



University College  
of Osteopathy

# **Disciplinary & Capability Procedure**

## **For Staff**

### Core Documentation Cover Page

## Disciplinary & Capability Procedure for Staff

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<b>Equality Impact</b>					
Positive equality impact (i.e. the policy/procedure/guideline significantly reduces inequalities)					
Neutral equality impact (i.e. no significant effect)					X
Negative equality impact (i.e. increasing inequalities)					
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## DISCIPLINARY AND CAPABILITY PROCEDURE FOR STAFF

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## **1. SCOPE**

- 1.1 This procedure exists to encourage employees to conform to their contracts of employment and the UCO's rules and regulations in relation to attendance, timekeeping, attention to work, health and safety plus conduct generally. The UCO philosophy is to promote attitudes of self-discipline whilst ensuring that satisfactory standards of work are achieved by all staff.
- 1.2 The procedure will be used only where it is clearly necessary. It will be used wherever possible as an aid to improvement rather than a means of punishment. Managers and supervisors operating this procedure must refer to ACAS Code of Practice and ACAS Guidance Notes, and maintain fairness and consistency of treatment, to ensure that all cases are investigated thoroughly, that decisions reached are fair and reasonable, and that there is no unfair discrimination.
- 1.3 This procedure applies to all UCO employees who have completed their probationary period, and who have received a letter to this effect. It covers all aspects of discipline, capability and disciplinary dismissals. In the case of dismissal resulting from serious or long-term ill health, only the capability procedure will be used and suitable alternative work will be considered before dismissal action is taken.

## **2. ACAS CODE OF PRACTICE**

- 2.1 Whenever a disciplinary process is being followed it is important to deal with issues fairly. There are a number of elements to this in the Code which include:
  - a) Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
  - b) Employers and employees should act consistently.
  - c) Employers should carry out any necessary investigations, to establish the facts of the case.
  - d) Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.
  - e) Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.
  - f) Employers should allow an employee to appeal against any formal decision made.

### **3. INFORMAL COUNSELLING**

- 3.1 Minor misconduct or breaches of rules will normally be dealt with initially by the employee's supervisor/Line Manager giving informal counselling or advice. This is not part of the formal disciplinary procedure and will not be recorded on the employee's personnel file, but the supervisor will keep a note of the date, circumstances and agreed action plan. The supervisor/Line Manager will explain to the employee the nature of the discussion and the risk of formal disciplinary proceedings should the agreed action plan not be met.

### **4. FORMAL DISCIPLINARY PROCEDURES**

- 4.1 The formal disciplinary procedure will be used in cases of more serious misconduct or breaches of the rules, or persistent minor breaches that have not been resolved through informal counselling. Normally, the procedure will follow the stages below but in cases of serious breaches of the rules, or action indicating unfitness for responsibilities held, the procedure may be invoked at any stage without a current warning at the previous stage. The UCO also reserves the right of summary dismissal for serious or persistent misconduct after a full investigation and disciplinary hearing meeting has been conducted.

#### **A) STAGE ONE - VERBAL**

- 4.2 Stage 1 is the first formal stage and is a verbal warning although put in writing.
- 4.3 The fact that a warning has been given, by whom, when, and for what reason will be recorded on the employee's personnel file.
- 4.4 The employee will be advised of the standards of conduct required, the consequences of a failure to maintain them (usually implementation of stage 2) and their right of appeal.

#### **B) STAGE TWO – FORMAL WRITTEN WARNING**

- 4.5 Stage 2 is a first formal written warning.
- 4.6 A copy of the warning will be placed on the employee's personnel file. The warning will specify:
- the matters of complaint against the employee,
  - relevant previous disciplinary action,
  - the improvements in conduct required to be achieved and maintained,
  - duration of the warning,
  - the consequences of a failure to respond as required and

- f) the right of appeal

**C) STAGE THREE – FINAL WRITTEN WARNING**

- 4.7 Stage 3 is a final written warning.
- 4.8 The details of the warning will be as at stage 2, but will also make it clear that further misconduct, breaches of rules or failure to comply with the warning will lead to the risk of dismissal.

