**Introduction**

All colleagues are expected to demonstrate professionalism, integrity and behaviours aligned to our values whilst at work or when representing the University. We are committed to ensuring misconduct is managed fairly and consistently, with the support of the People Team available to managers and colleagues throughout.

Advice should be sought from the People Team prior to the commencement of any disciplinary

process, either informal or formal.

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# **Purpose**

The policy provides advice and support for managing poor conduct at work, including performance-related misconduct where there is a persistent or wilful failure to meet appropriate standards.

# Scope

This policy applies to all University colleagues engaged on any contract type.

# Informal Disciplinary Process

Your manager will seek to resolve minor misconduct and behaviour issues promptly through Informal Intervention preferably in person or via a Teams video call.

The focus will be on providing prompt constructive feedback, in one of the following ways:

* Immediately upon witnessing the behaviour, if appropriate.
* Setting up a meeting to discuss an incident, issue or concern.
* During a pre-planned 1-1 meeting, if timely.

Your manager will record informal discussions via email, capturing the following key points:

* Summary of the discussion and key issues addressed.
* Expected future behaviours and performance standards.
* Agreed-upon actions or steps to be taken.
* Any progress review periods or follow-up meetings.
* Identified mitigating factors that may have influenced the situation.
* Training needs or support required to meet expectations.

Informal meetings do not require a member of the People Team to be in attendance, but support is available to managers and colleagues as needed.

Satisfactorily making the agreed improvements within the specified timescale should resolve the issue, though the discussion may be referenced in future if behaviours persist or recur.

# Formal Disciplinary Process

Should Informal Interventions be unsuccessful it may be necessary to escalate to the Formal Process. Where significant concerns are raised the formal process can be initiated immediately without the need for an informal process.

You have the right to be to be accompanied by a work colleague or a trade union representative at any stage in the formal process, including any investigations or appeals process. Legal representation or any other representation is not permitted.

Some examples of when a Formal Process would be advisable:

* Conduct or behaviours aligned with gross misconduct examples.
* Previously identified concerns managed informally but with no improvement.
* Where there is sufficient evidence or following conclusion of an investigation, behaviours or conduct are identified which warrant progression directly to a Disciplinary Hearing.

When determining whether behaviours or actions may require consideration via the Disciplinary Policy, [Appendix 1](#_Appendix_Y_-) provides a non-exhaustive list of examples, inclusive of misconduct and serious/gross misconduct.

Once it has been established that the Formal Process is required, the manager will open a ‘Case’ with necessary advice from a member of the Employee Relations Team, and should determine:

1. If there is the requirement for suspension with immediate effect to enable an investigation and/or hearing to be undertaken.
2. If an investigationis required to establish any missing facts or evidence before determining the need for a Disciplinary Hearing.

or

1. If there is sufficient information available about the concerns to enable progression to a hearing (with or without suspension).

### Investigations

At the commencement of any Formal Process, a manager or Senior Leadership Team (SLT) member (depending on severity) will be determined as the Commissioning Manager and will identify a suitable Investigating Manager, if required, who has not been directly involved or witnessed the alleged misconduct.

Investigations will be thorough and carried out without undue delay. This may involve meetings with you and relevant witnesses or simply reviewing documentary evidence. Where relevant, notes from informal meetings and action plans will be included.

Once all facts are established, the Investigating Manager will prepare a report including one of the following recommendations:

* **Formal action** – there is evidence to support the allegation so this matter should progress to a Disciplinary Hearing.
* **Informal action** – there is insufficient evidence to support the allegation so the matter should not progress to a Disciplinary Hearing. However, appropriate informal support such as the provision of training, counselling or mediation may be recommended. Further similar behaviour/concerns may result in disciplinary action.
* **No further action** – there is insufficient evidence to support the allegation so the case should not progress to a Disciplinary Hearing.

### Suspension

In some circumstances, it may be necessary to suspend you from your role. This is on a without prejudice basis and on full pay pending the outcome of the investigation and/or Disciplinary Hearing. This can occur at any time of the process and the decision to suspend will be taken by a member of the University’s Senior Leadership Team upon consultation with the Employee Relations Team.

### Formal Disciplinary Hearing

Once the process progresses to a hearing, the Commissioning Manager will appoint a suitable Hearing Manager or, in cases where dismissal is a potential outcome two Hearing Managers, typically the direct People Manager and another manager.

You will be invited to a Disciplinary Hearing with at least five working days’ notice. The invitation will:

* Outline the allegation(s) and the potential level of misconduct.
* Include any relevant evidence or investigation documents.
* Request that you provide any written statements and/or witness names up to two working days before the hearing.
* Offer you to consider any reasonable adjustments to support your participation, with Occupational Health input where necessary.

