per the outcome letter

Disciplinary Sanctions

Verbal Warning (Stage 1)

A verbal warning is normally issued as a remedy for minor misconduct or performance. A verbal warning is issued at stage 1 of the disciplinary procedure and will remain on an employee's file for 6 months, subject to satisfactory improvement and provided there is no repeat of the offending behaviour.

Written Warning (Stage 2)

If there is no improvement following the issuing of a verbal warning, a written warning will be the next level of sanction. A written warning can be issued in circumstances where there is no live verbal warning on file as long as the situation is sufficiently serious enough.

A written warning is issued at stage 2 of the disciplinary procedure and will remain on an employee's file for 12 months, subject to satisfactory improvement and provided there is no repeat of the offending behaviour.

Final Written Warning (Stage 3)

If there is no improvement following the issuing of a written warning, a final written warning will be the next level of sanction. A final written warning can be issued in circumstances where there is no live written warning on file as long as the situation is sufficiently serious enough.

A final written warning is issued at stage 3 of the disciplinary procedure and will remain on an employee's file for 12 months, subject to satisfactory improvement and provided there is no repeat of the offending behaviour.

Deferral of an increment for the period of the incremental cycle

This sanction should only be used as disciplinary action short of dismissal.

Reducing the employee to a specified lower grade or rank on a temporary or permanent basis

This sanction should only be used as disciplinary action short of dismissal.

Dismissal

Dismissal can only be authorised by the President of the University.

Dismissal Procedure

The dismissal procedure will usually be used in the following cases:

- a) The employee has failed to make adequate improvements within the specified timeframe to their behaviour, conduct or performance, or continues any act (s) or omissions (s) that has resulted in a final written warning being issued or,
- b) Alleged cases of Gross Misconduct, where the employee has committed a serious breach of the University's rules and procedures or of recognised and accepted standards of behaviour which results in a breakdown of the relationship of trust and confidence between the University and the employee concerned.

Where there is an allegation of gross misconduct, and no investigation has taken place, the Human Resource Director, or nominee will instigate a fact-finding investigation to establish the facts.

If the investigation finds that the employee does have a further case to answer, the following guidelines can be used to explain the procedure.

Stage 1 – The role of the Line Manager or nominee.

The Line Manager, or nominee, will conduct a disciplinary investigation meeting into the allegations raised and will make a recommendation based on the evidence as presented to them to determine if

the allegations warrant dismissal. The Line Manger has 10 working days to consider the matter and issue a recommendation in writing to the employee and the Human Resource Director, or nominee.

Guidelines for managers and employees as detailed above should be used for stage 1 of the dismissal procedure.

Stage 2 – The role of the Human Resource Director (HRD) or nominee.

On receipt of the recommendation from the Line Manager, the HRD has the discretion to refer the matter back for further investigation, should they feel this is necessary.

The HRD will review the relevant information pertaining to the allegations and decide on a prima facie basis, that further disciplinary action as provided for in the disciplinary statute may be warranted. If this is the case, the HRD will provide the employee with the following information to respond to:

1. All relevant information should include but is not limited to, witness statements, relevant policies, employee statement and fact-finding investigation report.
2. The employee will be pre warned that a potential sanction could be dismissal.
3. A copy of the Disciplinary Statute.

The employee will be given a deadline of 10 working days to respond in writing to points 1-3 above. Within the written response, an employee has the right to request a meeting with the HRD to discuss the allegations. If a meeting is requested, this will be arranged within a further 10 working days from the expiration of the date of the deadline.

Where the HRD finds that dismissal is proportionate and reasonable in circumstances, the recommendation will be communicated in writing to the employee and the President, within 10 working days. The 10 working days' timeline is from the date of the expiration of the response deadline or the date that the meeting took place, which ever comes first.

Stage 3 – The role of the President or nominee.

In cases where the proposed disciplinary sanction is dismissal or action short of dismissal, the President will be provided with a written report on the circumstances of the case by the HRD, or nominee.

The employee has the right to provide a written submission to the President for consideration prior to the decision being made.

Timelines will be decided by the President and will be appropriate in the circumstances.

The President will communicate the decision in writing to the employee and the HRD, or nominee. The President has the authority to issue any sanction, as provided for in the Disciplinary Statute, that they feel is proportionate and reasonable in the circumstances.

Suspension of Employee

Any period of suspension will be without prejudice and on full pay. Human Resources will support the administration of the procedure when there is a possibility that an employee will be suspended. The decision to suspend an employee will only be made after due consideration of the seriousness of the situation. An employee will need to be informed in advance of the reasons why suspension is being considered. The employee will be given the opportunity to respond and the right be represented by a trade union representative or a colleague of their choice, if they so wish.

If the decision is made that the situation is seriousness enough to warrant suspension, then the employee will be informed in writing. The decision to suspend will be kept under review throughout the investigation and/or disciplinary procedure.

During a period of suspension, an employee is not permitted to engage in work activities, attend the workplace or make contact with employees or students regarding University business or matters relating to their suspension, without prior written consent of the University.

The University will require the employee to provide their personal email address so that correspondence can be sent during the period of suspension.