**D) STAGE FOUR - DISMISSAL**

- 4.9 Stage 4 is dismissal.
- 4.10 Only a member of the Senior Management Team not involved in the previous disciplinary action (and not including the Vice-Chancellor) has the authority to dismiss.
- 4.11 Dismissal will be reserved for cases where acceptable standards of conduct from the employee have not been attained, or cases of gross misconduct or serious breaches of the rules, or action indicating unfitness for the responsibilities held by the particular employee concerned. Examples of cases justifying dismissal or a first and final warning are given at the end of this procedure; this list is not exhaustive and conduct not covered may nevertheless be so self-evidently unacceptable as to justify dismissal without prior disciplinary warnings.
- 4.12 Dismissal will take effect immediately (without prejudice to the employee's rights of appeal).

**5. INVESTIGATIONS AND HEARINGS**

- 5.1 In all cases before disciplinary action is taken the matter will be carefully investigated by the employee's supervisor or another manager appointed by a member of the Senior Management Team. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing meeting. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing meeting. Investigations will be conducted as rapidly as circumstances permit.
- 5.2 The employee may be suspended on full pay during an investigation, if this is considered advisable.
- 5.3 No disciplinary action will be taken until the employee has:
  - a) been informed of the nature of the complaint or allegations and of his or her rights under the procedure in writing
  - b) been offered sufficient time to prepare a case, and

- c) been interviewed by the person/s empowered to take the relevant disciplinary action.
- 5.4 Disciplinary hearing meeting will usually be held with the employee's supervisor/Line Manager (or an alternative) and may also involve up to two additional panel members.
- 5.5 The format and members of the Panel will be decided by the Head of Human Resources, bearing in mind the type of offence and role of the individual. The manager who has investigated will also attend to present their findings where appropriate. A Human Resources representative will be present at any hearing.
- 5.6 The employee will be informed at the start of the disciplinary hearing meeting of the nature of the complaint or allegations, the evidence that has been gathered and of his or her rights under the procedure. The employee will be asked to state his or her case to the disciplinary hearing, and may be accompanied by a trade union representative or a fellow employee, and in any case where the facts are in dispute, may call relevant witnesses.
- 5.7 Where full information is not available at the hearing or further consideration is required, the person chairing the hearing will normally adjourn it for the minimum amount of time necessary to gain these facts. Disciplinary hearings will be held as soon as reasonably practicable.
- 5.8 Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause the UCO will be entitled to make a decision on the evidence available.
- 5.9 In deciding on a disciplinary penalty, the manager/panel will take into account the employee's service and disciplinary record, his or her position and responsibilities, and any factors put forward in mitigation, as well as the nature of the disciplinary offence, relevant rules and previous practice in enforcing them. The Human Resources Representative will advise on appropriate penalties.
- 5.10 All formal disciplinary warnings will normally be valid only for a stated period, which will usually be six months to twelve months. At the end of this period the warning will be reviewed by the person issuing it. If the employee's conduct has been entirely satisfactory the warning will normally be cancelled; if not it may be extended for up to six months once a meeting with the employee and supervisor/Line Manager plus Human Resources has taken place and then reviewed again (without prejudice to fresh disciplinary proceedings at the next stage if the unsatisfactory conduct is sufficiently serious).
- 5.11 An employee subject to disciplinary warning for any reason is liable to further disciplinary action at the next stage of the procedure, irrespective of the nature of the subsequent disciplinary offence.

## **6. RIGHT OF ACCOMPANIMENT AT DISCIPLINARY HEARING MEETINGS**

- 6.1 Employees have a statutory right to be accompanied by a companion at a disciplinary meeting. The chosen companion may be a fellow worker, a trade union representative or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker.
- 6.2 The companion will be allowed to address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. The companion does not however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case.

