

Disciplinary Action for Misconduct and Serious Misconduct Policy - Senior Staff

Section 1 - Purpose

(1) This Policy outlines the procedures to be used in cases where an allegation(s) of misconduct/serious misconduct is made against a senior staff member.

(2) The Policy aims to provide a fair and just process by which an allegation(s) of misconduct/serious misconduct may be investigated and determined by the Vice-Chancellor and President.

Section 2 - Application

(3) This Policy, and the associated procedures, applies to senior staff members employed on an ongoing or fixed-term appointment at classification levels SSGA to SSGE inclusive. It excludes those senior staff on probation and those employed on a casual basis.

(4) Before the Vice-Chancellor and President takes disciplinary action against a staff member for conduct amounting to misconduct or serious misconduct, the Vice-Chancellor and President must take the steps in this Policy except that, where a matter which may involve misconduct or serious misconduct has been dealt with in good faith as if it were a case of unsatisfactory performance under the [Managing Unsatisfactory Performance Policy - Senior Staff](#), the procedures in this Policy are not required.

Section 3 - Definitions

Term	Definition
Disciplinary Action	Means action by the University to discipline a staff member and may include: <ol style="list-style-type: none"> 1. formal censure or counselling; 2. suspension of the staff member's participation in the Senior Staff Group Performance Pay Scheme for a defined period of time; 3. demotion; 4. suspension with, or without pay; 5. reallocation of duties or transfer; and 6. in the case of serious misconduct, termination of employment without notice.
Misconduct	Means conduct that is unsatisfactory but which is not so serious as to justify the possibility of termination of employment.
Misconduct Investigation Committee	Is the Committee established by the Vice-Chancellor and President to investigate allegation(s) of misconduct and serious misconduct. The Misconduct Investigation Committee will comprise: <ol style="list-style-type: none"> 1. a Chair who shall be external to the University appointed by the Vice-Chancellor and President in consultation with the staff member; 2. a staff member from within the University chosen by the senior staff member; 3. a staff member from within the University chosen by the Vice-Chancellor and President.

Term	Definition
Representative	Means: 1. In relation to a senior staff member, a person selected by the senior staff member to assist or represent the senior staff member. 2. In relation to the University, a person who assists or speaks on behalf of the University before the Misconduct Investigation Committee. In either case above, excludes a person who is currently practising as a solicitor or barrister.
Serious Misconduct	Is misconduct of a serious and wilful nature and is usually conduct of a type that would make it unreasonable to require the University to continue employment of the staff member concerned (Section CM (1)(c) of the Workplace Relations Act 1996). Conduct which may constitute serious misconduct includes, but is not limited to, such things as: 1. theft; 2. violence; 3. fraud; 4. conviction of a criminal offence, during the period of employment, which in the opinion of the University either impacts adversely on the staff member carrying out their duties or adversely on the reputation of the University; 5. conduct of a kind which constitutes an impediment to the carrying out of a staff member's duties or to the staff member's colleagues carrying out their duties; 6. a wilful and serious breach of the University's Code of Conduct, Statutes or policies; and 7. wilful disobedience of a lawful and reasonable employer request or direction.

Section 4 - Principles

(5) The principles which underlie this Policy are as follows:

- a. Senior staff have a responsibility to ensure their conduct is of the highest ethical standard, consistent with the University's [Code of Conduct - Staff](#), Statutes and policies.
- b. The University has a responsibility to support the conduct referred to in paragraph (a) and to assist staff in identifying and resolving ethical issues which may arise in the performance of their duties.
- c. In situations where allegation(s) of misconduct/serious misconduct are made against a staff member, it is reasonable for the University to investigate the allegation(s) and, where appropriate, to take disciplinary action, including, in the case of serious misconduct, termination of employment.
- d. Procedures for dealing with allegations of misconduct/serious misconduct should be fair, observe principles of natural justice and should be conducted expeditiously allowing sufficient time for the staff member to understand, consider and respond to the allegation(s).

