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## Staff Disciplinary Policy and Procedure

### 1. Scope and Purpose

- 1.1 Birmingham Newman University [hereafter referred to as the University] recognises disciplinary rules and procedures are necessary for the effective operation of the institution by encouraging all staff to achieve and maintain satisfactory standards of conduct and behaviour. The University also recognises that disciplinary rules and procedures are a necessary part of ensuring that all individuals are treated fairly and consistently.
- 1.2 The Policy and its Procedure is designed to ensure that all staff are aware of and understand their rights and responsibilities relating to discipline at work. It aims to facilitate satisfactory standards of conduct and performance, to encourage continuous improvements and to ensure that cases of alleged misconduct, unacceptable performance or other acts or omissions considered by the University to warrant consideration of disciplinary action are dealt with consistently and fairly within a reasonable timescale.
- 1.3 The Disciplinary Policy and Procedure applies to all employees of Birmingham Newman University with the exception of “holders of senior posts” who are subject to a separate procedure defined by the Council in accordance with the University’s Articles of Governance.
- 1.4 The policy is not intended to be contractual nor incorporated into the contract of employment.

### 2. General Principles

- 2.1 Every effort will be made to avoid the use of disciplinary action where alternatives are appropriate.
- 2.2 The procedure takes account of the ACAS Code of Practice on disciplinary procedures and will be reviewed periodically in line with changes in employment legislation, associated case law and developments in good practice. It should be read in conjunction with other relevant University policies and procedures.
- 2.3 The procedure may be invoked where, but not exclusively where:
  - previous support, advice or warnings have been ineffective;
  - a number of minor complaints are made which, taken together; constitute a breach of discipline;
  - a more serious breach of discipline occurs.

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- 2.4 All proceedings, whether informal or formal, should as far as is practicable remain confidential. Every effort should be made to resolve concerns at an early stage [refer to section 8 below].
- 2.5 An employee has the right to be informed and to state their case in response to management allegations or dissatisfaction in the performance and conduct at work.
- 2.6 In the interest of ensuring that disciplinary matters are resolved as speedily as possible, time limits are given for appropriate stages in this procedure. These are for guidance. If it is not practicable to adhere to these time limits, they may be amended, typically by mutual agreement. Due regard will be given to the personal circumstances of all parties involved in the procedure.
- 2.7 An employee has the right to be present and accompanied by a representative of a recognised trade union or a recognised trade union official, or workplace colleague at each stage of the formal disciplinary procedure.
- 2.8 The usual disciplinary procedures will apply to a representative of a recognised trade union. However, no disciplinary action should normally be taken until Human Resources have discussed the circumstances of the case with a full-time regional official.
- 2.9 There should be clear lines of accountability at all levels of the disciplinary process.
- 2.10 No disciplinary sanction will be taken against an employee until the University has fully investigated the circumstances of the matter in question having due regard to the employee's response to the allegation/s. The investigations should be completed within a reasonable time period. Where an investigation lasts in excess of 10 working days, the employee and trade union representative should be kept informed of the estimated time required to complete the investigation.
- 2.11 The University reserves the right to suspend the employee(s) on full pay while the allegation/s are being investigated.
- 2.12 **Staff support** – All employees and employee representatives involved in these proceedings are entitled to seek support through the confidential telephone counselling service provided by the 24/7 Employee Assistance Programme (EAP): They can be contacted 24/7 on 0800 107 6147 or through a confidential online portal [www.colleaguesupport.co.uk](http://www.colleaguesupport.co.uk) entering code 72135 as your username and password. Other support can be found by accessing the University intranet via: [Staff Health and Wellbeing \(newman.ac.uk\)](http://Staff Health and Wellbeing (newman.ac.uk)). Individuals can access the EAP by telephoning the free-phone number 0800 107 6147. Additional requests for face to face counselling will be made to Human Resources who will provide guidance and advice on staff support and wellbeing provisions

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### 3. Suspension Pending Disciplinary Hearing

