STAFF DISCIPLINARY POLICY

SUMMARY OF CHANGES

General changes

This document has been amended to reflect the University’s revised internal organisational structure which will be implemented for the purposes of UPR HR02 on 1 September 2012 and to take account of changes to titles and roles.

(Amendments to version 01.0, UPR HR02 are shown in italics.)

“DEALING WITH STAFF MISCONDUCT

The following is the full text of the above Policy and Procedures. It replaced the relevant sections of the ‘Disciplinary Code and Procedures’ with effect from 15 October 2008 and has been approved by the Board of Governors with effect from that date. This policy is consistent with statutory provisions and ACAS guidance. It is also supported by a number of appendices designed to provide practical help. Referral to the appropriate appendix is made as necessary throughout.

INTRODUCTION

The University aims to provide and maintain a safe working environment for all employees. The University expects and will enforce reasonable standards of conduct from its staff. In the event that an employee is alleged to have behaved in away that conflicts with the standard expected, the following policy and procedures will apply.

1 PURPOSE AND SCOPE

1 This policy sets out a framework for dealing with alleged staff misconduct. It is intended to help and encourage all employees to achieve and maintain a professional standard of behaviour at work. It is designed to inform staff of the possible consequences of their failure to adhere to the standards expected by The University. Its aim is to ensure consistent and fair treatment for all staff.

2 The existence of these procedures is not to be taken as interfering in any way with the responsibility of managers to raise informally with an employee any matter which gives cause for concern without recourse to these formal procedures and without a specific formal note being made.

3 It is essential that all matters relating to the application of these procedures remain confidential to the parties concerned and their Line Managers. Unnecessary disclosure could result in making a sensitive situation even more difficult.

4 These procedures apply to all staff (other than those within their probationary periods who are covered by separate arrangements) with the exception of the Vice-Chancellor, Deputy Vice-Chancellors, the Group Director of Finance and Secretary and Registrar for whom separate provision is made in the Articles of Government as appointees of the Board of Governors.

5 The process by which a formal complaint of harassment or bullying is investigated, is covered by a separate policy (Policy to promote Dignity and Respect – Preventing and Dealing with Harassment and Bullying). However where it is decided that there should be a disciplinary hearing, the investigation of harassment and bullying will contribute to the investigation stage required by the University’s staff disciplinary policy.

1 Minute 186.3, Board of Governors, 25 March 2009, refers.
The Vice-Chancellor has the power to suspend or dismiss any employee and can delegate these powers. In the case of professional staff*, both these powers are delegated to the Secretary and Registrar. In their absence, the power to suspend can be further delegated to a designated nominee - such action to be confirmed in writing subsequently by the Vice-Chancellor or Secretary and Registrar as appropriate.

[Note: * In the Articles of Government professional staff are defined as “non-teaching staff”.

II DEFINITION OF TERMS USED

1 “Friend” is a person chosen by the employee to accompany him/her to a hearing and who is either a colleague employed by the University or an employee or official of a Trade Union. The Friend may present the employee’s case and confer with the employee but will not be permitted to answer direct questions for the employee.

2 “Line Manager” – is the person to whom a member of staff reports or is directly responsible.

3 “Misconduct” – matters connected with an employee’s behaviour, inappropriate actions, deliberate wrongful acts or omissions, negligence or other such substantial reason.

4 “Recognised Trade Union” is a trade union formally recognised by the University for the purposes of collective bargaining (i.e. The University and Colleges Union (UCU) and UNISON).

5 “Senior Manager” is the next level of Line Manager, for example, Deputy Vice Chancellor; Dean of School; Head of Strategic Business Unit; Chief Information Officer; Pro Vice-Chancellor (Enterprise) and Director of Marketing and Communications; Director of Estates, Hospitality and Contract Services; Dean of Students; Director of Human Resources.

III GENERAL PRINCIPLES

1 The University will encourage a sensitive and constructive approach to addressing all matters dealt with under these procedures and ensure that matters are handled as efficiently as possible, within reasonable time periods and that clear outcomes are achieved and communicated at all stages. Concerns about conduct must be brought to an employee’s attention without undue delay by the appropriate Line Manager. The University will, normally, offer help, support and any reasonable appropriate training and development before moving into the formal procedures detailed in this policy.

2 No disciplinary action will be taken against an employee until an investigation has been carried out. The investigation should be conducted within as short a timescale as is practicable, normally not exceeding four working weeks. Other than in exceptional or special circumstances, for example: fraud, the employee concerned will be informed that an investigation is being conducted. Guidelines for conducting the investigation are set out in Appendix A.

3 Where allegations of misconduct and poor performance /competence (see Staff Disciplinary Policy- Managing Poor Performance) are raised at the same time, these will normally be subject to one investigation and, where appropriate, one formal hearing will be arranged with all issues being addressed in that one forum, but with any penalties being appropriate to the misdemeanour(s).

4 If an investigation or other action has already been taken in connection with the same facts, the University will, so far as possible, rely on previous investigations/hearings to ensure that the employee is not subject to the same procedure more than once.

5 At every stage the employee will be informed in writing of the level at which the matter is being considered, advised of the nature and details of the complaint against him or her and will be given the opportunity to explain, respond or defend himself/ herself and seek appropriate advice from a Friend before a decision is made.
6 At all formal stages the employee will have the right to be accompanied and represented by a Friend.

7 Either party to any of the formal stages will have the right to call witnesses to appear before the hearing (other than an appeal hearing, see Paragraph 12 below), subject to their signed witness statements having been provided in advance. However, it is envisaged that both parties will restrict to a minimum the number of witnesses to be called, noting that witnesses as to the character of the employee will not appear in person, but submit their statements in writing. The witness statements must be submitted to the Director of HR, or nominee, at least five working days before a hearing so that they can be distributed to all parties. At the hearing, it shall normally be the practice that witnesses will not be expected to read out their statement and further that the cross-examination of witnesses, where called, will be limited in time to half an hour for each witness.

8 The person hearing the case will have had no involvement in its preparation and will conduct the proceedings according to the outline format set out in Disciplinary Hearings Appendix B

9 If, for good cause, the employee is unable to attend the hearing, it will be adjourned to a suitable alternative date. If the employee is unable to attend the re-arranged hearing date, or a further re-arranged date, the hearing will normally proceed in his/her absence, but with his/her Friend being provided with the opportunity to present the employee's case on his/her behalf. Any submission by the employee in writing, or by his/her Friend, will be considered.

10 Regarding conduct issues, no employee will be dismissed for a first breach of discipline except in the case of gross misconduct, where the misconduct is deemed so serious that it would normally justify dismissal without notice or payment in lieu of notice.

11 Disciplinary action will be limited as follows:

An ORAL WARNING will normally last for 6 months,
A WRITTEN WARNING will normally last for 12 months,
A FINAL WRITTEN WARNING will normally last for 24 months.

12 An employee will have the right of appeal against any disciplinary penalty imposed. The person(s) hearing the appeal will not have been party to any earlier decision and will follow the procedures set out in Appeals Appendix C or Appeals - Board of Governors Appendix D as appropriate

13 Appeal hearings will operate on the basis of reviewing the earlier decision, based on submissions made by the member of staff and management. It will not be conducted as a total re-hearing of the evidence made when the initial decision was taken but rather be concerned with:

i reviewing the application of the procedures (evidence of procedural or administrative irregularity);
ii whether the penalty is disproportionate to the misdemeanour;
iii considering any new material evidence not available or produced at the original disciplinary hearing

Note 1: only in this circumstance will witness statements and the attendance in person of those witnesses be admissible.

Note 2: Where the grounds for appeal against a decision taken at Stage 3 level are based on new facts or evidence emerging during the period between a decision being made by the Vice Chancellor or Secretary and Registrar and the holding of the appeal, then the matter will first be reverted to the Vice-Chancellor or Secretary and Registrar to review any decision which may have been taken before reference to the Board of Governors – (see Appeals, Board of Governors, Appendix D)
The procedures may be initiated at any stage if the employee’s alleged misconduct warrants such action.

No action under these procedures will be taken against any employee who is a Recognised Trade Union representative until the circumstances have been discussed with a full-time official of the Recognised Trade Union concerned.

As far as practicable there will be a programme of appropriate training for all staff likely to be involved in using these procedures.

The Director of HR or nominee will be consulted by management at all stages of any case being considered under these procedures and will be present at all formal hearings.

Warnings given to an employee shall be placed on the University’s personal file of the employee kept in the HR Department. The warning shall be removed from the file after the specified period of time specified at III.11 has elapsed without further incident taking place. In exceptional circumstances, the times specified may be subject to variation – any such variation being notified to the individual at the time the warning is issued.

IV PROCEDURES WITH RESPECT TO STAFF MISCONDUCT

INFORMAL

Where it is alleged that conduct does not meet standards acceptable to the University, this must be brought to an employee's attention without undue delay by the appropriate Line Manager. Wherever practicable and appropriate, the employee will be reminded of the standards expected, offered help and such other forms of support and any reasonable training as may be appropriate before resorting to these formal procedures.

FORMAL STAGE 1 (ORAL WARNING)

Following an investigation by the Line Manager (see Investigating Staff Misconduct Appendix A), where it is alleged that conduct does not meet acceptable standards and, after consultation with the Director of HR (or nominee), a decision is made to proceed with a formal disciplinary hearing, the employee will normally be given ten working days’ notice in writing of the disciplinary hearing. The employee shall be given the details of the complaint in writing, informed that Stage 1 of this procedure is being invoked and be advised that he/she can be accompanied and represented by a Friend.

Any written evidence to be submitted by the employee in response to the complaint must be received by the Director of HR, or nominee, at least five working days in advance of the hearing so that all parties can consider it (see also section III.7 above regarding witness statements).

The person conducting the hearing (next level of management) will follow the format outlined in Disciplinary Hearings, Appendix B. At the hearing, the employee will be given the opportunity to respond to the allegations made and to explain his/her alleged actions.

The person conducting the hearing may then decide either:

(a) there is NO CASE TO ANSWER; or
(b) to take NO FURTHER ACTION, in which case he/she will confirm this in writing to the employee; or, if s/he considers the complaint substantiated;
(c) to give an ORAL WARNING.
5 **ORAL WARNING**

The employee will be advised of the reason for the warning; that it is the first stage of the disciplinary procedure; of any improvement required, including where appropriate establishment of targets and/or standards together with the timescale within which an improvement is expected together with the support needed to achieve these; and be warned of the possible consequences if further complaints arise.

6 **RIGHT TO APPEAL**

The employee will be informed in writing of his/her right to appeal to the next level of management. Any appeal must be submitted in writing to the Director of HR within ten working days of the date on which written confirmation of the decision was received, and must clearly state the grounds of the appeal. The employee must submit all papers relating to the appeal no later than five working days before the date set for the Appeal Hearing. Papers not submitted by this date will not normally be eligible for consideration by the appeal hearing. The appeal hearing will follow the format outlined in Appeals Appendix C.

**FORMAL STAGE 2 (WRITTEN WARNING)**

1 In the cases of serious misconduct or a further failure in conduct after the issuing of an oral warning, the Line Manager will conduct an investigation (see Investigating Staff Misconduct Appendix A) and report the circumstances to the Senior Manager.

2 Where a decision is made to proceed with formal procedures, the employee will normally be given ten working days notice in writing of the hearing. The employee shall have access in advance to any documents which are to be produced at the hearing. Any written evidence to be submitted by the employee in response to the complaint must be received by the Director of HR (or nominee) at least five working days in advance of the hearing so that all parties can consider it (see also section III.7 above regarding witness statements).

3 The hearing will be conducted by the Senior Manager following the format outlined in Disciplinary Hearings Appendix B. At the hearing, the employee will be given the opportunity to respond to the allegations made and to explain his/her actions.