Section 5 - Delegation of Process Issues

(6) Despite any reference to the Vice-Chancellor and President throughout this Policy, the Vice-Chancellor and President may, at any time, delegate their roles or obligations under this Policy to another senior officer of the University. The Vice-Chancellor and President may not delegate their role to a senior officer who is directly involved in the matter which is the subject of the procedures governed by this Policy, or to a senior officer who the Vice-Chancellor and President intends to nominate as a member of a committee established under these procedures.

Section 6 - Procedures/Key phases

(7) There are four key phases in the procedures for managing allegations of misconduct/serious misconduct and the determination of disciplinary action:

- a. Phase 1: Consideration of allegation(s) by Vice-Chancellor and President and notification of staff member.
- b. Phase 2: Action by Vice-Chancellor and President.
- c. Phase 3: Investigation by Misconduct Investigation Committee.
- d. Phase 4: Determination by Vice-Chancellor and President.

(8) There are exit points from the procedures at the end of Phase 2, or the matter may continue to Phase 3, investigation by the Misconduct Investigation Committee.

(9) The procedures provide the Vice-Chancellor and President with the authority to determine whether or not misconduct/serious misconduct has occurred, whether or not to impose disciplinary action and, if so, what that action will be.

(10) Under the procedures, where the allegation(s) is wholly or partly denied by the staff member, or where the staff member has not responded to the allegation(s), the Vice-Chancellor and President may refer the matter to the Misconduct Investigation Committee for investigation and provision of a report to the Vice-Chancellor and President. Where referral of the matter to the Misconduct Investigation Committee occurs, final determination of the matter remains with the Vice-Chancellor and President.

Section 7 - Phase 1: Consideration of Allegation(s) by Vice-Chancellor and President and Notification of Staff Member

(11) Any allegation of misconduct or serious misconduct will be considered by the Vice-Chancellor and President. If they believe such allegation(s) warrant further investigation, the Vice-Chancellor and President will:

- a. notify the staff member in writing and in sufficient detail to enable the staff member to understand the precise nature of the allegation(s) and to properly consider and respond to them; and
- b. require the staff member to submit a written response to the allegation(s) within 10 working days of the date of receipt of the written allegation(s). A staff member will be permitted reasonable time during work time to prepare such a response.

(12) At the time of notifying the staff member in accordance with section (a) above, if the Vice-Chancellor and President is of the view that the alleged conduct is such that it would be unreasonable to require the University to continue the staff member's attendance at work pending investigation of the allegation(s) in accordance with the procedures outlined in this Policy, they may suspend the staff member with or without pay.

(13) However, where suspension without pay occurs:

- a. the staff member can draw on any recreation leave or long service leave entitlements for the duration of the suspension without pay;
- b. the Vice-Chancellor and President may at any time direct that salary be paid on the grounds of hardship; and
- c. where the matter is subsequently referred to the Misconduct Investigation Committee, the Committee will determine whether suspension without pay will continue and may amend the nature of the suspension to one with pay from the date on which the suspension took effect.

(14) During any period of suspension, the staff member may be excluded from the University. An exception to this is that the staff member will be permitted reasonable access to the University for the preparation of their case and to collect personal property.

Section 8 - Phase 2: Action by Vice-Chancellor and President

(15) If each of the allegation(s) made against the staff member is denied by the staff member, and the Vice-Chancellor and President is of the view that there has been no misconduct or serious misconduct, they will immediately advise the staff member in writing and may, at the request of the staff member, publish the advice in an appropriate manner.

(16) If one or more of the allegation(s) are admitted by the staff member and the Vice-Chancellor and President is of the view that the conduct constitutes misconduct or serious misconduct, the Vice-Chancellor and President will advise the staff member in writing of the decision and the operative date and details of the disciplinary action to be taken.

