



DISCIPLINARY POLICY

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VERSION CONTROL SHEET

Version	Author	Review date	Changes	Approved by	Approval date
V1	Human Resources Manager	February 2021	Introduction of a specific Disciplinary Policy to provide clarity on roles and responsibilities, and further detail on the stages within the existing process (detailed in the Staff Handbook).	Principal	June 2021

1. POLICY STATEMENT

The FRA expects all staff to achieve and maintain its required standards of conduct, and if at any point these standards are not being reached, staff are challenged promptly and appropriately. The purpose of this policy is to provide a fair, clear and consistent approach for managers when dealing with conduct issues. It is aimed at providing swift and effective resolutions, minimising any negative impact on the FRA and its students.

2. SCOPE

This policy incorporates the FRA's informal and formal approach to managing conduct issues. It is designed to deal with a wide range of situations, from relatively minor concerns to gross misconduct.

It is not designed to deal with absence management, capability or performance issues; staff should refer to the respective policies for these procedures.

This policy applies to employees only and does not apply to contractors, consultants, agency workers or any self-employed individuals working for the organisation.

This policy does not form part of employees' terms and conditions of employment and may be subject to change at the discretion of the FRA.

3. THE LAW

The Employment Relations Act 1999 details that an employee is entitled to be accompanied to a disciplinary hearing. The employee's companion should be chosen by them and can be a colleague or a recognised trade union official. This policy ensures employees are aware of their right to be accompanied to formal disciplinary hearings and explains the role of an employee's representative at such meetings.

The Employment Rights Act details that an employee's contract of employment must specify the disciplinary rules and procedures that apply to the contract. All of the FRA's employment contracts reference the FRA's disciplinary procedure and where this can be found. The Employment Rights Act 1996 also details that an employee has the right not to be unfairly dismissed. This policy ensures a fair, clear and consistent approach to managing perceived misconduct.

The Acas Statutory Code of Practice for Disciplinary and Grievance Procedures, issued under the Trade Union and Labour Relations (Consolidation) Act 1992, sets out the basic requirements of fairness that are applicable to most disciplinary processes, ensuring the standards of reasonable behaviour are maintained.

The FRA's policy has been written in line with the Code, emphasising the requirement that managers raise any conduct issues promptly, and where appropriate, that an informal resolution is explored in the first instance. Where formal action is appropriate, the policy requires:

- Issues to be raised and dealt with promptly, fairly and consistently, with no unreasonable delays to meetings, decisions, or confirming those decisions;

- Appropriate investigation to establish the facts of any case;
- Ensuring an employee is informed of the basis of a problem and that they are given the opportunity to put forward their case before any decision is made;
- A right of appeal against formal sanctions
- Ensuring an employee is aware of their right to be accompanied at disciplinary hearings.

The General Data Protection Regulation 2016 and Data Protection Act 2018 requires employers to comply with the principles detailed in the Regulation/Act for processing data, including informing employees on how their personal data is held and used. Data collected during a disciplinary process, whether at investigation stage or any subsequent stage of proceedings, is treated as highly confidential and it will only be shared where necessary to ensure the appropriate investigation and outcome of an allegation of misconduct. All data obtained during a disciplinary process is processed and stored in line with the FRA's Data Protection Policy and the Employee Privacy Notice.

4. ROLES AND RESPONSIBILITIES

4.1 Employees

Employees are responsible for ensuring that they achieve and maintain the FRA's expected standards of conduct. If an employee is subject to a disciplinary process, they are expected to be cooperative at all times and to provide an honest and accurate account of events to aid a prompt investigation and resolution of any alleged misconduct.

4.2 Managers

Managers are responsible for acting in line with the FRA's Disciplinary Policy, ensuring any conduct issues are challenged promptly, consistently and documented appropriately, as well as identifying when either informal and formal action is needed, seeking advice from Human Resources as appropriate.

4.3 Human Resources

Human Resources are responsible for advising employees and managers on conducting disciplinary processes, providing guidance on their application and updating the FRA's Disciplinary Policy where required to ensure compliance with changes to legislation and FRA policy.

4.4 Employee Representatives

An employee who is subject to a formal disciplinary process is entitled to bring a companion to a disciplinary hearing and they should notify Human Resources in advance of the meeting if they are bringing someone with them, along with their details.

Employee companions should be either a colleague or a recognised Trade Union official. No other type of companion is allowed unless there are exceptional circumstances, and in which case, permission must be sought from Human Resources in advance. The FRA reserves the right to decline permission. If the FRA deems there to be a conflict of interest with the employee's chosen representative, the employee will be asked to select an alternative. Human Resources will verify the identity of a trade union official prior to attending any meetings and reserves the right to decline their attendance if they are unable or unwilling to provide suitable evidence of their identity and status.