4 Senior Manager will then decide either:
   (a) there is **NO CASE TO ANSWER**; or
   (b) to take **NO FURTHER ACTION**, in which case he/she will confirm this to that effect in writing to the employee; or
   (c) to issue an **ORAL WARNING**; or
   (d) to issue a **WRITTEN WARNING** (which may be a first or further warning); or
   (e) to issue a **FINAL WRITTEN WARNING**.

5 **WRITTEN WARNING** (including Final Written Warnings)

All written warnings will state the details of the complaint, the outcome of the hearing, the warning itself, any requirements to be met for improvement and timescale within which an improvement is expected and any monitoring or review meetings to be established. The written warning will warn about the possible consequences if there is a failure to improve or if there is a further incident warranting disciplinary action. In the case of a final written warning, this will warn that further disciplinary action could lead to dismissal.
6 **RIGHT TO APPEAL**

The employee will be informed in writing of his/her right to appeal to the next level of Management [ie The Deputy Vice-Chancellor in the case of teaching/research staff, and the Secretary and Registrar in the case of professional staff]. Any appeal must be submitted in writing to the Director of HR within ten working days of the date on which written confirmation of the decision was received, and must clearly state the grounds of the appeal. The employee must submit all papers relating to the appeal no later than five working days before the date set for the Appeal Hearing. Papers not submitted by this date will not be eligible for consideration by the appeal hearing. The appeal hearing will follow the format outlined in Appeals Appendix C.

**FORMAL STAGE 3**

1 In the case of confirmed gross misconduct (see Examples of Gross Misconduct Appendix E) repetition of a serious offence, or of further complaint after a final written warning, the disciplinary action taken may be dismissal. In the case of proven gross misconduct, the dismissal could be without notice.

2 The Senior Manager, when the allegation or complaint is brought to his/her attention, will, in appropriate cases, report to the Vice-Chancellor (or other nominated person) or Secretary and Registrar (or other nominated person) for a decision on whether the employee should be suspended (see Section V below).

3 The Senior Manager (or nominee) will conduct an investigation (see Investigating Staff Misconduct Appendix A) and report the circumstances to the Vice-Chancellor, or Secretary and Registrar, as appropriate.

4 Where a decision is made to proceed with formal procedures, the employee will normally be given ten working days notice in writing of the hearing. He/she shall be notified of the details of the complaint in writing, informed that Stage 3 of this procedure is being invoked, that dismissal is a possible outcome of the hearing and be advised that he/she can be accompanied and represented by a Friend. The employee shall have access in advance to any documents which are to be produced at the hearing. Any written evidence to be submitted by the employee in response to the complaint must be received at least five working days in advance of the hearing so that all parties can consider it (see also section III.7 above regarding witness statements).

5 The Vice-Chancellor, or Secretary and Registrar, as appropriate, will conduct the hearing following the format outlined in Disciplinary Hearings Appendix B.

6 The Vice-Chancellor or Secretary and Registrar will then decide either:

(a) there is NO CASE TO ANSWER; or
(b) to take NO FURTHER ACTION, in which case he/she will confirm this in writing to the employee; or
(c) to issue an ORAL WARNING; or
(d) to issue a WRITTEN WARNING (which may be a first or further warning); or
(e) to issue a FINAL WRITTEN WARNING; or
(f) to DISMISS. This may be with or without notice depending upon whether an allegation of gross misconduct is confirmed.

Alternative action to dismissal, which may include demotion or re-deployment (with no automatic protection of previous salary) within the University, may be considered by the Vice-Chancellor or Secretary and Registrar at their absolute discretion following agreement with the employee.

There is a flowchart - Progression Through The Disciplinary Procedure- Staff Misconduct, Appendix F which may be helpful.
RIGHT OF APPEAL

(a) The employee will be informed in writing of the decision and the reasons for it and of his/her right to appeal to the Board of Governors. Any such appeal must be submitted in writing to the Secretary to the Board of Governors within ten working days of the date on which the written confirmation of the decision was received and must clearly state the grounds of the appeal. The employee must submit all papers relating to the appeal no later than five working days before the date set for the Appeal Hearing. Papers not submitted by this date will not be eligible for consideration by the Appeal Hearing. The appeal hearing will follow the format outlined in Appeals, Board of Governors, Appendix D.

(b) In the case of appeal based on new material, e.g. evidence not available or produced at the original hearing, the matter will be reverted in the first instance to the Vice-Chancellor or Secretary and Registrar, as appropriate, for further consideration. In such circumstance, the Vice Chancellor or Secretary and Registrar will take responsibility for arranging a review hearing at which the new evidence can be presented (see III.7 above) and the attendance of those witnesses in person be admissible.

V SUSPENSION

1 Where there appears to be gross misconduct, or risk to property or other people, a period of suspension with pay may be imposed while the case is being investigated. Any suspension will be with pay, and any period of suspension will be as short as possible. The member of staff will be told exactly why they are being suspended, and that they will be called in for a disciplinary meeting as soon as possible. Suspension will not be used as a sanction before the disciplinary meeting. Suspension, in itself, is not a disciplinary action.

2 The Vice-Chancellor or, in the case of Professional staff, the Secretary and Registrar, may suspend from duty on full pay any employee for alleged gross misconduct or for other good and urgent cause. In their absence, the power to suspend can be further delegated to a designated nominee – such action to be confirmed in writing subsequently by the Vice-Chancellor or Secretary and Registrar, as appropriate.

3 Any employee suspended from duty will be informed in writing by the Vice-Chancellor or Secretary and Registrar (or designated nominee) of the reason for the suspension and that the suspension will be on full pay. They will also be advised as to what contact with the University will be permitted.

4 The suspension will be for the shortest practicable time.

5 During the period of suspension, the employee may request in writing permission to attend the University, specifying his/her reasons. Such request will be subject to the approval of the Vice-Chancellor or Secretary and Registrar and will not unreasonably be withheld.

VI RIGHT OF APPEAL AGAINST SUSPENSION

Under the Articles of Government any employee who has been suspended for three weeks or more may appeal in writing to the Board of Governors against the suspension, save that no such right of appeal shall lie if the employee has had notification of a hearing before the Vice-Chancellor or the Secretary and Registrar.

Note: The suspension against which an appeal is made shall continue to operate pending the determination of the appeal.

VII APPEAL AGAINST DISMISSAL

The procedure for appeal against dismissal is detailed in Appeals, Board of Governors Appendix D.
INVESTIGATING STAFF MISCONDUCT

Appendix A

To be read in conjunction with Staff Disciplinary Policy – Dealing with Staff Misconduct

1 The Purpose of the Investigation

1.1 An important element of the fair and expeditious handling of disciplinary matters is an adequate investigation. This does not mean exploring every avenue, but it does mean:

• enquiring into the circumstances surrounding the suspected or alleged misconduct;
• normally informing the employee that an investigation is being conducted and giving the employee a chance to offer an explanation (in exceptional or special circumstances the employee may not be informed that an investigation is being conducted);
• taking a balanced view of the information that emerges;
• reaching a decision whether or not there are sufficient grounds for an allegation of misconduct; and, if so, deciding whether it should be dealt with informally or under formal procedures.

Note: In cases concerning allegations of serious or gross misconduct, where suspension of the employee on full pay pending further investigation is considered appropriate, there will be no preliminary interview. In such cases, the Manager, following consultation with the Director of HR, or nominee, will report the circumstances to the Vice Chancellor or Secretary and Registrar, as appropriate, who will suspend the employee.

2 Who should conduct the investigation?

2.1 The appropriate level of Line Manager or other appropriate nominee (for example: associate head; head of academic group or section head) will normally be investigating allegations of misconduct (‘the Investigating Officer’) although there may be particular circumstances where it could be more appropriate for another person/manager to fulfil this role. The Investigating Officer should aim to complete the investigation in as short a period as possible, normally not exceeding 20 working days. The Investigating Officer may be supported by a HR Business Manager Business Partnering.

3 The Procedure

3.1 The employee concerned will normally be informed that an investigation is being carried out and about the nature of the allegation(s) (including details of any written complaints, where applicable) and be given the opportunity, should he/she so wish, to make an initial response. The Investigating Officer should therefore invite the employee to a meeting, as part of the investigation, giving him/her the opportunity to be accompanied and represented by a Friend and explaining the purpose of the meeting. In exceptional circumstances, such as allegations of fraud, the employee may not be informed of an investigation.

3.2 It is normally helpful for any witnesses or other persons believed to have significant information about the alleged misconduct, or pertinent knowledge about relevant procedures, etc to be interviewed as soon as possible before memory fades and written statements obtained from them at the earliest opportunity since these are best gathered whilst the incidents are fresh.
3.3 On completion of the investigation, the Investigating Officer should analyse the facts and evidence, prepare the report, as supported by documents/procedures/witness statements, etc, in consultation with an HR Manager Business Partnering (HRBP). The HRBP will advise on consistency of practice across the University and the validity of the approach being proposed. The Investigating Officer will then determine whether there are reasonable or sufficient grounds, on the balance of probabilities, to justify the allegations and, if so, whether it should be dealt with (i) informally or (ii) under the formal procedures:

i Informal

If the decision is taken to deal with the matter informally then the Investigating Officer should inform the individual of this and, in appropriate cases, a meeting can be held with the individual and his/her Friend to:

- Explain the outcome of the investigation
- Advise of the decision not to proceed formally under the Code of Practice and Procedures;
- Outline any development or action required regarding conduct, standards etc;
- Keep a note of the meeting;
- Confirm it in writing to the individual and copy this to the HR department.

ii Formal

The report should be submitted to the appropriate manager for action.

4 Timescales

4.1 It is important not to unreasonably delay the disciplinary investigation process and it should be conducted within as short a period as practicable, normally not exceeding 20 working days. Once the relevant facts have been established it should be possible to inform the employee fairly quickly whether management intends to take the matter to a formal disciplinary stage.
DISCIPLINARY HEARINGS

Appendix B

To be read in conjunction with Staff Disciplinary Policy Dealing with Staff Misconduct

1. The person chairing the hearing (chair) will outline the status of the hearing; his/her role; the role of the HR representative present (as adviser/note-taker and also in position of seeking further clarification on the issues as appropriate); explain what will happen; introduce all parties present and check that all parties have had the documents to which reference will be made by either side.

2. Management will present its case - the nature of the misconduct; the investigation; the findings and effectively the ‘charges’, calling any witness(es) one at a time, as appropriate. The member of staff and/or his/her Friend will have the opportunity to ask questions of the witness(es). Then the chair (and HR representative, for clarification, if appropriate) will have the opportunity to ask questions of the witness(es). The witness(es) will be called in sequence and leave after questioning, with the chair checking, if necessary whether there is likely to be a need to recall the person(s) at a later stage, and if so their availability.

3. The member of staff or his/her Friend will put his/her case - in the presence of management and call any witnesses (one at a time) with management having the opportunity to question, followed by the chair (and HR representative, for the purposes of clarification). The witness(es) will be called in sequence and leave after questioning, with the chair checking, if necessary whether there is likely to be a need to recall the person(s) at a later stage, and if so their availability. The member of staff should answer questions directly put to them.

4. If appropriate throughout, the chair may ask that a witness be re-called and ask further questions for clarification.

5. Management will sum up its case.

6. The member of staff or his/her Friend will sum up his/her case.

7. All parties, other than the chair and the HR representative, will withdraw. The chair will deliberate, only recalling management or the member of staff where there remain points of uncertainty on evidence already given. If recall is necessary, both parties will return.

8. The chair will make his/her decision, or may decide that an adjournment is necessary for him/her to reflect further upon the evidence, and in either event recalls management and the member of staff, plus his/her Friend, to receive his/her decision and the reasons for this. If appropriate, he/she will communicate his/her decision in writing.

9. The decision will be confirmed in writing with details of the appeals process, as appropriate and usually within 5 working days.