- 3.1 Suspension should only be imposed after careful consideration and it should be made clear to the employee that it is not considered a disciplinary act, but rather a holding action pending the outcome of an investigation.
- 3.2 When the University is of the view that an employee may have been guilty of gross misconduct, or
- 3.3 that because of some other *reasonable* and urgent cause, the continuing attendance of the employee at the University cannot be permitted, the Vice-Chancellor or member of the University Leadership Team (ULT) may suspend the employee from duty pending an investigation and or the holding of a formal disciplinary hearing. They shall:
- confirm the suspension in writing to the employee; and
  - inform the employee in writing of the reasons for the suspension, within 3 working days of the suspension.
- 3.4 An employee who is suspended from duty shall, throughout the period of suspension, continue to be entitled to their full pay.
- 3.5 An employee who has been under suspension for more than 10 working days should be informed of the likely time-scale for the conclusion of the investigation.
- 3.6 A suspension of an employee who is awaiting an appeal shall continue to operate pending the determination of the appeal (see section 16). This will be reviewed on a regular basis and where necessary support provided.

### 4. Disciplinary Sanctions

- 4.1 No formal disciplinary sanction will be imposed without a disciplinary hearing, *except* in the case of gross misconduct. When the penalty may be dismissal without notice or payment in lieu of notice, an employee will not normally be dismissed for a first breach of discipline. An employee will have the right to appeal against any disciplinary sanction imposed.

### 5. Equality, Diversity and Inclusion

- 5.1 The University will comply with the provisions of The Equality Act 2010 with regard to this policy and procedure.

### 6. Roles and Responsibilities

- 6.1 In order to support the implementation of this policy and procedure, it is the responsibility of:

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### 6.1.1 Managers

- a) To ensure employees in their area are aware of the standards of conduct and behaviour the institution expects
- b) To ensure employees in their area are aware of relevant policies and procedures
- c) To be aware and comply with the disciplinary policy and procedure
- d) To ensure staff are aware of and understand the disciplinary policy and procedure
- e) To ensure the fair and consistent application of the disciplinary policy and procedure
- f) To support, wherever possible, employees to correct unacceptable conduct and behaviour.

### 6.1.2 Employees

- a) To be aware of the standards of conduct and behaviour the institution expects of them
- b) To be aware of relevant policies and procedures in their area of work
- c) To be aware and comply with the disciplinary policy and procedure
- d) To maintain acceptable standards of conduct and behaviour
- e) To carry out their duties in accordance with their contract and terms and conditions of employment and the University's rules and procedures.
- f) Fulfil the duties of their post as reasonably required by the University.

### 6.1.3 Human Resources

- a) To ensure the disciplinary policy and procedure is readily available and understandable by employees and that they are aware of the standards of conduct and behaviour expected of them.
- b) To ensure compliance with legal obligations and the ACAS Code of Practice
- c) To review and monitor the operation and effectiveness of the policy and procedure
- d) To provide advice, guidance and training, to managers on its application.

## 7. Mediation

- 7.1 Mediation is a process by which an impartial person helps others to resolve their difficulties. It is voluntary and it can help to resolve problems. Mediation is undertaken without any admission of wrongdoing by any party, and without preventing any opportunity to pursue formal action.
- 7.2 Although mediation is often not applicable in disciplinary issues, where it is deemed appropriate, it may be considered. It may be appropriate whether or not an allegation is upheld.
- 7.3 If mediation is deemed an option, then this should be raised with an assigned member of Human Resources.

## 8. Procedural Guidelines

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- 8.1 The normal expectation is that the following procedural guidelines will apply. However, on occasions and for exceptional reasons, there may be the need to vary the procedure to suit individual cases / circumstances, and accordingly the University reserves the right to amend the procedures. The University will consult with the recognised union(s) regarding any proposal to vary the procedure and will be mindful of, and adhere to, the ACAS Code of Practice in any amendments made to the procedures.
- 8.2 The procedure should be followed in the order of the stages set out below. However, offences of a serious nature may be brought into the procedure at any stage, if an earlier stage is not deemed appropriate to deal with the concern. For example, there may be occasions when misconduct is considered not to be so serious as to justify dismissal, but serious enough to warrant a written warning which will be both the first and final written warning. At every stage of the procedure, the employee will be advised of the nature of the allegation against them and will be given the opportunity to state their case before any decision is made.