The role of the employee companion:

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<p>They may:</p> <ul style="list-style-type: none"> • Address the meeting and make representations on the employee's behalf; • Request documentation relevant to the matters being discussed; • Request breaks to confer with the employee; • Summarise the employee's case and make final representations. 	<p>They may not:</p> <ul style="list-style-type: none"> • Answer questions directed to the employee i.e. they should not put words into the mouth of the employee; • Disrupt the meeting.

4.5 Witnesses

When investigating a disciplinary, it may be necessary to conduct meetings with colleagues or other individuals who may be able to provide additional clarity on aspects of the allegations. Staff who fall into this category should ensure they provide an honest and accurate account on any matters being investigated, as well as ensuring the process is kept strictly confidential.

5. DISCIPLINARY PROCEDURES

The FRA reserves the right to modify the stages in the Disciplinary Procedure should the nature of any proven allegation warrant taking such action.

5.1 Informal Conduct Procedure

An informal conversation with a member of staff may be enough to resolve a minor conduct issue. Therefore, subject to the seriousness and the frequency of the misconduct, it is recommended that consideration is given to taking an informal approach in the first instance. Where an informal approach is taken, managers should do this promptly and clearly, ensuring they do not shy away from the message that needs to be communicated as this could impact the employee's understanding of the issues that need to be addressed. Managers are encouraged to document what has been agreed so future expectations are clear to all involved.

5.2 Formal Disciplinary Procedure

If the matter cannot be resolved informally, managers reserve the right to instigate a formal disciplinary procedure, providing they have sought advice and agreement from the Human Resources department.

5.2.1 Notifying the Employee of the Allegations of Misconduct

Where the FRA believes an act of misconduct warranting a investigation has taken place, the employee will be notified of this in writing, including the nature of the allegations and the next stage of the process. When notifying the employee, account should be taken for the fact that no allegations have been substantiated at that stage. Where possible, the fellow employee should be kept informed of when to expect an outcome and should be provided with support where necessary.

5.2.2 Appointing an Investigating Officer

A manager or a member of the Human Resources department will be appointed to investigate the allegations of misconduct. Subject to the nature of the allegations, the

Investigating Officer will usually be the employee's line manager. An alternative manager can be appointed to this role if deemed more appropriate e.g., for impartiality. The FRA reserves the right to appoint an external Investigating Officer if deemed more appropriate.

5.2.3 Disciplinary Investigation

The nature of the investigation required will depend on the facts of the case. For example, where a manager has dealt with a number of incidences of low-level misconduct directly, the investigation may consist of simply compiling the records of these, with no investigation meetings required.

Where the allegations are more complex, or involve others, the Investigating Officer, will undertake a larger investigation, which could comprise of interviewing the accused, interviewing witnesses and collating evidence from other sources (this list is not exhaustive). When considering who to meet with as part of a disciplinary investigation, due regard will be given to the potential value a meeting may add, the need to ensure the investigation retains focus, and the importance of keeping the details confidential.

Any investigation will be undertaken as soon as possible so allegations of misconduct can be dealt with fairly and promptly.

For clarity, any investigatory meeting with the employee should not itself result in disciplinary action. The investigation is to ascertain whether there is a case to answer at a disciplinary hearing. No decisions on disciplinary action/sanctions should be made until a hearing has taken place (if deemed required).

Following an investigation, if the Investigating Officer, deems there are insufficient grounds to pursue to a disciplinary hearing, the member of staff will be notified of this in writing as soon as possible. If the Investigating Officer concludes that there are reasonable grounds to believe there is a case to answer, the member of staff will also be advised of this in writing as soon as possible, including details of the disciplinary hearing, or when to expect this information.

Before a hearing takes place, any evidence gathered as part of the investigation will be provided to the employee accused of misconduct to enable them to give it sufficient consideration beforehand. Where appropriate, this may be provided in summary form and/or with elements redacted e.g., if there is a need to keep certain aspects of statements confidential.

5.2.4 Appointing a Hearing Officer

If the Investigating Officer confirms that there is a case to answer, a Hearing Officer will be appointed. To ensure impartiality and a fair process, the Investigating Officer and Hearing Officer cannot be the same person. Consideration will be given to the nature of the allegations and the seniority of the employee in the disciplinary process. Confirmation of who has been appointed to this role will be confirmed to the member of staff ahead of the hearing.

5.2.5 The Disciplinary Hearing

The disciplinary hearing will be held as soon as possible following the investigation process.

The hearing will usually be attended by the employee, their representative (if applicable), the Hearing Officer, a member of Human Resources, and a note taker. If a separate note taker is not able to be arranged, this role will be absorbed by somebody else in the meeting (usually Human Resources). The Investigating Officer may also be invited to attend to present any relevant facts and material to the hearing.