Appeal Procedure

An employee has the right to appeal any disciplinary sanction, in accordance with the Disciplinary Statute.

During an appeal hearing, the employee has the following rights:

- To have a fair and impartial hearing
- To have an appropriate appeals person appointed that has had no previous involvement in the other stages of the disciplinary procedure
- The right to be accompanied by a work colleague or trade union representative
- The right to submit relevant documentation
- The right to request that a witness is met with
- The right to have their grounds of appeal fairly examined

Notification of intention to appeal

Intention to appeal a verbal warning, written warning, final warning or any other action short of dismissal must be submitted in writing, to the Human Resource Director, within 10 working days of notification of the decision.

Intention to appeal a decision to dismiss must be submitted to a Disciplinary Appeals Board, within 10 working days of notification of the decision.

Grounds of appeal

The appeal must include reasons why the employee is appealing the decision, which can include one or more of the following:

1. The provisions of the Disciplinary Statute were not adhered to
2. All the relevant facts were not ascertained in the course of the disciplinary procedure
3. All the relevant facts were not considered, or not considered reasonably in the course of an investigation or disciplinary procedure
4. The employee concerned was not afforded a reasonable opportunity to answer the matter(s) at issue
5. The employee concerned could not reasonably be expected to have understood that performance, conduct, act or omission concerned would attract disciplinary action and/or
6. The sanction recommended is disproportionate to the performance or conduct concerned

Appeal Procedure (Other than dismissal)

The Human Resource Director, or nominee will convene an appeal hearing within 28 working days' of receipt of the notification of the intention to appeal.

Following the appeal hearing, a decision will be issued within 10 working days. This decision is final.

Dismissal Appeal Procedure

The Disciplinary Appeal Board operates independently and comprises of a Chairperson, Deputy Chair and a panel of independent external experts.

Step 1. When an employee submits their intention to appeal, the employee will be required to submit a written statement to the Board and the Human Resource Director, or nominee, within 10 working days.

Step 2. The Human Resource Director, or nominee, will then be asked to provide their own written statement to the Board and the employee.

Step 3. The Board may then ask for any further submission from the employee or the Human Resource Director, or nominee.

Step 4. The Board will notify the employee and Human Resource Director, or nominee, of the appeal hearing date. The hearing date will be scheduled within 30 working days from the date that the employee submitted their intention to appeal. The Board has the discretion to set the hearing date outside of the 30 working days' time limits in circumstances where more time is required to ensure fair process.

Step 5. The Board will issue a decision in relation to the employee's appeal, within 10 working days from the conclusion of the appeal hearing. The decision of Board is final.

Misconduct

Misconduct

Misconduct occurs when a staff member's conduct or work performance is below the general standard expected.

Examples of misconduct include, but are not limited to:

- regular or persistent lateness;
- unacceptable standard of appearance;
- unauthorised absence;
- poor performance;
- irregular attendance;
- neglect of duties;
- unprofessional attitude towards members of the UCD community;
- disobedience;
- disregard of safety and/or security regulations;
- misconduct within/outside business hours prejudicial to the University's interests or reputation;
- gambling or betting - excluding minor amounts on football pools, racing, sweepstakes, raffles, charitable draws etc.

Gross misconduct

Gross misconduct occurs when there is a serious breach of the University's rules and procedures or of recognised and accepted standards of behaviour which results in a breakdown of the relationship of trust and confidence between the University and the employee concerned.

Examples of gross misconduct include, but are not limited to:

- serious criminal behaviour (including conviction in respect of or pleading guilty to any criminal offence(s)) and/or knowingly acting in an illegal way which is prejudicial to the University's interests or reputation;
- serious and/or repeated non-adherence to the University codes of practice/policies;
- serious and/or repeated non-adherence to the University's e-mail, internet, IT, telephone policies;
- serious breaches of health and safety rules/policies, fighting and/or assault on another person;
- serious and/or repeat incapability through alcohol or being under the influence of illegal drugs or misuse of prescribed medication, possession and/or sale of illegal drugs;
- serious and/or repeated acts of negligence which causes unacceptable loss, damage and/or injury;
- serious and/or repeat disruptive/offensive behaviour;
- serious and/or repeat misrepresentation or misuse of authority abuse of position;
- serious breaches of research integrity requirements and/or policies;
- breaches of child protection policies;
- deliberate falsification of records, and/or violation(s), misuse and/or improper sharing of confidential information and/or serious misuse of organisational property, material or equipment;
- theft, fraud, embezzlement, misappropriation of funds, bribery and/or corruption;

- unauthorised entry/access to computer and/or other confidential records/files;
- discrimination, bullying, harassment, sexual harassment or other conduct of a sexual nature;
- unauthorised absence/unacceptable attendance levels and/or repeat failure to comply with sick leave policies;
- failure to disclose potential and/or actual serious conflicts of interest including where such conflicts include family members or connected persons;
- improper influence, to make personal gain (including financial gain) and improper influence to make gain (including financial gain) for family and other connected persons;
- acceptance of improper gifts/hospitality, e.g. from commercial organisations.