## **9. Informal**

- 9.1 The University is committed to ensuring that differences and difficulties can be resolved amicably through open communication. Wherever possible, and where appropriate, given the nature of the apparent issue, disciplinary matters will be resolved informally.
- 9.2 The employee should seek advice from their line management, their assigned member of the Human Resources or trade union representative.
- 9.3 It is expected that minor instances of unacceptable behaviour and/or conduct will be dealt with informally by the employee's line manager. An employee may not be aware that their behaviour or actions are causing a concern. Often, issues can be resolved at this point through discussion and clarification. Therefore, the manager will be expected to discuss the issues with the member of staff with a view to coaching them towards improving and sustaining satisfactory behaviour and/or conduct. This is more likely to produce effective solutions, minimise conflict and allow staff to maintain positive working relationships.
- 9.4 An internal or external facilitator (dependent on the circumstances of the matter) may be used to support the resolution of matters informally, as appropriate.
- 9.5 The manager will normally follow up any discussions outside of the formal procedure with a note to the employee confirming their discussion and explaining that if the informal action does not bring about an improvement, then the formal disciplinary procedure may be instigated. The note will be held on file and will be referred to should the matter progress to the formal disciplinary procedure and/or should other matters of behaviour and/or conduct arise. The situation will be reviewed in a timely manner.

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9.6 If the informal action does not bring about an improvement or in situations where the matter is more serious, the procedure below will apply.

## 10. Investigation

- 10.1 In all cases, other than in exceptional circumstances, Human Resources must be consulted prior to commencement of an investigation and will advise on who should undertake the role of Investigating Officer.
- 10.2 In all cases, the facts must be established via an investigation prior to the commencement of formal disciplinary action. The duration of the investigation will be dependent on the nature and complexity of the allegations and the scope of witnesses to be interviewed.
- 10.3 An Investigating Officer will normally be appointed when alleged unacceptable behaviour and/or conduct is identified to investigate the matter and produce a statement reporting their findings. The Investigating Officer's role is to establish the facts when alleged unacceptable behaviour and/or conduct is identified. This is in order to establish the most appropriate course of action, if any, to be taken.
- 10.4 Where an Investigating Officer is appointed, they will not subsequently act as the Disciplinary Officer in the event the matter is taken forward to a hearing, except in certain minor cases (e.g. breaches of a minor nature and/or where the staff member accepts the alleged breach and it is considered that dismissal is unlikely), where there is no conflict of interest the line manager may investigate the matter to establish the facts and may also subsequently act as the Disciplinary Officer.
- 10.5 The Investigating Officer will normally be appointed on the advice of Human Resources. They will typically be of a higher grade than the member of staff under investigation and may be from within or outside the Faculty/Directorate depending on the circumstances of the case and whether there is a likelihood of a conflict of interest. The Investigating Officer may be the employee's line manager if appropriate [see paragraph 10.4 above]. In exceptional circumstances a representative from Human Resources or an appropriate professional external to the University may conduct an investigation.
- 10.6 The employee against whom the allegations have been made will be given an opportunity to offer an explanation for the alleged unsatisfactory behaviour and/or conduct during the investigation.
- 10.7 After considering the relevant statements, documentation and interviews the Investigating Officer will produce a statement/report stating all the facts. This will be considered in conjunction with the Human Resources. If it is decided there is a case to answer, a disciplinary meeting will be arranged.

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## 11. Formal Disciplinary Procedure