The disciplinary hearing is an opportunity for the employee to put forward their case in response to each allegation, ask questions, and provide any mitigation (if applicable). The employee will also be given the opportunity to submit written evidence to the Hearing Officer, ideally ahead of the hearing. If either side wish to call a witness at the hearing, advance notice must be provided. If it is deemed that further investigation is required in order to decide on an appropriate outcome, the hearing may be adjourned and reconvened at a later date or if circumstances warrant, further enquiries may be undertaken by the Investigating or Hearing Officer and considered in coming to a decision on an appropriate outcome.

Summary notes of the hearing will be taken and provided to the employee as soon as possible after the meeting. Recording meetings are prohibited unless all parties attending any meeting provide explicit permission to do so. Covert recordings of meetings without express permission may be treated as a disciplinary matter in and of itself.

5.2.6 Outcome

Following the hearing, an outcome will be communicated to the employee in writing, confirming what sanction, if any, is being given. Possible outcomes may include no formal sanction, a first written warning, a final written warning, dismissal or summary dismissal in cases of gross misconduct (see section 5.2.8).

The FRA reserves the right to impose other outcomes in addition to the warnings listed above. These may include a period of suspension without pay, loss of seniority, transfer to a different job (this list is not exhaustive).

Additionally, the outcome may also incorporate other requirements such as mandatory attendance at training or the commencement of a performance improvement plan e.g., if it transpires that the conduct issue is linked to performance.

The outcome will be communicated as soon as practicable and subject to any further investigation required; it will be sent to the employee within a week of the hearing. In the outcome letter, the member of staff will be advised of how they can appeal the decision. If the outcome is dismissal, the employee will be provided with the written reasons for the dismissal and the date on which employment terminates.

5.2.7 Appeal

An employee has the right to appeal any sanction issued. If an employee wishes to submit an appeal, they should do so in writing, sending it to the Head of Human Resources, within a week of receiving the outcome they are appealing. The appeal must be clearly laid out in writing, including specifically what the employee is appealing, the grounds for this, and any documentary evidence to substantiate their claims.

The appeal will be heard by a manager who has not been involved in deciding the outcome. Where an employee is appealing dismissal, the appeal will be heard by the CEO & Principal.

At the appeal hearing, consideration will be given to the representations of the employee, the representations of the manager who decided the outcome being appealed, and any new facts that may have come to light. The manager/Principal hearing the appeal reserves the right to downgrade, upgrade (where applicable) or remove the sanction. Subject to the employee submitting all the relevant documentation, appeal meetings will normally take place within 2 weeks of receipt of the employee's written notice of appeal, with the outcome

of the appeal being issued within 2 weeks of the meeting. These timeframes may be extended where there is a need for further investigation. There is no further right to appeal after this meeting; the decision is final.

Where an employee appeals against a dismissal, they will not be entitled to be paid or reinstated (unless they are entitled to notice) between the date of dismissal and the conclusion of the appeal process. However, in the event that the decision to dismiss is overturned, they will be reinstated with immediate effect and be paid for any period between the date of the original dismissal and the successful appeal decision. Their continuous service will also not be affected.

5.2.8 Gross Misconduct

Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between an employee and an organisation. In the event that an employee commits an act of gross misconduct, the FRA will be entitled to terminate an employee's contract of employment without notice or pay in lieu of notice.

The following list gives examples of allegations, which if substantiated, may be regarded as gross misconduct:

- Inappropriate relationships with students in or outside of work;
- Conviction for any serious criminal offence or an offence which impacts the employee's suitability to do their role;
- Violence towards other people or property, or the use of insulting or abusive language or behaviour on the FRA's premises;
- Fraud, lying, theft or deliberate falsification records, documents or information;
- Possession or distribution of illegal drugs and/or inability to carry out normal job functions wholly or partly due to the misuse of alcohol or drugs;
- Accessing or being in possession of offensive or obscene material at work;
- Misuse and/or abuse of social media in or outside of work;
- Making covert recordings of colleagues, managers, students or other stakeholders;
- Unlawful discrimination, bullying or harassment;
- Any action likely to bring the FRA into disrepute;
- Indecency;
- Breaching statutory and regulatory agencies' compliance requirements;
- Abuse of Internet, Intranet or the e-mail system (including using these systems for private business purposes);
- A breach of data protection, disclosure of company documents or any other unauthorised use or disclosure of confidential information to unauthorised third parties;
- Failure to comply with the FRA's financial procedures for administration or the handling of electronic payments, cash, cheques, vouchers etc.;
- Unauthorised possession of property belonging to either the FRA or another person;
- Failure to comply with the FRA's policies;
- Failure to carry out a reasonable management instruction or request;
- Unauthorised absence;
- Refusing to allow a search to be carried out in accordance with FRA rules;
- Omissions or failure to disclose material information relating to our safer recruitment process including failing to declare relevant information on your application form or during the interview stages;
- Serious breach of health and safety regulations;
- Smoking in prohibited areas;

- Serious or gross negligence; and
- Sleeping on duty.