## **7. CAPABILITY**

- 7.1 The UCO will at all times endeavour to ensure that employees achieve and maintain a high standard of performance in their work. To this end it will ensure that standards are established, performance is monitored and employees are given appropriate training/support to meet these standards. The following procedure will typically be used to manage poor performance in the workplace.
- 7.2 Where the manager or supervisor first establishes that an employee's performance is unacceptable, an informal discussion will be held with the employee to try to establish the reason. Should this discussion result in a decision that the established standards are not reasonably attainable, the standards will be reviewed.
- 7.3 Should the interview establish that the performance problems are related to the employee's personal life, the necessary counselling/support will be provided with a review after (usually) 4 weeks. If improvement has not been achieved or is insufficient in this time, or if there is no other reason for the poor performance, the procedure outlined below will be implemented.
- 7.4 A letter will be sent to the individual, detailing the problems with his/her performance, and inviting the employee (together with a trade union or employee representative if so desired) to a formal interview with the line manager and the Head of Human Resources. The aims of the interview will be to:
  - a) Identify the cause(s) of poor performance and determine what (if any) remedial treatment (e.g. training, retraining, support etc) can be and have been given.
  - b) Explain clearly the shortfall between the employee's performance and the required standard.
  - c) Obtain the employee's commitment to reaching that standard.

- d) Set a reasonable period for the employee to reach the standard and agree on a monitoring system during that period.
  - e) Tell the employee what will happen if that standard is not met.
  - f) Right of appeal.
- 7.5 The outcome of this interview will be recorded in writing and a copy given to the employee.
- 7.6 At the end of the review period, a further formal interview will be held at which time:
- 7.7 If the required improvement has been made, the employee will be told of this and encouraged to maintain the improvement.
- 7.8 If improvement has been made but the standard not met, the review period will be extended.
- 7.9 If there has been no discernible improvement, the Line manager will explain to the employee that he or she has failed to improve. Consideration will be given to whether there are alternative vacancies which the employee would be competent to fill. If there are, the employee will be given the option of accepting such a vacancy. If such vacancies are available, the employee will be given full details of such vacancies, in writing, before being required to make a decision. If not then the employee will be moved to Stage 3 of the formal Disciplinary Procedure and issued with a final written warning.

## **8. APPEALS**

- 8.1 Employees have the right of appeal against any formal disciplinary or capability decision. Appeals will be heard where possible by a Senior Management Team member not involved with the original disciplinary action. The Head of Human Resources will also attend. Where the appeal relates to a member of the Senior Management Team, the Head of Human Resources will make suitable amendments to the procedure so that its principles are followed as closely as possible.
- 8.2 Appeals must be lodged in writing within five working days of the disciplinary decision being notified to the employee. The employee will be advised of the right of appeal and how and when to exercise it at that stage. Appeals will be heard as soon as reasonably practicable.
- 8.3 The employee is entitled to be heard personally at an appeal, and to be accompanied, if desired, by a representative of a trade union or a fellow employee, to call relevant witnesses in the same way as at the disciplinary hearing, and to comment on any new evidence arising at the appeal.

- 8.4 The appeal may be dismissed, allowed in full (in which case the disciplinary penalty is retrospectively cancelled) or allowed in part by substituting a lesser penalty which could have been imposed at the original hearing. In addition where the appeal is against dismissal the employee may be offered the alternative of a disciplinary demotion or a period of suspension without pay, or given the option to resign, as alternatives to dismissal.
- 8.5 In all cases the employee will be informed in writing of the results of the appeal hearing.

## **9. SPECIAL CASES**

- 9.1 Employees working in situations where it is not practicable to implement the procedure fully and promptly, will be dealt with as nearly as possible in accordance with the procedure and in particular may be suspended on full pay while arrangements are made for an appropriately constituted hearing.

## **10. CRIMINAL CHARGES**

- 10.1 Employees convicted (or in exceptional cases, charged but not yet convicted) of a criminal offence will be disciplined only if the conviction indicates a breach of the company's disciplinary rules or that they are in any way unfit to continue in the employment of the company.
- 10.2 Where an employee has been charged with an offence that is so significant, the Senior Management Team may authorise disciplinary proceedings prior to the court hearing because they are satisfied they are necessary to protect the interests of the UCO.