- 11.1 Following investigation, if the Investigating Officer in conjunction with Human Resources, decides there is a case to answer, a disciplinary hearing will be arranged by the Human Resources.
- 11.2 Prior to the Disciplinary Hearing, the Investigating Officer will have prepared a written statement in the form of a report detailing the employee's alleged conduct, characteristics or circumstances that have led to the disciplinary action. This report will be referred to as The Management Case. A copy of The Management Case (which may include witness statements) will be sent by Recorded Delivery, hand delivered to the employee, or by email by Human Resources at least 5 calendar days before the Disciplinary Hearing is scheduled.
- 11.3 The employee will be invited to the Disciplinary Hearing no later than 5 calendar days before the Disciplinary Hearing is scheduled. The employee will be advised of the following:
- i. The date, time and venue of the hearing;
  - ii. The nature of the allegations and a copy of the Management Case
  - iii. The purpose of the Disciplinary Hearing and that a disciplinary sanction (including dismissal where appropriate) may result;
  - iv. The entitlement to be accompanied at the hearing by a recognised Trade Union representative or a workplace colleague; and
  - v. The right to call witnesses and/or present evidence.
- 11.4 Disciplining Officer will be nominated to chair the Disciplinary Hearing. The Disciplining Officer will not normally have been involved in the investigation relating to the specific case. The Disciplining Officer will normally be a member of ULT.
- 11.5 The Disciplinary Panel of the Disciplinary Hearing will consist of the chair (as described in paragraph 10.4) and a senior manager. Depending on the allegations and the issues being considered a third senior manager may be called to sit on the panel. Where expert evidence is presented or technical/specialist matters are also considered the University reserves the right to appoint an external advisor to the panel.
- 11.6 A representative of Human Resources will be appointed to the Disciplinary Panel in an advisory capacity. A note taker may be in attendance. Notes of the hearing will be provided to the Disciplining Officer and the employee to consider and sign as an accurate record.
- 11.7 The employee must take all reasonable steps to attend the Disciplinary Hearing. If, for any reason, which was not foreseeable at the time the hearing was arranged, it is not reasonably practicable for the employee or their representative to attend the Disciplinary Hearing, the University will invite the employee to an alternative hearing date. In exceptional circumstances, the employee may delay the hearing for up to 7

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calendar days and notice (preferably written) of this must be received within 24 hours prior to the meeting. Failure to give sufficient notice of unavailability, unless the circumstances are outside of the employee's control, may lead to the hearing taking place and a decision being reached without the attendance of the employee.

- 11.8 The duty to invite the employee to attend a Disciplinary Hearing shall cease if the University has invited the employee to attend two hearing and the paragraph above has applied in relation to each of them. In such circumstances, or if the employee has simply failed to attend the Disciplinary Hearing, the chair of the Disciplinary Hearing shall be entitled to make a determination on the evidence otherwise available.
- 11.9 If either the employee or the Investigating Officer wishes to refer to additional documentary evidence during the Disciplinary Hearing, copies of the documents must be made available to Human Resources in advance of the hearing (and in any event normally at least 3 working days before the hearing) so they can be passed to the other party before the hearing takes place.
- 11.10 If the employee or the Investigating Officer wishes to call witnesses, Human Resources must be provided with details of the witnesses at least 3 working days before the hearing is due to take place so that any necessary arrangements, if not already in place, can be undertaken.
- 11.11 If the employee raises new evidence and the Disciplining Officer decides it should be investigated further, the meeting will be adjourned and will be reconvened once the new evidence has been investigated and considered. Any further investigations will normally be undertaken within 14 calendar days by the Investigating Officer.
- 11.12 Where the Disciplining Officer considers that the case has been substantiated they will determine the appropriate disciplinary action. In doing so, they may consider the seriousness of the offence, any mitigating factors and the previous record of the employee's conduct and length of service.
- 11.13 If a warning is issued, an action plan will be determined which will normally include:
- a) The period over which the improvement is to be achieved.
  - b) Appropriate action to eliminate any identified underlying causes of any misconduct and/or behaviour.
  - c) When, how and by whom improvement will be reviewed, including at least one interim review.
- 11.14 The Disciplining Officer will write to the employee, normally within 7 calendar days of the Disciplinary Hearing, informing them of the outcome of the Disciplinary Hearing and of their right of appeal. The employee will also be informed of the reason for any disciplinary sanction being imposed, the improvement required and the period over which the improvement is to be achieved, the potential consequences of not achieving the required improvement. In cases of dismissal the employee will also be notified of when their employment will end.

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- 11.15 A note of the Disciplinary Hearing and any other paperwork and/or correspondence will be kept on the employee's personal file. This file note will be disregarded normally after a period of between 6, 12 months and 24 months (or exceptionally longer).