NB. This list is not exhaustive.

5.2.9 Suspension

The FRA reserves the right to suspend an employee on full basic pay whilst a disciplinary process is being undertaken. This decision will only be taken if deemed absolutely necessary and only where advice has been sought from Human Resources. Consideration will be given to the seriousness of the alleged behaviour, the potential risk in allowing the employee to remain at work and the need to safeguard the investigation process.

Suspension is neither a disciplinary sanction nor an assumption of guilt, and the FRA will make every effort to restrict a suspension to the shortest time possible, with regular reviews regarding its necessity being carried out.

5.2.10 Police Investigations

If the Police are carrying out a criminal investigation into a matter that is also the subject of an internal disciplinary investigation, the FRA reserves the right to pause the internal investigation if it is deemed appropriate e.g., if the internal investigation is likely to prejudice or disrupt the Police proceedings. However, there is no requirement to wait or rely on the outcome of a Police investigation when determining the appropriate internal course of action. Furthermore, if the Police investigation does not result in prosecution, the FRA may still conclude that formal disciplinary action is still justified, on the basis of an internal investigation.

Where delays to informal proceedings are deemed appropriate, the employee will be notified of this, the reasons why and when to expect and update in writing.

5.2.11 Fraud and Theft

It is the FRA's policy to hand over all cases of internal fraud and theft to the Police who will undertake a separate criminal investigation. Should the matter be proven, the FRA reserves the right to prosecute. In addition to any proceedings taken against the employee by the prosecuting authorities, the FRA will use civil law to recover any loss and costs as a result of the employee's actions. These losses may include but are not limited to:

- The value of the property or cash stolen;
- The cost of the internal investigation;
- The cost of subsequent disciplinary hearings;
- Payment towards future loss prevention measures.

5.2.12 Conducting Virtual Meetings

Where it is not possible to hold a face-to-face meeting, disciplinary hearings/appeal hearings will be conducted remotely. All attendees will be provided with the necessary access ahead of the meeting to ensure the opportunity for full participation in the process.

5.2.13 Delays and Non-attendance to Meetings

Disciplinary processes should always be undertaken without unreasonable delay and where the FRA is unable to adopt the suggested timeframes for meetings laid out in this policy e.g., because further investigation is required to ensure a thorough process, the employee who is the subject of the disciplinary process will be notified of a delay and where appropriate, they will be provided with the reason for this and when they can next expect to be updated.

If the employee who is subject to the disciplinary process is unable to attend the date scheduled for a formal meeting, they should advise the Investigating/Hearing Officer or relevant Human Resources representative as soon as possible, including the reason why they are unable to attend. When providing this notification, the employee must provide a reasonable alternative which must not be more than a week after the date originally proposed. If the employee fails to notify the FRA of their non-attendance or they fail to provide an acceptable explanation for this, the FRA reserves the right to hold the meeting in the member of staff's absence, and any outcome decided in this instance will be binding.

5.2.14 Retention of Disciplinary Records

It is necessary for the FRA to retain accurate records of any formal disciplinary processes so that the issues and any outcomes decided are clearly documented. At each stage, full written records will be kept of all investigations, interviews, hearings, and outcomes, as well as formal communication sent as part of the process; these documents will remain on the employee's file whilst any sanction is live.

Expired sanctions are retained on the relevant employee's file as the FRA will need to take account of these when considering future conduct e.g., to establish a pattern of behaviour or an awareness of the relevant rules. Documentation relating to the expired sanctions e.g., the investigation notes, will not usually be retained post the sanction expiring, unless there is a justification for this.

These records will form part of an individual's personnel record and will be stored in accordance with the FRA's Data Protection and Record Retention Policies.

5.2.15 Overlap with Grievance Policy

If a grievance is raised by a member of staff who is subject to a disciplinary process, the disciplinary will usually be concluded before the grievance is heard. If a grievance has the potential to have a bearing on the disciplinary outcome, it can be raised as an issue to be considered as part of the disciplinary proceedings. Alternatively, at the absolute discretion of the FRA, the disciplinary process may be temporarily suspended in order to deal with the grievance first.

6. SUPPORT, ADVICE AND INTERPRETATION

The Human Resources department will provide support and advice in the interpretation and application of this policy and procedure.