

## **Disciplinary & Capability Procedure**

**Document Date:** January 2022  
**Purpose:** To set out how the organisation will deal with allegations of misconduct or capability.  
**Audience:** Permanent and casual staff

### **1. Introduction**

- 1.1 All employees are covered by this procedure, which sets out how we will deal with allegations of unacceptable or improper behaviour (misconduct) or performance (capability).
- 1.2 This procedure follows the Acas Code of Practice on disciplinary and grievance procedures.
- 1.3 It applies regardless of how long you have been an employee with Royal Holloway Students' Union.
- 1.4 Self-employed contractors are not covered by this procedure.
- 1.5 RHSU reserves the right to amend this procedure at any time.

### **2. Informal action**

- 2.1 Sometimes we will choose to discuss a misconduct or performance issue with you to see whether the problem can be resolved in an informal way.
- 2.2 We will do this by talking privately with you and any other staff involved, listening to your point of view, agreeing improvements to be made and setting up a training or development plan if it is a performance issue.
- 2.3 If this fails to resolve the problem, or we feel this approach is inappropriate in the circumstances, we will follow the formal stage of this procedure.

### **3. Misconduct & Capability**

- 3.1 Misconduct is when an employee's inappropriate behaviour or action breaks workplace rules. Some examples of misconduct include:
  - Bullying
  - Harassment
  - Refusing to do work (insubordination)
  - Being absent without permission
  - Lateness
- 3.2 Some acts of misconduct count as 'gross misconduct' because they are very serious or have serious effects. This procedure will still apply in such cases but it may lead to dismissal without notice or payment in lieu of notice. See section 8 for further detail.

3.3 It is important to note that you could face disciplinary action for misconduct outside the workplace, where this has a potentially negative impact on the organisation.

3.4 Capability or performance is about an employee's ability to do the job. In these circumstances we will take a supportive approach to ensuring that you have the right support, training, tools and resources to do the job. We will also make it clear what improvements are expected of you and the timeframe for this. Where this does not lead to the required improvements we will follow the formal stage of this procedure.

#### **4. How we investigate**

4.1 Where necessary, we will carry out an investigation of misconduct or performance matters without unreasonable delay.

4.2 The purpose of the investigation is to see if there is a case to answer, make sure everyone is treated fairly, gather evidence for all sides where appropriate and establish the facts of the case.

4.3 In some cases this will require holding an investigatory meeting with you before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by us for use at any disciplinary hearing.

4.4 At any stage of the investigation it may be determined that the issue should be resolved informally instead.

4.5 In misconduct cases, where practicable, a different member of staff will carry out the investigation and disciplinary hearing.

4.6 Where an investigation is carried out we will write to tell you as soon as practicable. There are certain circumstances where we may deem this inappropriate i.e. where there is a risk of tampering of evidence or influencing witnesses.

4.7 If there is an investigatory meeting this will not by itself result in any disciplinary action but any evidence may be used at a disciplinary meeting where disciplinary action may be taken as a result.

4.8 There is no statutory right for you to be accompanied at a formal investigatory meeting.

4.9 If you do not attend the investigatory meeting, the investigating member of staff will need to consider all other evidence and make a reasonable decision in your absence.

4.10 In some circumstances it may be deemed appropriate to suspend you with pay whilst the misconduct or performance is investigated. If suspension is deemed necessary we will write to you to explain the reason for your suspension. In such circumstances you should stay away from work, not visit its premises or make contact with its staff, except for any named point of contact as identified in the letter.

4.11 Any such suspension is not considered a disciplinary action.

#### **5. Formal Disciplinary Meeting**

## A. How we carry out the formal hearing

5.1 Where an investigation shows that you have a case to answer, we will write to you to tell you:

- The alleged misconduct or performance issue
- Any evidence from the investigation
- The date, time and location of the disciplinary hearing
- Who will be the hearing manager
- Information regarding your right to be accompanied at the hearing
- The possible outcomes

5.2 It is your responsibility to attend the hearing but, if you cannot, we will normally reschedule it provided we are satisfied with your explanation for why you cannot attend. We will only reschedule the meeting once, unless there are very good reasons to justify a second rescheduling. If you do not attend any meeting without notification, we may be obliged to make our decision without you being present.

5.3 We may record the meeting, but we will not do so without telling you. You are also invited to record the meeting if you wish, but please tell us as we would consider it discourteous to the managers involved for you to make a covert recording.

5.4 We will go through all the details at the meeting so that you fully understand the allegation of poor performance or misconduct made against you. If relevant, we will also outline the evidence we found when we carried out our investigation.