## **11. RETURNING FROM UNPAID LEAVE/SABBATICALS**

- 11.1 Employees granted extended leave without pay may be disciplined at any stage in the procedure if they fail to return on time after an extended period of leave, and it should be made clear at the time of authorising the leave that failure to return on time could lead to dismissal.
- 11.2 The employee will be given the opportunity of a disciplinary hearing and any penalty to be imposed will be assessed in the light of the employee's explanation and all other relevant factors.

## **12. CASES INVOLVING A MEMBER OF THE SENIOR MANAGEMENT TEAM**

- 12.1 In the case of disciplinary action involving a member of the Senior Management Team, the Vice-Chancellor will have responsibility for stages 1-3 of the procedure. The Chair and Vice-Chair of the Board of Directors (who will not have been involved at earlier stages of the procedure) acting together have the authority to dismiss a member of the Senior Management Team.

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- 12.2 In the case of disciplinary action involving the Vice-Chancellor, the Chair of the Board will have responsibility for stages 1-3 of the procedure. A panel of three Board Members would have the authority to dismiss the Vice-Chancellor.

## 13. CASES INVOLVING STATUTORY REGISTRATION AUTHORITIES

- 13.1 Employment regulated by statutory bodies is conditional upon continuing registration (e.g. General Osteopathic Council (GOsC) in respect of osteopaths working the UK).
- 13.2 Organisations like the GOsC act where there is evidence that an individual may not be fit to practise, for example when:
- a) an individual has been convicted of a criminal offence
  - b) there is an allegation of serious professional misconduct
  - c) an individual's professional performance may be seriously deficient
  - d) an individual with health problems continues to practise whilst unfit.
- 13.3 If there is evidence that service users may be at risk, the registration authority may suspend or restrict an individual's registration as an interim measure.
- 13.4 The UCO has a duty to report any incidents of alleged professional misconduct or other serious issues to the appropriate registration authority. The UCO will not wait for the outcome of any separate investigation, which the registration authority undertakes before instigating its own disciplinary action.
- 13.5 An osteopath or medical professional who is appointed to the UCO in a clinical capacity must usually maintain registration as a condition of employment – the loss of registered status would therefore normally lead to capability proceedings, although each case would be considered on its merits.

## 14. EXAMPLES OF MISCONDUCT WHICH COULD LEAD TO DISMISSAL

- 14.1 The UCO values the excellent conduct and behaviour of its staff. However, from time to time an individual employee may become involved in conduct that is unacceptable. Below are examples of conduct justifying dismissal (which may be summary i.e. without payment of notice) or which may lead to a first and final warning. In all cases the matter will be fully investigated and a disciplinary hearing meeting held prior to any final decision.
- a) Stealing
  - b) Assault, threatening behaviour or malicious damage.
  - c) Fraud.

- d) Removing or transporting any property that does not belong to you from UCO premises, except in the course of your duties or with prior written consent from the management.
  - e) Failure to comply with UCO safety rules as contained within the Health & Safety policy.
  - f) Conduct that brings the UCO's good name into disrepute.
  - g) Presence at work in an unfit state to meet the public.
  - h) Failure to adhere to the UCO's financial regulations.
  - i) Bullying
  - j) Discrimination
  - k) Acts of sexual or racial harassment against colleagues, students, employees, patients, members of the public, service companies etc.
  - l) Persistent or prolonged bad time keeping.
  - m) Absence without permission or good cause.
  - n) Persistent refusal to comply with a lawful request or order.
  - o) Misuse of UCO equipment or facilities, including gaining unauthorised access to or altering any data stored on a computer, tape or disk.
  - p) Access to and/or dissemination of pornographic or other inappropriate material on the Internet (refer to the Internet and E-mail policy).
  - q) Any attempt to commit any of the above.
- 14.2 This list is not exhaustive, but indicates the type of conduct that might fundamentally undermine the trust and confidence in an employment relationship.

## **15. OVERLAPPING GRIEVANCE AND DISCIPLINARY CASES**

- 15.1 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.