(17) If each of the allegation(s) is wholly or partly denied, or if the staff member has not responded to the allegation(s), the Vice-Chancellor and President may:

- a. decide to take no further action; or
- b. counsel or censure the staff member in relation to the conduct in question and take no further action; or
- c. refer the matter to the Misconduct Investigation Committee; or
- d. in the case of serious misconduct and when the Vice-Chancellor and President believes on reasonable grounds that the serious misconduct has occurred, and it would be unreasonable to require the University to continue employment of the staff member in light of the nature of the serious misconduct which has occurred, the Vice-Chancellor and President may terminate the staff member's employment. However, before a decision to terminate employment is made, the Vice-Chancellor and President must:
 - i. have regard to all facts and circumstances surrounding the matter including any mitigating circumstances; and
 - ii. have regard and give appropriate weight to the results of any investigation of the matter by bodies or persons inside or outside the University that have already occurred in relation to the substance of the serious misconduct; and
 - iii. act reasonably and fairly.

Section 9 - Phase 3: Investigation by Misconduct Investigation Committee

(18) Where a matter is referred to the Misconduct Investigation Committee for investigation:

- a. the Committee shall be provided with a copy of the written allegation(s) and a copy of any written reply to the allegation(s) by the staff member;
- b. the Committee shall operate in accordance with the principles of natural justice and procedural fairness and shall, unless otherwise agreed with the Vice-Chancellor and President, complete its role as expeditiously as possible and within 30 days of the Committee being established; and
- c. the staff member and the University are entitled, where they so choose, to be represented in proceedings before the Committee by a relevant Representative, defined in Section 3.

(19) The Misconduct Investigation Committee shall conduct its proceedings consistent with the principles of natural justice and procedural fairness and shall:

- a. conduct proceedings in private;
- b. take into account all information which it considers relevant to the case, including any response(s) by the staff

member;

- c. provide the staff member with a copy of all written statements received by the Committee;
- d. interview any person that it considers relevant to the case;
- e. allow the staff member (and where they so choose their Representative) to be present during all interviews;
- f. provide parties to the review with a reasonable opportunity to call and question witnesses and to present and challenge evidence;
- g. provide the staff member a reasonable opportunity to provide a verbal or written response including to matters raised in written statements and/or present a submission; and
- h. keep a complete record of proceedings and make the record available to the staff member or Vice-Chancellor and President upon request.

(20) The Misconduct Investigation Committee will provide the Vice-Chancellor and President with a written report containing a finding. The Committee's report will indicate whether any mitigating circumstances are evident and, whether or not, in the Committee's view, the allegation(s) have been established on the balance of probabilities. (Where the view of the Committee is not unanimous, the minority view holder shall include in the report to the Vice-Chancellor and President the reasons for their view).

Section 10 - Phase 4: Determination by Vice-Chancellor and President

(21) Following consideration of the report from the Misconduct Investigation Committee (which will not be binding on the Vice-Chancellor and President), the Vice-Chancellor and President shall determine whether or not misconduct or serious misconduct has occurred.

- a. Where the Vice-Chancellor and President determines that misconduct or serious misconduct has occurred, the Vice-Chancellor and President shall decide whether or not to impose disciplinary action and, if so, what that disciplinary action will be. The Vice-Chancellor and President shall communicate their decision to the staff member in writing.
- b. Where the decision is that the misconduct or serious misconduct has not occurred the Vice-Chancellor and President may, at the request of the staff member, publish the decision in an appropriate manner.
- c. A decision not to impose disciplinary action where there has been misconduct or serious misconduct cannot be construed as an admission that there was no conduct justifying a previous decision to suspend without pay and any payment for lost salary during a period of suspension shall be at the Vice-Chancellor and President's discretion.
- d. Where a staff member has been suspended without pay pending the decision of the Vice-Chancellor and President, then any lost income will be reimbursed if there was no misconduct or serious misconduct.
- e. All actions of the Vice-Chancellor and President under these procedures will be final, except that nothing in these procedures will be construed as excluding the jurisdiction of any court or tribunal which, but for these procedures, would be competent to deal with the matter.

Status and Details

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