NOTES:

i. Exceptionally, by mutual agreement of all parties, this outline format for conducting the hearing can be amended provided that the general principles are still followed.

ii. At the hearing, it shall normally be the practice that witness(es) will not be expected to read out their statement(s) and further that the cross-examination by each side of witnesses, where called, will wherever possible be limited in time to half an hour for each witness.

iii. Proceedings will not be tape-recorded.

iv. Requests for adjournment by either party will be at the discretion of the Chair and agreement will not be withheld unreasonably.

v. Normally the HR representative will take notes although in some instances it may be appropriate for an additional member of the HR department to fulfil this role.

vi. Notes of the proceedings will not be circulated subsequently but kept for record purposes only and used in the event of any subsequent appeal at which time they will be circulated to all parties.

vii. It is the responsibility of the member of staff and/or Friend to keep their own notes of the hearing.
APPEALS

To be read in conjunction with Staff Disciplinary Policy Dealing with Staff Misconduct

1. The appeal hearing will operate on the basis of reviewing the earlier decision, based on submissions made by the member of staff and management. It will not be conducted as a re-hearing of the evidence made when the initial decision was taken but rather be concerned with reviewing the application of the procedures, whether the penalty is disproportionate to the misdemeanour and considering any new material evidence not available or produced at the original hearing which the member of staff wants to raise. Normally, only in the case of new evidence will witness statements, and the attendance of those witnesses in person, be admissible.

2. Any appeal to a higher level of management must be submitted in writing to the Director of HR within ten working days of the date on which written confirmation of the warning was received. The employee must clearly state the grounds of his/her appeal.

3. The Director of HR (or nominee) will arrange the hearing giving the employee a minimum of ten working days’ notice in writing of the place, date and time of the hearing, and advising him/her of his/her right to be accompanied or represented by a Friend.

4. The Director of HR (or nominee) will inform the appropriate manager who made the original decision that an appeal has been lodged against the original decision.

5. Both the member of staff who is appealing and the manager who made the original decision must submit all evidence or documents to which reference shall be made at the hearing, including where the case for appeal relates to new evidence the names of any witnesses it is proposed to call (or witness statements where a witness is not to be called). This should be no later than 5 working days before the date set for the hearing to the Director of HR (or nominee) for simultaneous distribution to all parties. Papers not submitted by this date will not normally be eligible for consideration.

6. The Director of HR (or nominee) will attend as adviser and will normally act as note-taker.

7. The member of staff (or his/her Friend) shall put his/her case in the presence of the Senior Manager and, where the appeal is based on new evidence, call appropriate witnesses.

8. The manager shall have the opportunity to ask questions of the member of staff and, where appropriate, his/her witnesses.

9. The Senior Manager conducting the appeal may ask questions of the member of staff and, where appropriate, his/her witnesses. The Director of HR, or nominee, may ask questions of the member of staff and, where appropriate, his/her witnesses for clarification.

10. The manager who made the original decision shall respond to the case put by the member of staff.

11. The member of staff or his/her Friend shall have the opportunity to ask questions of the manager and, where appropriate, his/her witnesses.

12. The Senior Manager conducting the appeal may ask questions of the member of staff and, where the appeal is based on new evidence, any witnesses. The Director of HR or nominee, may ask questions of the member of staff and, where the appeal is based on new evidence, any witnesses for clarification.

13. Both sides shall have the opportunity to summarise their points if they so wish, the member of staff’s statement being last.

14. The manager and the member of staff and his/her Friend shall withdraw.
15 The Senior Manager hearing the appeal, with the Director of HR or nominee, to advise, shall deliberate in private, only recalling the parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding that only one is concerned with the point giving rise to doubt.

16 The Senior Manager hearing the appeal shall determine his/her decision.

17 All parties shall be recalled, and the manager hearing the appeal shall convey his/her decision, and the reasons for this. Alternatively, the manager hearing the appeal may defer and communicate his/her decision later, either in person or in writing.

18 The manager’s decision on the appeal shall be final. It shall be confirmed in writing to the employee normally within five working days.

NOTES:

i Exceptionally, by mutual agreement of all parties, this outline format for conducting the appeal hearing can be amended provided that the general principles are still followed.

ii Where witnesses attend the hearing, it shall normally be the practice that they will not be expected to read out their statement and further that the cross-examination by each side of witnesses, where called, will be limited in time to half an hour for each witness.

iii Proceedings will not be tape-recorded.

iv Requests for adjournments by either party will be at the discretion of the Chair and not unreasonably withheld.

v Normally the HR representative will also take notes although in some instances it may be appropriate for an additional member of the HR department to fulfil this role.

vi Notes of the proceedings will not be circulated subsequently but kept on the HR files for record purposes only and used in the event of any subsequent action.

vii It is the responsibility of the member of staff and/or Friend to keep their own notes of the appeal hearing.
To be read in conjunction with Staff Disciplinary Policy Dealing With Staff Misconduct

1. Appeals to the Board of Governors, or a Committee thereof, can only be made after a first appeal has been exhausted. Note: Where the appeal is based on new material evidence emerging during the period between a decision being made by the Vice Chancellor or Secretary and Registrar and the holding of the appeal, the matter will be reverted to the Vice-Chancellor or the Secretary and Registrar. Then there will be further consideration, and only in that circumstance will witness statements, and the attendance of those witnesses in person, be admissible. In such circumstance, the Vice Chancellor or Secretary and Registrar will take responsibility for arranging a review hearing at which the new evidence can be presented and the attendance of those witnesses in person be admissible.

2. Any Committee established by the Board of Governors shall consist of three Governors who shall be Independent Members of the Board or external Co-opted Members (i.e., Governors who are not Staff or Students of the University).

3. The appeal hearing will operate on the basis of reviewing the last appeal decision, based on submissions made by the member of staff and Senior Management. It will not be conducted as a re-hearing of the evidence made when the initial decision was taken but rather be concerned with reviewing the application of the procedures and whether the penalty is disproportionate to the misdemeanour.

4. The procedure of a hearing before the Governors shall be as follows:

4.1. Any appeal to the Board of Governors must be submitted in writing to the Secretary to the Board of Governors within ten working days of the date on which the written decision was received. The employee must clearly state the reasons for and grounds of his/her appeal.

4.2. The Secretary to the Board of Governors will notify the Vice-Chancellor or the Secretary and Registrar (or their nominee), as appropriate, (‘management’) that an appeal has been lodged.

4.3. The Secretary to the Board of Governors will arrange the hearing and will give the member of staff a minimum of ten working days’ notice in writing of the place, date and time of the hearing, and advise him/her of his/her right to be accompanied and represented by a Friend.

4.4. Both the member of staff and management must submit all evidence or documents to which reference shall be made at the hearing at least 5 working days in advance to the Secretary to the Board for simultaneous distribution to all parties.

4.5. The Director of HR (or nominee) will attend to advise the Panel.

4.6. The member of staff (or his/her Friend) shall put his/her case in the presence of the Senior Manager.

4.7. The Senior Manager shall have the opportunity to ask questions of the member of staff.

4.8. The members of the Committee may ask questions of the member of staff.

4.9. The Senior Manager shall put the case in the presence of the member of staff and his/her Friend.

4.10. The member of staff or his/her Friend shall have the opportunity to ask questions of the Senior Manager on the evidence given by him/her.

4.11. The members of the Committee may ask questions of the manager.
4.12 Both parties shall have the opportunity to sum up their cases if they so wish, the member of staff's statement being last.

4.13 The Senior Manager and the member of staff and his/her Friend shall withdraw.

4.14 The Committee, with the officer appointed as Secretary to the Committee and the Director of HR (or nominee) to assist as required, shall deliberate in private, only recalling the Senior Manager and the member of staff (and his/her Friend) to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return.

4.15 The Committee shall determine its decision, which may include: confirmation of the earlier decision or the referral of the case to the Vice-Chancellor or Secretary and Registrar for reconsideration.

4.16 All parties shall be recalled, and the Committee convey its decision, and the reasons for this. Alternatively, the Committee may defer and communicate its decision later, either in person or in writing.

4.17 The Committee's decision on the appeal shall be final. It shall be confirmed in writing to the employee normally within five working days.

NOTES:

i If any party seeks to address the Appeal Committee, this must be in the presence of the other party.

ii It must be made clear at the outset who will be the person presenting the employee's case to the Appeal Committee - either the employee or the Friend, but not both.

iii If any employee who has been dismissed without notice is re-instated on appeal, the re-instatement shall take effect from the date of the original dismissal and no loss of earnings shall be incurred.

iv Proceedings will not be tape-recorded.

v Requests for adjournments by either party will be at the discretion of the Chair and not unreasonably withheld.

vi The Secretary to the Committee will take notes of the proceedings, but these will not be circulated subsequently but kept for record purposes only and may be used in response to any subsequent employment tribunal or legal action.

vii It is the responsibility of the member of staff and/or Friend to keep their own notes of the appeal hearing.
EXAMPLES OF GROSS MISCONDUCT

Appendix E

To be read in conjunction with Staff Disciplinary Policy - Dealing With Staff Misconduct

The following are examples of gross misconduct which, if proved, may result in dismissal without notice. These are merely examples and do not constitute an exhaustive list.

1. Theft or fraud
2. Threat of or actual physical violence or bullying
3. Deliberate and serious damage to property
4. Serious misuse of the University’s or University's Companies property or name
5. Deliberately accessing internet sites containing pornographic, offensive or obscene materials
6. Deliberately sending pornographic, offensive or obscene materials
7. A serious breach of University rules and regulations
8. Serious insubordination
9. Unlawful discrimination or harassment
10. Bringing the University or University Companies into serious disrepute
11. Serious incapability at work brought on by alcohol or illegal drugs
12. Causing loss, damage or injury through serious negligence
13. A serious breach of the University’s health and safety rules
14. A serious breach of trust and confidence

Signed for and on behalf of the University: --------------------------------------------------------

UCU: ---------------------------------------------------------------

UNISON: -------------------------------------------------------------

DATE:
Progression Through the Disciplinary Procedure – Staff Misconduct

Informal level or Formal Stage 1

- Informal counselling and support

Oral warning (6 months)

- Written Warning (1 year)

Final Written Warning (2 years)

- Dismissal /demotion /redeployment

Formal Stage 2

- Written Warning (1 year)

- Final Written Warning (2 years)

Formal Stage 2 more serious

- First and Final Written Warning (2 years)

Stage 3 Gross Misconduct

- Dismissal with or without notice

TAKE NOTE

- You can start with a warning at any level but when you issue a subsequent warning for repetition of similar misconduct, this would normally be at the next level.
- Information in brackets in the flowchart refers to the length of time the warning remains active.
STAFF DISCIPLINARY POLICY

MANAGING POOR PERFORMANCE

The following is the full text of the above Policy and Procedures which replaced the relevant sections of the ‘Disciplinary Code and Procedures’ with effect from 15 October 2008. This policy is consistent with statutory provisions and ACAS guidance. It is also supported by a number of appendices designed to provide practical help. Referral to the appropriate appendix is made, as necessary, throughout.

INTRODUCTION

The University is committed to enabling all staff to reach their full potential and to deliver at least a satisfactory level of performance. In the event that a member of staff is judged to be performing at a less than acceptable level, the University will offer reasonable counselling, support and training in order to resolve the problem. In the majority of cases this approach will result in an improvement in performance bringing it up to the level required. Only after these approaches have been tried and there has been no improvement or even a deterioration in performance will the following policy and procedures apply.

I PURPOSE AND SCOPE

1 This policy sets out a framework for dealing with poor performance. It is intended to help and encourage all employees to achieve and maintain standards of work and performance satisfactory to the University. It is designed to inform staff of the likely consequences of their failure or inability to fulfil or meet their work obligations. Its aim is to ensure consistent and fair treatment for all staff.