At the hearing, you will:

* Respond to the allegations.
* Challenge the investigation findings and ask questions.
* Present evidence.

If you do not engage in the process without good reason, the hearing may proceed in your absence and a decision will be made based on the available information.

### Right of Delay

It is expected that attendance at formal meetings will be prioritised. However, if for genuine reasons, any party cannot attend a formal meeting, the meeting will be rescheduled and held without unreasonable delay.

If any party cannot attend the rescheduled meeting, then consideration will be given to holding the meeting in their absence with a decision made on the information available.

### Outcome and Sanctions

The Hearing Manager will review all available information and evidence to determine whether there is a case to answer, based on the evidence presented and, where appropriate, on the balance of probabilities.

The manager will assess whether the case constitutes misconduct or gross misconduct and determine the appropriate disciplinary outcome:

**Written Warning**

* + Typically remains active for 12 months (subject to the nature of the concerns).
  + Improvement in conduct is expected during this period.
  + Lack of improvement may lead to further disciplinary action.

**Final Written Warning**

* + Normally remains active for 12 months; may be extended up to 24 months depending on severity.
  + Issued for repeated misconduct, insufficient improvement, or more serious concerns that may amount to gross misconduct.

**Dismissal with Notice**

* + Applied in cases of repeated misconduct or continued unsatisfactory conduct/performance.
  + Dismissal is usually immediate, with payment in lieu of notice.

**Dismissal without Notice**

* + Applied in cases of gross misconduct.
  + Dismissal is immediate and without notice or payment in lieu.

**No Sanction**

* + If the allegation is not upheld, no disciplinary action is taken.
  + In some cases, the allegation may be upheld but mitigating factors may result in no or reduced sanction.
  + Recommendations may still be provided.

The decision will be provided in writing within five working days of the hearing. If more time is required, you will be notified of this delay as soon as possible and given the reasons for it. There may be instances where the outcome is delivered verbally depending on the circumstances.

If you have an extended absence during the period of any live warnings, these will be extended proportionally to the duration of the absence.

Where a sanction is applied and it may be considered a breach of the standards required of a regulatory or professional body or an external partner/funder, the University may be required to report the matter to the relevant organisation.

# Appeals Process

You may appeal against the outcome within 10 working days of being notified of the decision.

The appeal process is not a re-hearing, therefore the grounds for appeal must be based on:

* New evidence coming to light which could have materially affected the outcome.
* A flaw in the procedure which could have influenced the outcome.
* Unfairness of the outcome.

One Appeal Manager will be appointed, for all appeals, including cases of gross misconduct. The Appeal Manager will not have had any prior involvement in the disciplinary matter.

At the Appeal Hearing, you will be given the opportunity to state your appeal and provide any new information. The Appeal Manager may adjourn the meeting to make further investigations or seek advice/further information if necessary, ensuring that they inform you of any additional information that is considered.

The Appeal Manager will make a final decision and will notify you of their decision in writing within 10 working days of the Appeal Hearing, unless otherwise notified.

There is only one level of appeal within the University and therefore the decision taken following the appeal is final.

# Criminal Charges

If you are charged with, or convicted of, a criminal offence (outside of your employment with the University) this will not normally in itself be considered a reason for disciplinary action however if there could be any impact on your employment with the University you must advise your manager. Consideration will be given to the relevance and effect the charge, or conviction has on your suitability/ability to complete your role and the impact it could have on your relationship with the University, work colleagues, students and customers.

The University will not wait for the outcome of a criminal prosecution in convening a Disciplinary Hearing and reaching a decision, if it considers that prompt action is required and Police Scotland have not advised the University not to proceed where it may interfere with their investigation.

Additionally, if the University has a reasonable belief that your conduct may be considered a criminal offence, we will report the matter to the authorities as necessary.

# Records

Confidential records will be kept of all appropriate documentation generated during formal process and retained by the People Team in line with the University’s retention schedule.

A People Team representative will take a summary note (not verbatim) of the formal meetings. Written records of Hearings and any Investigation meetings will be given to the colleague/witness to review, sign and return.

In some circumstances information may be redacted, for example, to protect a witness.

The recording of either informal or formal meetings is not permitted. This is to encourage openness and full participation by all parties during meetings.

# Support

* [ACAS Code of Practice on Disciplinary & Grievance Procedures](https://www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures)
* [Employee Assistance Programme](https://intranet.napier.ac.uk/working-here/health-and-wellbeing/employee-assistance-programme)
* [Health and Wellbeing Intranet Resources](https://intranet.napier.ac.uk/working-here/health-and-wellbeing)
* If you are a member of a Trade Union, you can receive support and advice from your trade union representative.
* The [Citizens Advice Bureau](https://www.citizensadvice.org.uk/) can provide impartial and knowledgeable support and advice.