5.5 We will give you the time you need to respond to the allegations made against you and to put your own case. We will also give you the opportunity to question us, to present your own evidence, to call your own witnesses, and to respond to evidence that witnesses on behalf of the organisation have put forward. If there are any questions you want us to put to the organisation's witnesses, please tell us and (unless there is a good reason not to) we will make sure they are asked.

5.6 We will take summary notes of the discussion, which we will share with you following the meeting to ensure they present an accurate reflection of the meeting.

5.7 The decision regarding the outcome will be sent to you in writing. This decision will be based on the findings from the investigation and meetings, what is fair and reasonable, and a consideration regarding what the organisation has done in similar cases before.

5.8 We try to send you the outcome decision within two weeks of the disciplinary hearing.

## B. Your right to be accompanied

5.9 You are entitled to be accompanied by a colleague or trade union representative at any formal disciplinary meeting called under this policy where you face formal action (including dismissal).

5.10 If you want to exercise this right, you should tell us as soon as possible who you want to accompany you. It is your responsibility to arrange for them to attend. If you choose a work

colleague, we will not prevent them from attending, but we may rearrange the meeting if their absence from work causes operational problems.

- 5.11 Your colleague or union representative can, if this is your preference, explain the key points of your case to the meeting and can respond on your behalf. You can also confer with them during the meetings. They must not, however, answer questions put directly to you or try to prevent the organisation from asking questions or outlining its arguments.

## **6. Disciplinary action and dismissal process**

6.1 These are the three stages of our procedure for dealing with cases of poor performance or misconduct.

- i. First stage: We will issue you with a first written warning. Unless you already have active written warnings relating to your performance and/or to disciplinary matters on your work record, a first written warning will usually remain in place for 12 months from the date you are notified of the decision. It will then be removed from your record.
- ii. Second stage: If there is an active first written warning on your record and your performance has failed to improve or you are involved in further misconduct, we will usually issue you with a final written warning. In serious cases of poor performance or misconduct, we may issue a final written warning without first issuing a first written warning. In either case, the final written warning remains active for 12 months from the date you are notified of the decision. It will then be removed from your record.
- iii. Third stage: If there is an active final written warning against you and your performance has failed to improve or you are involved in further misconduct, you may be dismissed. You may also be dismissed for a serious case of misconduct or poor performance, or if you are involved in gross misconduct. We explain what 'misconduct' and 'gross misconduct' comprise in the lists given below.

6.2 Sometimes we are prepared to explore other actions short of dismissal. These may include deploying you to a different role, demoting you, and/or extending your final written warning period to allow us further time to review how you respond.

6.3 The disciplinary outcome and details will remain confidential but would usually need to be shared with your line manager to ensure they can monitor any negative effects on the business.

## **7. Your right to appeal**

7.1 You have the right to appeal against any capability or disciplinary decision taken against you. To do this, you need to respond within a week of being told of the action by writing directly to [suhrteam@su.rhul.ac.uk](mailto:suhrteam@su.rhul.ac.uk). You must explain exactly why you are appealing. This may be that you feel that the outcome is too severe or that a stage of the disciplinary procedure was wrong or unfair.

7.2 Wherever possible, the appeal meeting will not be led by the manager who held the meeting at which we decided what disciplinary action to take. You may be accompanied by a trade union representative or work colleague, in line with the process outlined above.

7.3 The organisation's final decision will be sent to you in writing. We try to do this within two weeks of the appeal hearing. You do not have any further right to appeal against our decision.

## 8. How we define 'gross misconduct'

8.1 You will usually be dismissed without warning, without notice, and without payment in lieu of notice if we find you have committed an act of gross misconduct. This is known as summary dismissal.

8.2 The following list gives examples of what we would normally regard as **gross misconduct** likely to lead to summary dismissal. This list is not exhaustive and should be referred to as a guide:

- bullying or physical violence
- fraud, theft, or any act of dishonesty
- serious lack of care to your duties or other people (gross negligence)
- serious health and safety breaches
- serious and intentional damage to the organisation's property
- unlawful harassment or discrimination
- viewing, receiving, or sending anything that breaches the organisation's harassment, bullying and equal opportunities policies
- knowingly accessing websites containing offensive, obscene or pornographic material
- serious insubordination
- serious breaches of confidence
- being under the influence of illegal drugs
- being under the influence of alcohol, unless this is with your manager's express knowledge and permission — for example, where you are involved in entertaining on the organisation's behalf