2 It is essential that all matters relating to the application of these procedures remain confidential to the parties concerned and those who need to know. Unnecessary disclosure could result in making a sensitive situation even more difficult

3 This policy applies to all staff (other than those within their probationary periods who are covered by separate arrangements) with the exception of the Vice-Chancellor, Deputy Vice-Chancellors, the Group Director of Finance and Secretary and Registrar for whom separate provision is made in the Articles of Government as appointees of the Board of Governors.

4 The Vice-Chancellor has the power to suspend or dismiss any employee and can delegate these powers. In the case of professional staff*, both these powers are delegated to the Secretary and Registrar. In their absence, the power to suspend can be further delegated to a designated nominee - such action to be confirmed in writing subsequently by the Vice-Chancellor or Secretary and Registrar as appropriate.

[Note: * In the Articles of Government professional staff are defined as “non-teaching staff”]

II DEFINITION OF TERMS USED

1 “Poor Performance” – job performance that does not meet required standards

2 “Competence” – matters associated with the employee’s suitability, capacity, efficiency, sufficiency and fitness to carry out his/her work to a standard acceptable to the University. This will include the employee’s sustained eligibility to meet specific statutory or professional requirements necessary to undertake their work.

3 “Friend” is a person chosen by the employee to accompany him/her to a hearing and who is either a colleague employed by the University or an employee or official of a Trade Union. The Friend may present the employee’s case and confer with the employee but will not be permitted to answer direct questions for the employee.
"Line Manager" – is the person to whom a member of staff reports or is directly responsible.

"Recognised Trade Union" is a trade union formally recognised by the University for the purposes of collective bargaining (ie: The University and College Unions (UCU) and UNISON).

"Senior Manager" is the next level of Line Manager, for example, Deputy Vice Chancellor; Dean of School; Head of Strategic Business Unit; Chief Information Officer; Pro Vice-Chancellor (Enterprise) and Director of Marketing and Communications; Director of Estates, Hospitality and Contract Services; Dean of Students; Director of Human Resources.

III GENERAL PRINCIPLES

1 The University will encourage a sensitive and constructive approach to addressing all matters dealt with under this policy and ensure that they are handled as efficiently as possible, within reasonable time periods and that clear outcomes are achieved and communicated at all stages. Concerns about performance or competence must be brought to an employee’s attention without undue delay by the appropriate Line Manager. As already stated, The University will offer reasonable help and support before moving into the formal procedures detailed in this policy.

(See Guidance Notes - Managing Poor Performance, Appendix A)

2 No disciplinary action will be taken against an employee until an examination of the facts has been carried out. This should be conducted within as short a timescale as is practicable, normally not exceeding 20 working days. The employee concerned will be informed at the outset that an investigation is being conducted. (See Guidance Notes – Managing Poor Performance, Appendix A)

3 Where allegations of poor performance and misconduct (see "Staff Disciplinary Policy - Dealing With Staff Misconduct") are raised at the same time, these will normally be subject to one investigation and, where appropriate, one formal hearing will be arranged with all issues being addressed in that one forum, but with any penalties being appropriate to the misdemeanour(s).

4 If an investigation or other action has already been taken in connection with the same facts under a University Procedure, the University will, so far as possible, rely on previous investigations/hearings to ensure that the employee is not subject to the same procedure more than once.

5 At every stage the employee will be informed in writing of the level at which the matter is being considered, advised of the nature and details of the shortfall in performance and will be given the opportunity to respond, explain and seek appropriate advice from a Friend before a decision is made.

6 At all formal stages the employee will have the right to be accompanied and represented by a Friend.

7 Either party to any of the formal stages will have the right to call witnesses to appear before the hearing (other than an appeal hearing, see Paragraph 12 below), subject to their signed witness statements having been provided in advance. However, it is envisaged that both parties will restrict to a minimum the number of witnesses to be called, noting that witnesses as to the character of the employee will not appear in person, but submit their statements in writing. The witness statements must be submitted to the Director of HR, or nominee, at least five working days before a hearing so that they can be distributed to all parties. At the hearing, it shall normally be the practice that witnesses will not be expected to read out their statement and further that the cross-examination of witnesses, where called, will be limited in time to half an hour for each witness.
The person hearing the case will have had no involvement in its preparation and will conduct the proceedings according to the outline format set out in Disciplinary Hearings, Appendix B.

If, for good cause, the employee is unable to attend the hearing, it will be adjourned to a suitable alternative date. If the employee is unable to attend the re-arranged hearing date, or a further re-arranged date, the hearing will normally proceed in his/her absence, but with his/her Friend being provided with the opportunity to present the employee's case on his/her behalf. Any submission by the employee in writing, or by his/her Friend, will be considered.

Disciplinary action will be limited as follows:

An ORAL WARNING will normally last for 6 months,
A WRITTEN WARNING will normally last for 12 months,
A FINAL WRITTEN WARNING will normally last for 24 months.

An employee will have the right of appeal against any disciplinary penalty imposed. The person(s) hearing the appeal will not have been party to any earlier decision and will follow the procedures set out in Appeals, Appendix C and Appeals, Board of Governors, Appendix D.

Appeal hearings will operate on the basis of reviewing the earlier decision, based on submissions made by the member of staff and management. It will not be conducted as a total re-hearing of the evidence made when the initial decision was taken but rather be concerned with:

i reviewing the application of the procedures (evidence of procedural or administrative irregularity);
ii whether the penalty is disproportionate to the misdemeanour;
iii considering any new material evidence not available or produced at the original disciplinary hearing.

Note 1: only in this circumstance will witness statements and the attendance in person of those witnesses be admissible.

Note 2: Where the grounds for appeal against a decision taken at Stage 3 level are based on new facts or evidence emerging during the period between a decision being made by the Vice Chancellor or Secretary and Registrar and the holding of the appeal, then the matter will first be reverted to the Vice-Chancellor or Secretary and Registrar to review any decision which may have been taken before reference to the Board of Governors (see Appeals, Board of Governors, Appendix D).

The procedures may be initiated at any stage if the employee’s poor performance or incompetence warrants such action.

No action under these procedures will be taken against any employee who is a Recognised Trade Union representative until the circumstances have been discussed with a full-time official of the Recognised Trade Union concerned.

As far as practicable there will be a programme of appropriate training for all staff likely to be involved in using these procedures.

The Director of HR or nominee will be consulted by management at all stages of any case being considered under these procedures and will be present at all formal hearings.

Warnings given to an employee shall be placed on the University's personal file of the employee kept in the HR Department. The warning shall be removed from the file after the specified period of time specified at III.10 has elapsed without further incident taking place. In exceptional circumstances, the times specified may be subject to variation – any such variation being notified to the individual at the time the warning is issued.
IV  PROCEDURES WITH RESPECT TO STAFF POOR PERFORMANCE

INFORMAL

1  Coaching and guidance are a part of normal management practice. Much can be achieved by way of informal guidance, particularly where shortcomings are not of a serious or persistent nature. The formal procedure will not be implemented without there first having been a period of coaching and guidance, the aim being to encourage an employee to understand what is expected, to improve and thus meet the University’s standards. (See Guidance Notes – Managing Poor Performance Appendix A)

2  However, in some circumstances it may be appropriate to initiate this procedure if the employee’s alleged poor performance or incompetence warrants such action.

FIRST FORMAL WARNING (ORAL WARNING)

1  Where the employee has failed to reach an acceptable level of performance, despite informal counselling, support and guidance and time to improve, the formal stage will be invoked. The manager who dealt with the informal stage will submit a report to the next level of management, (this may be the Senior Manager, as appropriate) identifying the alleged poor performance or shortcomings and including any appropriate written reports on teaching observation(s) conducted by the line manager and an independent line manager. The employee will be given ten working days’ notice in writing of a meeting to discuss this. The employee will be given the details of the concerns about his/her alleged shortcomings, poor performance or incompetence in writing in advance, informed that a formal stage is being invoked and be advised that he/she can be accompanied and represented by a Friend.

2  The meeting to discuss the alleged shortcomings and concerns will be conducted by the Line Manager. (See Disciplinary Hearings, Appendix B) At the meeting, the employee and/or the employee’s Friend will be given the opportunity to respond to the evidence presented and to state his/her position.

3  The Line Manager must then decide whether:

   (a)  to take NO FURTHER ACTION, in which case he/she will confirm this outcome in writing to the employee; or

   (b)  the level of performance is of concern and therefore an ORAL WARNING is appropriate.

4  FIRST FORMAL WARNING (ORAL WARNING)

   The warning will be confirmed in writing and the employee will be given an action plan. This will set out levels of acceptable performance and targets, together with appropriate support, guidance and training to be given and state the timescale within which improvement is expected. The member of staff will be required to improve over a period of time (normally no more than 8 working weeks). The employee will be warned of the possible consequences of a failure to improve or in the event that further shortcomings are identified. A review date will be set when progress can be assessed. At the end of the agreed period for improvement, the manager will hold a further meeting with the employee, and if he/she chooses in the presence of his/her Friend, to discuss progress. If the employee’s performance/competence has improved sufficiently that he/she now meets the required standard, this will be confirmed in writing, and possibly a further review meeting will be arranged to check that this can be sustained. If however, the employee’s performance/competence remains below the required standard, the employee will be informed that further action will be taken under Formal Stage 2 of this procedure.
RIGHT TO APPEAL

The employee will be informed in writing of his/her right to appeal to the next appropriate level of management. Any appeal must be submitted in writing to the Director of HR within ten working days of the date on which written confirmation of the decision was received, and must clearly state the grounds of the appeal. The employee must submit all papers relating to the appeal no later than five working days before the date set for the Appeal Hearing. Papers not submitted by this date will not be eligible for consideration by the appeal hearing. The appeal hearing will follow the format outlined in Appeals, Appendix C.

FORMAL STAGE 2 (WRITTEN WARNING)

1. If, having completed Formal Stage 1 of this procedure the employee’s performance remains unsatisfactory and below the standard that is required, or were to fall below this standard at any time during the next twelve months, referral will be made to the Senior Manager.

2. The employee’s Line Manager will prepare a report on the employee’s poor performance or lack of competence and standard of work, including the action taken under Formal Stage 1, where appropriate, and forward it to the Senior Manager. The employee will be given ten working days’ notice in writing of a meeting to discuss this. The employee will be given the details of the concerns about his/her alleged shortcomings, poor performance/lack of competence in writing in advance, informed that Formal Stage 2 is being invoked and be advised that he/she can be accompanied and represented by a Friend.

3. The meeting will be conducted by the Senior Manager, who will discuss with the employee the alleged shortcomings, concerns or complaints and any further action that may be necessary to rectify the problem.

4. At the meeting, the employee and/or the employee’s Friend will be given the opportunity to respond to the evidence presented and to state his/her position.

5. The Senior Manager will then decide whether:

   (a) to take NO FURTHER ACTION, in which case he/she will confirm this outcome in writing to the employee; or
   (b) to issue a FINAL FORMAL WARNING.

6. FINAL FORMAL WARNING (FINAL WRITTEN WARNING)

The warning will be confirmed in writing and the employee will be given an action plan. This will set out levels of acceptable performance and targets, together with appropriate support, guidance and training to be given and state the timescale within which improvement is expected. The member of staff will be required to improve over a period of time (normally no more than 8 working weeks). The employee will be warned of the possible consequences of a failure to improve or in the event that further shortcomings are identified. A review date will be set when progress can be assessed. At the end of the agreed period for improvement, the manager will hold a meeting with the employee, and if he/she chooses in the presence of his/her Friend, to discuss progress. If the employee’s performance/competence has improved sufficiently that he/she now meets the required standard, this will be confirmed in writing, and possibly a further review meeting will be arranged to check that this can be sustained. If however, the employee’s performance/competence remains below the required standard, the employee will be informed that further action will be taken under Formal Stage 3 of this procedure which could result in the employee’s dismissal.
RIGHT TO APPEAL

The employee will be informed in writing of his/her right to appeal to the Deputy Vice-Chancellor or Secretary & Registrar. Any appeal must be submitted in writing to the Director of HR within ten working days of the date on which written confirmation of the decision was received, and must clearly state the grounds of the appeal. The employee must submit all papers relating to the appeal no later than five working days before the date set for the Appeal Hearing. Papers not submitted by this date will not be eligible for consideration by the appeal hearing. The appeal hearing will follow the format outlined in Appeals Appendix C.