# Document Detail

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| --- | --- |
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# Appendix 1 – Examples of Misconduct and Gross Misconduct

This is an indicative list and is not exhaustive. We will deal with each situation on a case-by-case basis, taking into consideration all of the evidence available.

Examples of **misconduct** may include:

* Poor timekeeping (repeated lateness without reasonable explanation).
* Instances of inappropriate behaviour towards colleagues or students, which could include discourtesy or rudeness.
* Improper use of email, internet, social media, and breaches of the [Information Security](https://documentcentre.napier.ac.uk/Search-Results?fv=categories~Information%20technology)  policies - subject to provisions under the Public Interest (Disclosure) Act 1998.
* Improper use of IT equipment and software.
* Refusal to comply with reasonable management instructions or requests.
* Failure to comply with the University policies and procedures including Health and Safety.
* Removal of University property without authorisation.
* Unauthorised absence from work, including a colleague’s failure to follow the University’s [Attendance Management Policy](https://intranet.napier.ac.uk/working-here/policies-and-guidance/time-off).
* Academic and/or research misconduct – see [Research Misconduct Policy](https://intranet.napier.ac.uk/-/media/files/research,-innovation-and-enterprise/research/researchmisconductpolicy.pdf).
* Smoking/vaping outside designated areas.

Examples of **gross misconduct** may include the list below or repeated instances of the list above:

* Harassment on any grounds, including sex, gender reassignment race, religion, nationality, disability, age, sexual orientation, marital status or pregnancy/maternity related grounds.
* Any form of bullying (in line with the University’s [Dignity at Work Policy](https://intranet.napier.ac.uk/working-here/policies-and-guidance/behaviours,-conduct-and-performance)) including aggressive physical or verbal conduct, victimisation, exclusion or intimidation (including “cyber bullying”).
* Assault - physical violence or the malicious ill-treatment of other colleagues, visitors or students, including the threat of violence.
* Posting social media content that has the sufficient potential to or does bring the University into disrepute, or reflects negatively on the University, colleagues or students (in line with the University’s [Social Media Usage Policy](https://intranet.napier.ac.uk/working-here/policies-and-guidance/behaviours,-conduct-and-performance)).
* Improper use of University funds, equipment or resources.
* Gross negligence or recklessness which seriously endangers the health and safety of colleagues, students or others, or causes (or might cause) unacceptable loss, damage or injury.
* Behaviours which have the potential to or do bring the University into disrepute (which can include behaviour outside work premises or hours).
* Dishonesty, theft or fraud involving University property or unauthorised possession of property belonging to others.
* Failing to declare any private, business and/or financial interests, that would potentially conflict with the role and duties undertaken by the colleague at the University (as required by the [Finance Regulations](https://documentcentre.napier.ac.uk/search-results?fv=categories~Financial|subcategory~Financial%20control%20and%20regulation)).
* Giving false information about qualifications or entitlement to work (including immigration status); using fraudulent identity or withholding information that would be relevant.
* Unauthorised and deliberate possession, copying, alteration, destruction or retention of University’s documentation.
* Deliberate or serious breaches of confidentiality - subject to provisions under Public Interest (Disclosure) Act 1998.
* Falsification of documents including expenses claims or other official documents.
* Wilful damage to University property, equipment or other resources.
* Illegal or inappropriate use of, or copying of, IT equipment or software (including viewing, copying or sending pornographic material or violent images on the internet).
* Serious incapability to perform normal duties due to the influence of alcohol or drugs whilst at work or on University premises (see also the University’s [Alcohol and Substance Use and Misuse Policy](https://intranet.napier.ac.uk/working-here/policies-and-guidance/behaviours,-conduct-and-performance).
* Misuse of the University’s property or name.
* Serious breach of trust and confidence – in line with the provisions of the University’s [Public Interest Disclosure (Whistleblowing) Policy](https://intranet.napier.ac.uk/working-here/policies-and-guidance/behaviours,-conduct-and-performance).
* Serious academic misconduct (including research misconduct) – see also the University’s [Research Misconduct Policy](https://documentcentre.napier.ac.uk/-/media/files/research,-innovation-and-enterprise/research/researchmisconductpolicy.pdf).
* Making untrue / vexatious and malicious allegations against a colleague.
* Criminal offences within employment, for instance corrupt practices including the receipt of money, goods, favours or hospitality in respect of services rendered.
* Criminal activities outside work, where such conduct is judged to be incompatible with the individual’s employment, or where it could bring the University into disrepute.