## 12. Disciplinary Outcomes

- 12.1 In considering whether and what sanction/s should be imposed following a disciplinary hearing the following will be considered:
- The nature and severity of the allegations
  - The action/s of the member of staff
  - Any mitigating factors
  - The general employment and conduct record of the member of staff

## 13. Disciplinary Warnings

- 13.1 The following disciplinary warnings may be given:

### Stage 1: Formal Verbal Warning

Following a disciplinary Hearing, a formal verbal warning may be given where the employee's conduct does not meet acceptable standards. The employee will be advised of the reason for the warning, that it is the first stage of the formal disciplinary procedure, that he or she has a right to appeal against it in accordance with Section 16 below. Appropriate documentation will be placed on the personal file relating to the employee and a copy given to the employee within 10 working days. After 6 months, the warning will be spent and the documentation will be removed from the employee's personal file, subject to the employee's conduct having been satisfactory throughout that period.

### Stage 2: Written Warning

Where the offence is serious, or the employee has failed to heed the verbal warning, or has committed a further offence of misconduct.

This written warning will give details of the allegations against the employee, the improvement required and the time limit within which such improvement must be achieved. In the case of misconduct, the warning will state that, if the employee commits a further offence of misconduct during the period specified in the warning, action under Stage 3 will be considered. The written warning will also advise the employee of the right of appeal. A copy of the written warning will be placed on employee's personal file. The warning will be spent and removed after 12 months, subject to the employee's conduct having been satisfactory throughout that period.

### Stage 3: Final Written Warning

Where there is a failure to improve or change behaviour in the timescale set at the earlier stages, or for a further offence of the same or different nature, or where the offence is sufficiently serious, a final written warning may be given. The written warning will also advise the employee of the right of appeal. A copy of the written warning will be placed on employee's personal file. The warning will be spent and removed after 24 months, subject to the employee's conduct having been satisfactory throughout that period.

### Stage 4: Dismissal

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If the employee's conduct and/or behaviour still fails to improve, or for a further offence of the same or different nature following a final written warning, or in cases of gross misconduct, dismissal will normally result.

A member of staff who commits an act of gross misconduct will be liable to summary dismissal (i.e. dismissal without notice and without payment in lieu of notice).

The formal written letter will be sent to the employee outlining the reasons for the dismissal and advising them of their right of appeal as outlined in Section 16.

It should be noted that only the Vice-Chancellor has the power to dismiss an employee, however this power may be delegated to the Chair of the Disciplinary Panel. This power may be delegated only with the permission of the Vice-Chancellor.

## 14. Other Possible Outcomes Short of Dismissal

- 14.1 Depending on the circumstances of the case, consideration may be given to substituting dismissal with a final written warning and one or more of the following sanctions:
- a) Demotion to a lower graded post.
  - b) Transfer to another directorate or faculty or location.
  - c) Loss of title or status.

## 15. Examples of Gross Misconduct

- 15.1 The following are examples of breaches of discipline considered by the University to be gross misconduct that may lead to summary dismissal. This list is not exclusive or exhaustive:
- a) Theft, including unauthorised removal of property, from the University, its employees, students or members of the public.
  - b) Serious negligence which causes unacceptable loss, damage or injury.
  - c) Threatening or abusive language or conduct of a serious nature.
  - d) Acts of harassment, bullying or sexual misconduct including at social gatherings outside the workplace which are connected with work.
  - e) Assault or indecent behaviour by an employee.
  - f) The consumption of alcoholic drinks, or drugs not prescribed by a medical practitioner, which reduces the ability of the employee to work with proper effectiveness and with due regard for their safety and welfare, and/or the safety and welfare of others, while at work/during working hours.
  - g) The commission of a criminal offence which renders the employee unsuitable or unable to carry out the duties for which they are employed.
  - h) Falsification of records and University documents such as recruitment forms, overtime sheets, expense claims or flexible working hours records.
  - i) Committing an offence as defined by the Bribery Act 2010; that is to make an offer of financial or other advantage to another person intended to induce or reward improper performance of a relevant function or activity or in the knowledge that acceptance would be improper performance, or to accept an offer of a financial or other advantage as detailed above.
  - j) Committing an offence as defined by the Economic Crime and Corporate Transparency Act 2023