FORMAL STAGE 3

1 If, in cases of gross professional negligence or incompetence or, having completed Formal Stage 2 of this procedure, the employee’s performance/competence remains below the standard required, or falls below the standard required during the following 12 months, the Senior Manager will prepare a statement of case to the Vice-Chancellor or Secretary and Registrar, as appropriate.

2 Where a decision is made to proceed with formal disciplinary action, the employee will normally be given ten working days notice in writing of the hearing. He/she shall be notified of the details of the complaint in writing, informed that Stage 3 of this procedure is being invoked, that dismissal is a possible outcome of the hearing and be advised that he/she can be accompanied and represented by a Friend. The employee shall have access in advance to any documents which are to be produced at the hearing. Any written evidence to be submitted by the employee in response to the complaint must be received at least five working days in advance of the hearing so that all parties can consider it (see also section III.7 above regarding witness statements).

3 The Vice-Chancellor, or Secretary and Registrar, as appropriate, will conduct the disciplinary hearing following the format outlined in Disciplinary Hearings, Appendix B.

4 The Vice-Chancellor or Secretary and Registrar will then decide:

(a) to take NO FURTHER ACTION, in which case he/she will confirm this outcome in writing to the employee; or
(b) to EXTEND THE PERIOD OF REVIEW and require further monitoring; or
(c) to consider FURTHER ACTION; or
(d) to DISMISS. This will normally be with notice.

Alternative action to dismissal, which may include demotion or re-deployment (with no automatic protection of previous salary) within the University, may be considered by the Vice-Chancellor or Secretary and Registrar at their absolute discretion following agreement with the employee.

5 RIGHT OF APPEAL

(a) The employee will be informed in writing of the decision and the reasons for it and of his/her right to appeal to the Board of Governors. Any such appeal must be submitted in writing to the Secretary to the Board of Governors within ten working days of the date on which the written confirmation of the decision was received and must clearly state the grounds of the appeal. The employee must submit all papers relating to the appeal no later than five working days before the date set for the Appeal Hearing. Papers not submitted by this date will not be eligible for consideration by the appeal hearing. The appeal hearing will follow the format outlined in Appeals, Board of Governors, Appendix D.
(b) In the case of appeal based on new material evidence not available or produced at the original hearing, the matter will be reverted in the first instance to the Vice-Chancellor or Secretary and Registrar, as appropriate, for further consideration. In such circumstance, the Vice Chancellor or Secretary and Registrar will take responsibility for arranging a review hearing at which then new evidence can be presented (see 11.7 above) and the attendance of those witnesses in person will be admissible.

There is a flowchart Progression Through The Staff Disciplinary Procedure – Managing Poor Performance, Appendix E which may be helpful.

V SUSPENSION

1 Where there appears to be gross professional negligence or incompetence which might expose people or property to risk, a period of suspension with pay may be imposed while the case is being investigated. Any suspension will be with pay, and any period of suspension will be as short as possible. The member of staff will be told exactly why they are being suspended, and that they will be called in for a disciplinary meeting as soon as possible. Suspension will not be used as a sanction before the disciplinary meeting. Suspension, in itself, is not a disciplinary action.

2 The Vice-Chancellor or, in the case of Professional staff, the Secretary and Registrar, may suspend from duty on full pay any employee for alleged gross misconduct or for other good and urgent cause. In their absence, the power to suspend can be further delegated to a designated nominee – such action to be confirmed in writing subsequently by the Vice-Chancellor or Secretary and Registrar, as appropriate.

3 Any employee suspended from duty will be informed in writing by the Vice-Chancellor or Secretary and Registrar (or designated nominee) of the reason for the suspension and that the suspension will be on full pay. They will also be advised as to what contact with the University will be permitted.

4 The suspension will be for the shortest practicable time.

5 During the period of suspension, the employee may request in writing permission to attend the University, specifying his/her reasons. Such request will be subject to the approval of the Vice-Chancellor or Secretary and Registrar and will not unreasonably be withheld.

VI RIGHT OF APPEAL AGAINST SUSPENSION

Under the Articles of Government any employee who has been suspended for three weeks or more may appeal in writing to the Board of Governors against the suspension, save that no such right of appeal shall lie if the employee has had notification of a hearing before the Vice-Chancellor or the Secretary and Registrar.

Note: The suspension against which an appeal is made shall continue to operate pending the determination of the appeal.

VII APPEAL AGAINST DISMISSAL

The procedure for appeal against dismissal is detailed in Appeals, Board of Governors, Appendix D.
GUIDANCE NOTES - MANAGING POOR PERFORMANCE

Appendix A

1. These guidelines are intended to assist staff in dealing fairly and effectively with employees whose performance is unacceptable to The University. They must be read in conjunction with “Staff Disciplinary Policy - Managing Poor Performance”.

2. In the event of concern about an individual’s job performance or competence, the following considerations should be made BEFORE recourse to any action outlined in the Policy document.

   a. The individual should be aware of concerns about their performance
   b. A confidential counselling discussion (or a number of discussions) should have been arranged with the aim of covering:
      - the shortcomings in performance by giving specific examples
      - encouraging the individual to adopt a problem solving approach
      - listening to suggestions and explanations as to why the problems exist
      - agreeing a plan of action which has clearly measurable objectives and a timescale for review
      - offering reasonable support and training if needed
      - what will happen if the required improvement is not forthcoming
   c. A record of the meeting(s) should be made with a copy for the Line Manager and a copy for the member of staff.

3. If informal counselling, support and guidance fail and if there is no improvement or if there is deterioration in performance, then formal action as outlined in the Policy document will be necessary. The Policy document sets out the rules which must be followed so as to be fair and consistent and to protect staff and The University against the legal consequences of getting things wrong. Questions about the application of this policy should be addressed to the relevant HR Manager Business Partnering.

4. Preparing the case for a formal hearing

   Once the policy document has been read and advice sought from the relevant HR Manager Business Partnering the Line Manager should take the following actions:

   a. Gather all relevant evidence ie notes of all the meetings, counselling sessions etc
   b. Obtain all relevant personal details of the employee (e.g. length of service, disciplinary record, past performance, appraisals etc)
   c. Examine all the evidence to determine whether despite reasonable counselling and support the employees’ performance has fallen short of what is required. Provide clear, specific examples
   d. Advise the employee that formal action on the grounds of poor performance is likely to ensue
   e. Obtain written evidence from relevant witnesses, if appropriate, always bearing in mind that confidentiality is paramount.
   f. Notify the Line Manager who will be hearing the case and submit a detailed report illustrating the shortfalls in performance. Go on to recommend the level of formal action considered to be appropriate (Remember your HR Manager Business Partnering will be able to provide assistance on this particular point)
   g. Send the employee details of the concerns about their performance and advise them on the date of the formal hearing (at least 10 days notice) and their rights of representation.
5 Presenting the case at a formal hearing

- Be clear and objective and keep calm when presenting evidence.
- Avoid being personal and do not take personally what may be said in response.
- Answer questions honestly and succinctly and do not say anything that cannot be substantiated with evidence.
- Seek an adjournment during the meeting if a break is required or to verify facts.
DISCIPLINARY HEARINGS  Appendix B

To be read in conjunction with Staff Disciplinary Policy Managing Poor Performance

1 The person chairing the hearing (chair) will outline the status of the hearing; his/her role; the role of the HR representative present (as adviser/note-taker and also in position of seeking further clarification on the issues as appropriate); explain what will happen; introduce all parties present and check that all parties have had the documents to which reference will be made by either side.

2 Management will present its case - the nature of the poor performance; the investigation; the findings and effectively the ‘charges’, calling any witness(es) one at a time, as appropriate. The member of staff and/or his/her Friend will have the opportunity to ask questions of the witness(es). Then the chair (and HR representative, for clarification, if appropriate) will have the opportunity to ask questions of the witness(es). The witness(es) will be called in sequence and leave after questioning, with the chair checking, if necessary whether there is likely to be a need to recall the person(s) at a later stage, and if so their availability.

3 The member of staff or his/her Friend will put his/her case - in the presence of management and call any witnesses (one at a time) with management having the opportunity to question, followed by the chair (and HR representative, for the purposes of clarification). The witness(es) will be called in sequence and leave after questioning, with the chair checking, if necessary whether there is likely to be a need to recall the person(s) at a later stage, and if so their availability. The member of staff should answer questions directly put to them.

4 If appropriate throughout, the chair may ask that a witness be re-called and ask further questions for clarification.

5 Management will sum up its case.

6 The member of staff or his/her Friend will sum up his/her case.

7 All parties, other than the chair and the HR representative, will withdraw. The chair will deliberate, only recalling management or the member of staff where there remain points of uncertainty on evidence already given. If recall is necessary, both parties will return.

8 The chair will make his/her decision, or may decide that an adjournment is necessary for him/her to reflect further upon the evidence, and in either event recalls management and the member of staff, plus his/her Friend, to receive his/her decision and the reasons for this. If appropriate, he/she will communicate his/her decision in writing.

9 The decision will be confirmed in writing with details of the appeals process, as appropriate and usually within 5 working days.

NOTES:

i Exceptionally, by mutual agreement of all parties, this outline format for conducting the hearing can be amended provided that the general principles are still followed.

ii At the hearing, it shall normally be the practice that witness(es) will not be expected to read out their statement(s) and further that the cross-examination by each side of witnesses, where called, will wherever possible be limited in time to half an hour for each witness.

iii Proceedings will not be tape-recorded.

iv Requests for adjournment by either party will be at the discretion of the Chair and agreement will not be withheld unreasonably.

v Normally the HR representative will take notes although in some instances it may be appropriate for an additional member of the HR department to fulfil this role

vi Notes of the proceedings will not be circulated subsequently but kept for record purposes only and used in the event of any subsequent appeal at which time they will be circulated to all parties

vii It is the responsibility of the member of staff and/or Friend to keep their own notes of the hearing.
APPEALS

Appendix C

To be read in conjunction with Staff Disciplinary Policy Managing Poor Performance

1. The appeal hearing will operate on the basis of reviewing the earlier decision, based on submissions made by the member of staff and management. It will not be conducted as a re-hearing of the evidence made when the initial decision was taken but rather be concerned with reviewing the application of the procedures, whether the penalty is disproportionate to the misdemeanour and considering any new material evidence not available or produced at the original hearing which the member of staff wants to raise. Normally, only in the case of new evidence will witness statements, and the attendance of those witnesses in person, be admissible.

2. Any appeal to a higher level of management must be submitted in writing to the Director of HR within ten working days of the date on which written confirmation of the warning was received. The employee must clearly state the grounds of his/her appeal.

3. The Director of HR (or nominee) will arrange the hearing giving the employee a minimum of ten working days’ notice in writing of the place, date and time of the hearing, and advising him/her of his/her right to be accompanied or represented by a Friend.

4. The Director of HR (or nominee) will inform the appropriate manager who made the original decision that an appeal has been lodged against the original decision.

5. Both the member of staff who is appealing and the manager who made the original decision must submit all evidence or documents to which reference shall be made at the hearing, including where the case for appeal relates to new evidence the names of any witnesses it is proposed to call (or witness statements where a witness is not to be called). This should be no later than 5 working days before the date set for the hearing to the Director of HR (or nominee) for simultaneous distribution to all parties. Papers not submitted by this date will not normally be eligible for consideration.

6. The Director of HR (or nominee) will attend as adviser and will normally act as note-taker.

7. The member of staff (or his/her Friend) shall put his/her case in the presence of the manager and, where the appeal is based on new evidence, call appropriate witnesses.

8. The Senior Manager shall have the opportunity to ask questions of the member of staff and, where appropriate, his/her witnesses.

9. The Senior Manager conducting the appeal may ask questions of the member of staff and, where appropriate, his/her witnesses. The Director of HR, or nominee, may ask questions of the member of staff and, where appropriate, his/her witnesses for clarification.

10. The manager who made the original decision shall respond to the case put by the member of staff.

11. The member of staff or his/her Friend shall have the opportunity to ask questions of the manager and, where appropriate, his/her witnesses.

12. The Senior Manager conducting the appeal may ask questions of the member of staff and, where the appeal is based on new evidence, any witnesses. The Director of HR or nominee, may ask questions of the member of staff and, where the appeal is based on new evidence, any witnesses for clarification.

13. Both parties shall have the opportunity to summarise their points if they so wish, the member of staff’s statement being last.

14. The manager and the member of staff and his/her Friend shall withdraw.
15 The Senior Manager hearing the appeal, with the Director of HR or nominee, to advise, shall deliberate in private, only recalling the parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding that only one is concerned with the point giving rise to doubt.

16 The Senior Manager hearing the appeal shall determine his/her decision.

17 All parties shall be recalled, and the manager hearing the appeal shall convey his/her decision, and the reasons for this. Alternatively, the manager hearing the appeal may defer and communicate his/her decision later, either in person or in writing.

18 The manager's decision on the appeal shall be final. It shall be confirmed in writing to the employee normally within five working days.

NOTES:

i Exceptionally, by mutual agreement of all parties, this outline format for conducting the appeal hearing can be amended provided that the general principles are still followed.

ii Where witnesses attend the hearing, it shall normally be the practice that they will not be expected to read out their statement and further that the cross-examination by each side of witnesses, where called, will be limited in time to half an hour for each witness.

iii Proceedings will not be tape-recorded.

iv Requests for adjournments by either party will be at the discretion of the Chair and not unreasonably withheld.

v Normally the HR representative will also take notes although in some instances it may be appropriate for an additional member of the HR department to fulfil this role.

vi Notes of the proceedings will not be circulated subsequently but kept on the HR files for record purposes only and used in the event of any subsequent action.

vii It is the responsibility of the member of staff and/or Friend to keep their own notes of the appeal hearing.
APPEALS, BOARD OF GOVERNORS

Appendix D

To be read in conjunction with Staff Disciplinary Policy Managing Poor Performance

1. Appeals to the Board of Governors, or a Committee thereof, can only be made after a first appeal has been exhausted. Note: Where the appeal is based on new material evidence emerging during the period between a decision being made by the Vice Chancellor or Secretary and Registrar and the holding of the appeal, the matter will be reverted to the Vice-Chancellor or the Secretary and Registrar. Then there will be further consideration, and only in that circumstance will witness statements, and the attendance of those witnesses in person, be admissible. In such circumstance, the Vice Chancellor or Secretary and Registrar will take responsibility for arranging a review hearing at which the new evidence can be presented and the attendance of those witnesses in person be admissible.

2. Any Committee established by the Board of Governors shall consist of three Governors who shall be Independent Members of the Board or external Co-opted Members (ie Governors who are not Staff or Students of the University).

3. The appeal hearing will operate on the basis of reviewing the last appeal decision, based on submissions made by the member of staff and Senior Management. It will not be conducted as a re-hearing of the evidence made when the initial decision was taken but rather be concerned with reviewing the application of the procedures and whether the penalty is disproportionate to the misdemeanour.

4. The procedure of a hearing before the Governors shall be as follows:

4.1. Any appeal to the Board of Governors must be submitted in writing to the Secretary to the Board of Governors within ten working days of the date on which the written decision was received. The employee must clearly state the reasons for and grounds of his/her appeal.

4.2. The Secretary to the Board of Governors will notify the Vice-Chancellor or the Secretary and Registrar (or their nominee), as appropriate, (‘management’) that an appeal has been lodged.

4.3. The Secretary to the Board of Governors will arrange the hearing and will give the member of staff a minimum of ten working days’ notice in writing of the place, date and time of the hearing, and advise him/her of his/her right to be accompanied and represented by a Friend.

4.4. Both the member of staff and management must submit all evidence or documents to which reference shall be made at the hearing at least 5 working days in advance to the Secretary to the Board for simultaneous distribution to all parties.

4.5. The Director of HR (or nominee) will attend to advise the Panel.

4.6. The member of staff (or his/her Friend) shall put his/her case in the presence of the manager.

4.7. The Senior Manager shall have the opportunity to ask questions of the member of staff.

4.8. The members of the Committee may ask questions of the member of staff.

4.9. The Senior Manager shall put the case in the presence of the member of staff and his/her Friend.

4.10. The member of staff or his/her Friend shall have the opportunity to ask questions of the Senior Manager on the evidence given by him/her.

4.11. The members of the Committee may ask questions of the Senior Manager.
4.12 Both parties shall have the opportunity to sum up their cases if they so wish, the member of staff’s statement being last.

4.13 The Senior Manager and the member of staff and his/her Friend shall withdraw.

4.14 The Committee, with the officer appointed as Secretary to the Committee and the Director of HR (or nominee) to assist as required, shall deliberate in private, only recalling the Senior Manager and the member of staff (and his/her Friend) to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return.

4.15 The Committee shall determine its decision, which may include: confirmation of the earlier decision or the referral of the case to the Vice-Chancellor or Secretary and Registrar for reconsideration.

4.16 All parties shall be recalled, and the Committee convey its decision, and the reasons for this. Alternatively, the Committee may defer and communicate its decision later, either in person or in writing.

4.17 The Committee’s decision on the appeal shall be final. It shall be confirmed in writing to the employee normally within five working days.

NOTES:

i If any party seeks to address the Appeal Committee, this must be in the presence of the other party.

ii It must be made clear at the outset who will be the person presenting the employee’s case to the Appeal Committee - either the employee or the Friend, but not both.

iii If any employee who has been dismissed without notice is re-instated on appeal, the re-instatement shall take effect from the date of the original dismissal and no loss of earnings shall be incurred.

iv Proceedings will not be tape-recorded.

v Requests for adjournments by either party will be at the discretion of the Chair and not unreasonably withheld.

vi The Secretary to the Committee will take notes of the proceedings, but these will not be circulated subsequently but kept for record purposes only and may be used in response to any subsequent employment tribunal or legal action.

vii It is the responsibility of the member of staff and/or Friend to keep their own notes of the appeal hearing.

Signed for and on behalf of the University:-------------------------------------------------------------

UCU:-------------------------------------------------------------

UNISON:-------------------------------------------------------------

DATE:
Appendix E

PROGRESSION THROUGH THE STAFF DISCIPLINARY PROCEDURE

MANAGING POOR PERFORMANCE

Informal counselling and support

Oral warning (Formal Stage 1)
(6 months)

Written warning (Formal Stage 2)
(1 year)

Final written warning (Formal Final Stage 2)
(2 years)

Formal Stage 3
Dismissal/ redeployment/demotion

- In cases of managing poor performance /incompetence all of the above stages would normally be followed in order.
- Progression from one stage to the next would be determined by whether the employee reached the required standard of performance within the agreed time frame (normally no more than 8 weeks at each stage).
- The information in brackets in the flowchart indicates the length of time the warning remains active.
- Prior to taking action under stage 3 there might be a period of suspension in the case of gross professional negligence or incompetence.
MANAGING STAFF LONG TERM AND SHORT TERM ILL HEALTH ABSENCE

The following is the full text of the above Policy and Procedures which replaced the relevant sections of ‘the Disciplinary Code and Procedures’ with effect from 15 October 2008. This policy is supported by a number of appendices designed to provide practical help. Referral to the appropriate appendix is made, as necessary, throughout. This policy should be read in conjunction with the Absence Management Policy, Employees Guide to Sickness Absence and Occupational and Statutory Sick Pay Schemes.

INTRODUCTION

The University has a legal responsibility for the health, safety and well-being of its staff. It enacts this in many ways including a range of initiatives which encourage staff to adopt a healthier and more balanced lifestyle. In return, the University expects an acceptable level of attendance from its employees. It recognises the need to manage staff absence sensitively and effectively so as to support the employee and meet its own operational needs.

The University operates beneficial sickness and leave conditions, determined by continuity of service, such that normally employees after five years’ service are eligible for six months’ full pay and six months’ half pay. It is important to review compliance with sickness rules and conditions; to explore the reasons for sickness absence in order to prevent, if possible, the absence recurring.

I PURPOSE AND SCOPE

1 The University has sickness absence management policies in place to ensure, through effective management, that staff absence is kept to a minimum; that staff with health problems receive appropriate support through their manager, the Occupational Health Department and HR; that all staff are treated fairly and consistently in line with good employment practice and that, wherever practicable and appropriate, staff can be assisted to return to work through agreed rehabilitation programmes.

2 This policy is concerned with a member of staff’s incapacity to meet required standards of performance because of ill health (both long term absences and frequent intermittent short term absences from work) and about balancing the University’s needs against the circumstances of the employee concerned. It is a fundamental feature of this procedure that there be regular and effective communication and consultation with the member of staff throughout the period(s) of absence so that he or she is clear about the possible consequences of his/her continued absence. Equally there is an expectation that the employee will keep her/his manager informed about their particular circumstances, as far as it is practicable, and the possibility and timescale for return or of further absence.

3 The decision to dismiss on the grounds of incapacity is not a medical one but a managerial one-based, amongst other things, on medical opinion(s). However, the absence of a medical diagnosis, or prognosis, does not in itself prevent management action. Employees have the right under the Access to Medical Reports Act 1988 (as amended) not to disclose their medical report although this may inhibit the employer’s attempt to gain helpful information from a general practitioner. In such a case, the employer can advise the employee that there is a need to obtain information regarding his/her health, and that his/her further employment will be assessed on the information available, and, if appropriate, can refer the employee to the University’s Occupational Health Physician or an independent specialist.

4 It is essential that all matters relating to the application of these procedures remain confidential to the parties concerned and those who need to know. Unnecessary disclosure could result in disciplinary action on the grounds of misconduct.
These procedures apply to all staff (other than those within their probationary periods who are covered by separate arrangements) with the exception of the Vice-Chancellor, Deputy Vice-Chancellors the Group Director of Finance and Secretary and Registrar for whom separate provision is made in the Articles of Government as appointees of the Board of Governors.

The Vice-Chancellor has the power to suspend or dismiss any employee and can delegate these powers. In the case of professional staff*, both these powers are delegated to the Secretary and Registrar. In their absence, the power to suspend can be further delegated to a designated nominee - such action to be confirmed in writing subsequently by the Vice-Chancellor or Secretary and Registrar as appropriate.

[Note: * In the Articles of Government professional staff are defined as “non-teaching staff”.

II DEFINITION OF TERMS USED

1 “Incapability” – situations where the employee’s inability to meet required standards of work is attributable to his/her ill-health (both long term absences and frequent short term absences from work).

2 “Friend” is a person chosen by the employee to accompany him/her to a hearing and who is either a colleague employed by the University or an employee or official of a Trade Union. The Friend may present the employee's case and confer with the employee but will not be permitted to answer direct questions for the employee.

3 “Line Manager” – is the person to whom a member of staff reports or is directly responsible.

4 “Recognised Trade Union” is a trade union formally recognised by the University for the purposes of collective bargaining (i.e: The University and College Unions (UCU) and UNISON).

5 “Senior Manager” is the next level of Line Manager, for example, Deputy Vice Chancellor; Dean of School; Head of Strategic Business Unit; Chief Information Officer; Pro Vice-Chancellor (Enterprise) and Director of Marketing and Communications; Director of Estates, Hospitality and Contract Services; Dean of Students; Director of Human Resources.