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- k) Breaches of financial regulations and/or breaches including the University's financial procedures
- l) Breaches relating to the University's Safeguarding arrangements including terrorist matters pertaining to breaches of the Counter-Terrorism and Security Act 2015 (CTSA 2015)
- m) Breaches of the University's regulations including for example: the misuse of University computing facilities; downloading (accessing) or circulating pornographic or other offensive material from the Internet; use of unlicensed software on the University's IT systems; illegal downloading, sale and or file sharing copyright material at work;
- n) Serious breaches of health and safety regulations endangering other people, including deliberate damage to, neglect of, or misappropriation of equipment.
- o) Carrying out external work, which competes or conflicts with the interests of the University, without prior approval, and/or carrying out external work which interferes with professional responsibilities.
- p) Use of for personal benefit or gain, or divulgence of, confidential information belonging to the University or relating to its affairs or dealings.
- q) Misconduct offences which fall within the purview of the Code of Practice for Research.
- r) Serious potential of bringing the University into disrepute, for example, through misuse of social networking sites.

## 16. Appeals and Appeal Hearing Procedure

- 16.1 An employee has a right of appeal against a disciplinary sanction following the outcome of a Disciplinary Hearing.
- 16.2 An employee who wishes to make an appeal should submit their appeal in writing within 7 calendar days of the issue of the disciplinary decision to the Director of Human Resources. The grounds for appeal should be stated and full details of their case provided. Where new evidence is provided the Director of Human Resources will determine whether it is appropriate to adjourn proceedings to permit further investigation.
- 16.3 Upon receipt of an appeal, Human Resources will convene an Appeal Hearing. In accordance with the principles governing the arrangement of the Disciplinary Hearing, the employee must take all reasonable steps to attend and they will have the right to be accompanied by a workplace colleague or a trade union representative. The provisions relating to postponement and the employee's continued duty to attend will apply equally to any appeal hearing (refer to sections 11.7 and 11.8).
- 16.4 The Vice-Chancellor will chair the Appeal Hearing. Accompanying the Vice-Chancellor on the Appeal Panel will be two external members of the Council. The Director of Human Resources will sit on the Appeal Panel in an advisory capacity. At the Appeal Hearing the employee will be given opportunity to state their case and will be entitled to be accompanied by a recognised trade union representative or workplace colleague.

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- 16.5 Where the Vice-Chancellor has chaired the Disciplinary Hearing against which the appeal has been made, then another Senior Staff will substitute for the Vice-Chancellor on the Appeal Panel and the hearing will be chaired by a member of the Council.
- 16.6 The Appeal Hearing will take place as soon as practicable and without unreasonable delay. If the appeal is against dismissal, the employee shall be normally entitled to 7 calendar days' notice of the date, time and venue of the Appeal Hearing, unless an earlier date has been mutually agreed.

## **17. Records Management Statement**

- 17.1 The records associated with this policy are controlled by the Human Resources and will be created, stored and disposed of in line with the University's Records Management guidelines and procedures.
- 17.2 The University is committed to complying with the requirements of General Data Protection legislation and regulations and any personal data created as part of this policy will be processed in accordance with the University's General Data Protection Act 2018 governance procedures. This includes ensuring that data is held securely, is not disclosed unlawfully and is destroyed when no longer needed.
- 17.3 The University also aims to ensure that users of this policy are aware of Data Protection, Freedom of Information and Records Management issues associated with this policy.

## **18. Criminal convictions**

- 18.1 An employee will not be dismissed or otherwise disciplined automatically because they have been charged with or convicted of a criminal offence or is absent from work because they have been remanded in custody. Consideration will be given to:
- what effect the charge or conviction has on the employee's suitability to perform their role;
  - the employee's relationship with the University i.e. colleagues, students, external parties and other members of the University community;
  - whether suitable alternative work is appropriate/available and;
  - what effect the enforced absence will have on the University.
- 18.2 Where the conduct requires prompt action, the University does not need to await the outcome of criminal proceedings before taking fair and reasonable action. Given the sensitivity of these situations, these matters will be managed on a case-by-case basis and always with the guidance and advice of Human Resources

## **19. Risk Management**

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- 19.1 Failure to comply with this policy could lead to breaches in employment legislation and may give rise to claims against the University

## **20. Advice and Guidance and Training**

- 20.1 To ensure that a consistent approach is applied managers will be provided with training and development opportunities to familiarise themselves with the procedure and to apply it in a fair and competent manner.

## **21. Procedural Review and Version Control**

- 21.1 This policy and procedure will be reviewed in three years from the date of implementation, or earlier if deemed necessary by the University.

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