III PROCEDURES WITH RESPECT TO STAFF INCAPACITY DUE TO ILL-HEALTH

LONG TERM ABSENCE FROM WORK BECAUSE OF ILL HEALTH

1 Long term absence is normally defined as being a specific period or several periods of absence (normally amounting to more than 13 weeks) and is distinguishable from frequent intermittent absence in that it tends to be continuous or connected and is usually traced to an underlying medical condition. Alternatively, it may be known that the employee is likely to be absent for such a period because of illness.

2 Following consultation and discussion with the employee, should it appear that there may be a long-term effect on the employee’s ability to comply with his/her contract of employment, the line manager, following consultation with HR, will write to the Occupational Health Department to seek advice. The Occupational Health Department will, with the employee’s permission, obtain medical reports. Management will not be given any details of these reports but will be advised by the Occupational Health Physician as to:

i the nature of the illness;
ii the likelihood of the current level of absence recurring or some other illness arising;
iii the employee’s expected date of return;
iv whether or not the employee will be fit to resume full duties within a reasonable timescale;
v if not, what duties the employee may reasonably be expected to be able to undertake; and
vi fitness for duties, with reasonable adjustments.
The employee may provide an additional medical assessment if he/she so wishes.

Once advice has been received from the Occupational Health Department, the line manager and the appropriate HR Business Partner will discuss the employee’s long-term prospects of return to full duties. Full consideration will be taken of the requirements of the *Equality Act 2010*, in particular the requirement to make reasonable adjustments.

Where the Line Manager and HR Manager Business Partnering believe that continuation of the present contract is doubtful, the following possibilities will be explored:

(a) Temporary or permanent change of work pattern or methods within the same department;
(b) Temporary or permanent change of post within the same department;
(c) A suitable post elsewhere within the University;
(d) Reasonable re-training and/or rehabilitation;
(e) Downgrading, providing the employee formally agrees to the change, with an examination as to the impact on the individual’s occupational pension;
(f) Early retirement on the grounds of incapacity because of ill-health, subject to the pension scheme regulations and rules [Note: In cases of chronic ill health, where the employee is in one of the University’s occupational pension schemes, ill health retirement is an option that can be considered. However this is a decision based on medical opinion and relates to ‘permanent incapacity’. If approved by the appropriate pensions authority (Teachers’ Pensions or the Local Government Pension Scheme), then it allows the employee to be released with immediate (often enhanced) pension].
(g) Termination of contract with notice (or pay in lieu of notice).

The line manager and the HR Manager Business Partnering will formally meet with the employee and his/her Friend to explore the options and, wherever possible, to try to agree a plan of action.

If the options outlined in paragraph 5 (a) to (f) are not possible or practical and/or fail, or where it is not possible to reach an agreement that termination should be by mutual agreement, a report will be made to the Vice Chancellor or Secretary and Registrar as appropriate. (see also Formal Stage 3 below).

FREQUENT INTERMITTENT (SHORT - TERM) ABSENCE FROM WORK

Frequent intermittent absence can be defined as persistent short-term absences. These are absences that are normally sporadic and frequently attributable to minor ailments, in many cases unconnected.

The following sections, ie: Informal Stage through to Formal Stage 2 inclusive, relate only to managing frequent intermittent (short-term) absence from work.

INFORMAL STAGE (frequent intermittent (short-term) absence from work).

In cases of frequent intermittent short-term absences from work, whether or not covered by a medical or self certificate, the Line Manager will meet with the employee to discuss the reasons for the absences; to advise of the need for the individual to consider consulting a doctor to establish whether medical treatment is necessary; to identify whether there are any other underlying reasons for absences (ie work related or domestic); and to decide what action can or should be taken. The Line Manager will warn the employee of the consequences if there is no improvement in the absence/attendance pattern.
FIRST FORMAL WARNING (ORAL WARNING) (frequent intermittent (short-term) absence from work).

1 If the absence/attendance pattern does not improve, the line manager, following consultation with the HR Business Partner, will seek the advice of the Occupational Health department. The Occupational Health department will, with the employee’s permission, obtain medical reports. Management will be advised by the Occupational Health Physician as to the likelihood of the current levels of absence recurring or some other illness arising; whether there is some underlying medical cause for these absences; whether the employee is fit to undertake full duties and, if not, what duties the employee may reasonably be expected to be able to undertake.

2 The line manager, accompanied by the appropriate HR Business Partner, will meet with the member of staff. The employee will be given ten working days’ notice in writing of the meeting, and will be advised that he/she can been accompanied and represented by a Friend. The employee will be given the details of his/her attendance record in writing in advance and informed that the formal procedure is being invoked.

3 The meeting will be conducted by the Line Manager to discuss the report from the occupational health department, explain the impact that the frequent intermittent short term absence is having on the employee’s department, outline in what respect the employee’s attendance fails to meet an acceptable standard, and discuss with the employee any other relevant matters.

4 At the meeting the employee will be given the opportunity to respond.

5 The Line Manager will then decide whether:

(a) to take NO FURTHER ACTION, in which case he/she will confirm this outcome in writing to the employee; or

(b) the absence/attendance pattern is unacceptable and therefore a FIRST FORMAL WARNING is appropriate.

6 FIRST FORMAL WARNING (ORAL WARNING)

The First Formal Warning will be confirmed in writing. This will set out the required level of attendance and the timescale within which improvement is expected. The member of staff may be required to improve attendance over a period of time (normally no more than 8 working weeks). A review date will be set when progress can be assessed. The employee will be warned of the possible consequences of a failure to improve or in the event that further shortcomings are identified. At the end of the agreed period for improvement, the manager will hold a meeting with the employee, and if he/she chooses in the presence of his/her Friend, to discuss progress. If the employee’s attendance has improved sufficiently that he/she now meets the required standard, this will be confirmed in writing, and possibly a further review meeting will be arranged to check that this can be sustained. If however, the employee’s attendance remains below the required standard, the employee will be informed that further action will be taken under Formal Stage 2 of this procedure.

7 RIGHT TO APPEAL

The employee will be informed in writing of his/her right to appeal to the next appropriate level of management. Any appeal must be submitted in writing to the Director of HR within ten working days of the date on which written confirmation of the decision was received, and must clearly state the grounds of the appeal. The employee must submit all papers relating to the appeal no later than 5 working days before the date set for the Appeal Hearing. Papers not submitted by this date will not be eligible for consideration by the appeal hearing. The appeal hearing will follow the format outlined in Appeals Appendix A.
FORMAL STAGE 2 (WRITTEN WARNING) (frequent intermittent (short-term) absence from work).

1. Where the level of attendance does not improve and investigations indicate that the employee’s attendance is unlikely to improve, a formal meeting will be arranged. The Line Manager will prepare a report and submit this to the Senior Manager.

2. The Senior Manager will be advised by a senior member of the HR Department. The Senior Manager will review the case. The employee will be given ten working days' notice in writing of a disciplinary meeting. The employee will be given the details of the concerns about his/her alleged frequent intermittent absences in writing in advance, informed that the Formal Stage 2 is being invoked and be advised that he/she can be accompanied and represented by a Friend.

3. The meeting will be conducted by the Senior Manager, who will discuss with the employee the alleged poor attendance/frequent absences and the consequences should this not improve, and set a review date when progress might be considered. The employee will be made aware that unless a level of attendance that is satisfactory to the University is achieved, further action could be taken which could lead to dismissal.

4. At the meeting, the employee (or Friend where he/she is represented) will be given the opportunity to respond to the evidence presented.

5. The Senior Manager will then decide whether:
   (a) to take NO FURTHER ACTION, in which case s/he will confirm this to that effect in writing to the employee;
   (b) to issue a FINAL FORMAL WARNING.

6. FINAL FORMAL WARNING

The Final Formal Warning will be confirmed in writing. This will set out the required level of attendance and the timescale within which improvement is expected. The member of staff may be required to improve attendance immediately or over a period of time (normally no more than 8 working weeks). A review date will be set when progress can be assessed. The employee will be warned of the possible consequences of a failure to improve or in the event that further shortcomings are identified. At the end of the agreed period for improvement, the manager will hold a meeting with the employee, and if he/she chooses in the presence of his/her Friend, to discuss progress. If the employee’s attendance has improved sufficiently that he/she now meets the required standard, this will be confirmed in writing, and possibly a further review meeting will be arranged to check that this can be sustained. If however, the employee’s absence/attendance pattern remains below the required standard, the employee will be informed that further action will be taken under Formal Stage 3 of this procedure which could result in the employee’s dismissal.

7. RIGHT TO APPEAL

The employee will be informed in writing of his/her right to appeal to a Senior Manager. Any appeal must be submitted in writing to the Director of HR within ten working days of the date on which written confirmation of the decision was received, and must clearly state the grounds of the appeal. The employee must submit all papers relating to the appeal no later than 5 working days before the date set for the Appeal Hearing. Papers not submitted by this date will not be eligible for consideration by the appeal hearing. The appeal hearing will follow the format outlined in Appeals, Appendix A.
FORMAL STAGE 3 (applicable to both Long Term Absence and Frequent Short - Term Absence)

1. In the case of Frequent Intermittent Absence, having completed Formal Stage 2 of this procedure, the employee’s absence/attendance pattern remains below the standard required, or falls below the standard required during the following 12 months, the Senior Manager will prepare a statement of case outlining such matters as: performance, health record, likelihood of change in attendance, availability of alternative work, the effect of past and future absence on the service and comparative data, as appropriate, and send this to the Vice-Chancellor or Secretary and Registrar, as appropriate, who has the authority to terminate employment.

2. Where, in the case of Long Term Absence, the options outlined in Section VI, paragraph 5 (a) to (f) (Page 13 above) are not possible or practical and/or fail, or where it is not possible to reach an agreement that termination should be by mutual agreement, a report will be made to the Vice Chancellor or Secretary and Registrar as appropriate.

3. Where a decision is made to proceed with a formal hearing, the employee will normally be given ten working days’ notice in writing of the hearing. He/she shall be notified of the details of the problem in writing, informed that Stage 3 of this procedure is being invoked, that dismissal is a possible outcome and be advised that he/she can be accompanied and/or represented by a Friend. The employee shall have access in advance to any documents which are to be produced at the hearing. Any written evidence to be submitted by the employee in response to the complaint must be received at least five working days in advance of the hearing so that all parties can consider it.

4. The Vice-Chancellor, or Secretary and Registrar, as appropriate, will conduct the hearing following the format outlined Hearings Appendix D

5. The Vice-Chancellor or Secretary and Registrar will decide:

(a) to take NO FURTHER ACTION, in which case s/he will confirm this to that effect in writing to the employee; or
(b) to EXTEND THE PERIOD OF REVIEW and require further monitoring; or
(c) to take FURTHER ACTION (which may include in the case of Long Term Absence demotion or re-deployment within the University following agreement with the employee as an alternative to dismissal); or
(d) to DISMISS. This will normally be with notice.

6. RIGHT OF APPEAL

The employee will be informed in writing of the decision and the reasons for it and of his/her right to appeal to the Board of Governors. Any such appeal must be submitted in writing to the Secretary to the Board of Governors within ten working days of the date on which the written confirmation of the decision was received and must clearly state the grounds of the appeal. The employee must submit all papers relating to the appeal no later than 5 working days before the date set for the Appeal Hearing. Papers not submitted by this date will not be eligible for consideration by the appeal hearing. The appeal hearing will follow the format outlined in Appeals, Board of Governors, Appendix B

[Note: In the case of appeal based on new material evidence not available or produced at the original hearing, the matter will be reverted to the Vice-Chancellor or Secretary and Registrar, as appropriate, for further consideration].
APPEALS

Appendix A

To be read in conjunction with Managing Staff Long and Short Term Ill health Absence

1. The appeal hearing will operate on the basis of reviewing the earlier decision, based on submissions made by the member of staff and management. It will not be conducted as a re-hearing of the evidence made when the initial decision was taken but rather be concerned with reviewing the application of the procedures, whether the penalty is disproportionate to the misdemeanour and considering any new material evidence not available or produced at the original hearing which the member of staff wants to raise. Normally, only in the case of new evidence will witness statements, and the attendance of those witnesses in person, be admissible.

2. Any appeal to a higher level of management must be submitted in writing to the Director of HR within ten working days of the date on which written confirmation of the warning was received. The employee must clearly state the grounds of his/her appeal.

3. The Director of HR (or nominee) will arrange the hearing giving the employee a minimum of ten working days’ notice in writing of the place, date and time of the hearing, and advising him/her of his/her right to be accompanied or represented by a Friend.

4. The Director of HR (or nominee) will inform the appropriate manager who made the original decision that an appeal has been lodged against the original decision.

5. Both the member of staff who is appealing and the manager who made the original decision must submit all evidence or documents to which reference shall be made at the hearing, including where the case for appeal relates to new evidence the names of any witnesses it is proposed to call (or witness statements where a witness is not to be called). This should be no later than 5 working days before the date set for the hearing to the Director of HR (or nominee) for simultaneous distribution to all parties. Papers not submitted by this date will not normally be eligible for consideration.

6. The Director of HR (or nominee) will attend as adviser and will normally act as note-taker.

7. The member of staff (or his/her Friend) shall put his/her case in the presence of the manager and, where the appeal is based on new evidence, call appropriate witnesses.

8. The Senior Manager shall have the opportunity to ask questions of the member of staff and, where appropriate, his/her witnesses.

9. The Senior Manager conducting the appeal may ask questions of the member of staff and, where appropriate, his/her witnesses. The Director of HR, or nominee, may ask questions of the member of staff and, where the appeal is based on new evidence, any witnesses for clarification.

10. The manager who made the original decision shall respond to the case put by the member of staff.

11. The member of staff or his/her Friend shall have the opportunity to ask questions of the manager and, where appropriate, his/her witnesses.

12. The Senior Manager conducting the appeal may ask questions of the member of staff and, where the appeal is based on new evidence, any witnesses. The Director of HR or nominee, may ask questions of the member of staff and, where the appeal is based on new evidence, any witnesses for clarification.

13. Both parties shall have the opportunity to summarise their points if they so wish, the member of staff’s statement being last.

14. The manager and the member of staff and his/her Friend shall withdraw.
15 The Senior Manager hearing the appeal, with the Director of HR or nominee, to advise, shall deliberate in private, only recalling the parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding that only one is concerned with the point giving rise to doubt.

16 The Senior Manager hearing the appeal shall determine his/her decision.

17 All parties shall be recalled, and the manager hearing the appeal shall convey his/her decision, and the reasons for this. Alternatively, the manager hearing the appeal may defer and communicate his/her decision later, either in person or in writing.

18 The manager’s decision on the appeal shall be final. It shall be confirmed in writing to the employee normally within five working days.

NOTES:

i Exceptionally, by mutual agreement of all parties, this outline format for conducting the appeal hearing can be amended provided that the general principles are still followed.

ii Where witnesses attend the hearing, it shall normally be the practice that they will not be expected to read out their statement and further that the cross-examination by each side of witnesses, where called, will be limited in time to half an hour for each witness.

iii Proceedings will not be tape-recorded.

iv Requests for adjournments by either party will be at the discretion of the Chair and not unreasonably withheld.

v Normally the HR representative will also take notes although in some instances it may be appropriate for an additional member of the HR department to fulfil this role.

vi Notes of the proceedings will not be circulated subsequently but kept on the HR files for record purposes only and used in the event of any subsequent action.

vii It is the responsibility of the member of staff and/or Friend to keep their own notes of the appeal hearing.
APPENDICES, BOARD OF GOVERNORS

To be read in conjunction with Managing Staff Long and Short Term Ill Health Absence

1. Appeals to the Board of Governors, or a Committee thereof, can only be made after a first appeal has been exhausted. Note: Where the appeal is based on new material evidence emerging during the period between a decision being made by the Vice Chancellor or Secretary and Registrar and the holding of the appeal, the matter will be reverted to the Vice-Chancellor or the Secretary and Registrar. Then there will be further consideration, and only in that circumstance will witness statements, and the attendance of those witnesses in person, be admissible. In such circumstance, the Vice Chancellor or Secretary and Registrar will take responsibility for arranging a review hearing at which the new evidence can be presented and the attendance of those witnesses in person be admissible.

2. Any Committee established by the Board of Governors shall consist of three Governors who shall be Independent Members of the Board or external Co-opted Members (i.e., Governors who are not Staff or Students of the University).

3. The appeal hearing will operate on the basis of reviewing the last appeal decision, based on submissions made by the member of staff and Senior Management. It will not be conducted as a re-hearing of the evidence made when the initial decision was taken but rather be concerned with reviewing the application of the procedures and whether the penalty is disproportionate to the misdemeanour.

4. The procedure of a hearing before the Governors shall be as follows:

4.1. Any appeal to the Board of Governors must be submitted in writing to the Secretary to the Board of Governors within ten working days of the date on which the written decision was received. The employee must clearly state the reasons for and grounds of his/her appeal.

4.2. The Secretary to the Board of Governors will notify the Vice-Chancellor or the Secretary and Registrar (or their nominee), as appropriate, (‘management’) that an appeal has been lodged.

4.3. The Secretary to the Board of Governors will arrange the hearing and will give the member of staff a minimum of ten working days’ notice in writing of the place, date and time of the hearing, and advise him/her of his/her right to be accompanied and represented by a Friend.

4.4. Both the member of staff and management must submit all evidence or documents to which reference shall be made at the hearing at least 5 working days in advance to the Secretary to the Board for simultaneous distribution to all parties.

4.5. The Director of HR (or nominee) will attend to advise the Panel.

4.6. The member of staff (or his/her Friend) shall put his/her case in the presence of the manager.

4.7. The Senior Manager shall have the opportunity to ask questions of the member of staff.

4.8. The members of the Committee may ask questions of the member of staff.

4.9. The Senior Manager shall put the case in the presence of the member of staff and his/her Friend.

4.10. The member of staff or his/her Friend shall have the opportunity to ask questions of the senior Manager on the evidence given by him/her.

4.11. The members of the Committee may ask questions of the Senior Manager.
4.12 Both parties shall have the opportunity to sum up their cases if they so wish, the member of staff’s statement being last.

4.13 The Senior Manager and the member of staff and his/her Friend shall withdraw.

4.14 The Committee, with the officer appointed as Secretary to the Committee and the Director of HR (or nominee) to assist as required, shall deliberate in private, only recalling the Senior Manager and the member of staff (and his/her Friend) to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return.

4.15 The Committee shall determine its decision, which may include: confirmation of the earlier decision or the referral of the case to the Vice-Chancellor or Secretary and Registrar for reconsideration.

4.16 All parties shall be recalled, and the Committee convey its decision, and the reasons for this. Alternatively, the Committee may defer and communicate its decision later, either in person or in writing.

4.17 The Committee’s decision on the appeal shall be final. It shall be confirmed in writing to the employee normally within five working days.

NOTES:

i If any party seeks to address the Appeal Committee, this must be in the presence of the other party.

ii It must be made clear at the outset who will be the person presenting the employee’s case to the Appeal Committee - either the employee or the Friend, but not both.

iii If any employee who has been dismissed without notice is re-instated on appeal, the re-instatement shall take effect from the date of the original dismissal and no loss of earnings shall be incurred.

iv Proceedings will not be tape-recorded.

v Requests for adjournments by either party will be at the discretion of the Chair and not unreasonably withheld.

vi The Secretary to the Committee will take notes of the proceedings, but these will not be circulated subsequently but kept for record purposes only and may be used in response to any subsequent employment tribunal or legal action.

vii It is the responsibility of the member of staff and/or Friend to keep their own notes of the appeal hearing.
HEARINGS

Appendix D

To be read in conjunction with Managing Staff Long-Term and Short-Term Ill Health Absence

1. The person chairing the hearing (chair) will outline the status of the hearing; his/her role; the role of the HR representative present (as adviser/note-taker and also in position of seeking further clarification on the issues as appropriate); explain what will happen; introduce all parties present and check that all parties have had the documents to which reference will be made by either side.

2. Management will present its case - the nature of the investigation; the findings and effectively the ‘charges’, calling any witness(es) one at a time, as appropriate. The member of staff and/or his/her Friend will have the opportunity to ask questions of the witness(es). Then the chair (and HR representative, for clarification, if appropriate) will have the opportunity to ask questions of the witness(es). The witness(es) will be called in sequence and leave after questioning, with the chair checking, if necessary whether there is likely to be a need to recall the person(s) at a later stage, and if so their availability.

3. The member of staff or his/her Friend will put his/her case in the presence of management and call any witnesses (one at a time) with management having the opportunity to question, followed by the chair (and HR representative, for the purposes of clarification). The witness(es) will be called in sequence and leave after questioning, with the chair checking, if necessary whether there is likely to be a need to recall the person(s) at a later stage, and if so their availability. The member of staff should answer questions directly put to them.

4. If appropriate throughout, the chair may ask that a witness be re-called and ask further questions for clarification.

5. Management will sum up its case.

6. The member of staff or his/her Friend will sum up his/her case.

7. All parties, other than the chair and the HR representative, will withdraw. The chair will deliberate, only recalling management or the member of staff where there remain points of uncertainty on evidence already given. If recall is necessary, both parties will return.

8. The chair will make his/her decision, or may decide that an adjournment is necessary for him/her to reflect further upon the evidence, and in either event recalls management and the member of staff, plus his/her Friend, to receive his/her decision and the reasons for this. If appropriate, he/she will communicate his/her decision in writing.

9. The decision will be confirmed in writing with details of the appeals process, as appropriate and usually within 5 working days.

NOTES:

i Exceptionally, by mutual agreement of all parties, this outline format for conducting the hearing can be amended provided that the general principles are still followed.

ii At the hearing, it shall normally be the practice that witness(es) will not be expected to read out their statement(s) and further that the cross-examination by each side of witnesses, where called, will wherever possible be limited in time to half an hour for each witness.

iii Proceedings will not be tape-recorded.

iv Requests for adjournment by either party will be at the discretion of the Chair and agreement will not be withheld unreasonably.

v Normally the HR representative will take notes although in some instances it may be appropriate for an additional member of the HR department to fulfil this role.
vi Notes of the proceedings will not be circulated subsequently but kept for record purposes only and used in the event of any subsequent appeal at which time they will be circulated to all parties.

viii It is the responsibility of the member of staff and/or Friend to keep their own notes of the hearing.

Signed for and on behalf of the University: -----------------------------------------------

UCU: -----------------------------------------------

UNISON: -----------------------------------------------

DATE:
Flowchart – Managing Long – Term and Short – Term Ill Health Absence

Appendix C

Staff Disciplinary Policy
Version 02.0 UPR HR02 (formerly UPR PER/D/1)

Long term

Absence of 13 weeks or more

Meet employee. Is there long term effect on ability to do job

Yes

No

Speak to HR and Occupational Health. Get medical reports

Line Manager and HR meet. Does the Disability Discrimination Act apply? Can work adjustments help?

Yes

No

Adjustments resolve problem

Continue to monitor

Assist employee in resuming work. Continue to monitor

Adjustments do not resolve problem or are not practical

Consider termination of contract under formal stage 3 of policy

Short term

Line manager speaks informally to employee to ascertain reasons for absence

Improvement?

Yes

No

Monitor and maintain

Consult HR and Occupational Health. Give employee 10 days notice of formal meeting (stage 1). Set out action and target for improvement

Improvement?

Yes

No

After maximum of 8 weeks, move to Formal Stage 2 of procedure

Improvement?

Yes

No

After a maximum of 8 weeks move to final written warning

Improvement?

Yes

No