

IMPERIAL COLLEGE LONDON

ORDINANCE D8

THE DISCIPLINARY PROCEDURE

This Ordinance is made pursuant to Part III of the Appendix to the College's Statutes

INTRODUCTION

1. This Disciplinary Procedure shall apply to members of staff to whom the Appendix to the College's Statutes for "Academic Staff: Dismissal, Discipline, Grievance Procedures and Related Matters" (hereinafter "the Appendix") apply.
2. This Ordinance does not apply to matters of capability, which are dealt with under the Capability Ordinance. Disciplinary issues cover situations of poor conduct and those performance issues that arise following negligence or deliberate unwillingness on behalf of the member of staff to carry out a reasonable instruction. Throughout this Ordinance, the terms 'disciplinary' and 'misconduct' are used interchangeably and both terms refer to matters related to the disciplinary procedure.

SUPPORT FRAMEWORK

3. Line managers are expected to undertake their role in line with the [Imperial Expectations](#) and [Respect for Others](#) ethos. They should meet members of staff on a regular basis to discuss work and give guidance on work matters. Where a line manager has concerns about a member of staff's conduct (with the exception of alleged serious or gross misconduct), the line manager will informally discuss this with the member of staff and agree structured support to address the concerns.
4. Where a line manager has concerns about a member of staff's conduct, the line manager must in the first instance, discuss these with HR who will consider the issues and options for addressing these, such as through one-to-one discussion, mediation, coaching and training without attendance from Human Resources or Trade Union representatives. If it is judged that the concerns are such that they should be managed under the support section of this policy, HR will undertake a one-to-one briefing session with the manager to guide on the appropriate policies and support and advise the manager on how to discuss this with the member of staff. Following the discussion(s), the line manager will discuss their concerns with the member of staff informally, in line with the advice received, and will also provide the member of staff with the details of what support is available.
5. Where informal discussions relating to conduct issues are taking place with a member of staff who at that stage discloses a disability (as defined by the Equality Act), arrangements should be made to assess the impact of that disability upon the member of staff's role and the conduct issues identified. An assessment should be made of any adjustments that might reasonably be put in place. This is without prejudice to the College's obligations in respect of disabled employees in any other respect.
6. Reasonable attempts will be made to resolve any problems through discussion and training, where appropriate. The arrangements will vary depending on the circumstances of each case. The line

manager and member of staff will aim to agree objectives to address the problem and offer reasonable support or training that would assist the member of staff in meeting the required standards of conduct.

7. The member of staff will be given reasonable time to improve, and the period of review will be agreed at the meeting. Progress will be reviewed informally during the review period, and regular feedback given to the member of staff. Positive support and encouragement will be offered to the member of staff to help him or her meet the required standards of conduct and/or performance.

8. The line manager should record notes of informal meetings, which may contain (if appropriate) objectives that will address concerns raised, and details of the training and other activities which will support the meeting of the objectives. Notes should also contain details of the agreed period of review.

9. If there is no (or insufficient) improvement following structured support, or in cases of alleged serious or gross misconduct, formal action will be taken which may lead to the issue of formal written warnings or dismissal. If, during the course of an informal meeting or review, a line manager considers the matter warrants formal action, the informal action will be terminated and an investigation started in accordance with the arrangements outlined below. A member of staff may also request that the matter be dealt with formally should he/she wish to do so.

10. Where it is known that the member of staff is an official of a trade union, the relevant full-time regional officer of that trade union should be informed at the commencement of any formal proceedings under this Ordinance.

FORMAL ACTION

INVESTIGATION

11. Where formal action is being considered, an investigation should be carried out in order to gather the relevant facts and supporting evidence promptly before recollections fade. Where the relevant individual is on secondment to another organisation, an investigation has already been carried out by the host organisation in respect of the allegations made against the individual, that investigation has found that the individual has a disciplinary case to answer, and in the reasonable opinion of the College that investigation has been carried out fairly, the College will not be required (although it may still elect, entirely at its discretion) to carry out further investigation under paragraphs 11-20 of this procedure and it will be entitled to use the evidence gathered in the course of the investigation carried out by the host organisation for the purposes of taking the matter forward under paragraphs 21 and onwards of this policy.

12. Where a member of staff has disclosed a disability (as defined by the Equality Act 2010) then arrangements for investigations should include consideration of any requirements for reasonable adjustments to accommodate the disability.

13. The investigation is normally carried out by a management representative (as determined by the Head of Department in consultation with Human Resources). The individual conducting the investigation for the purpose of this procedure is referred to as the "investigating officer" and he or she may also be assisted by a member of staff from the Human Resources Division.

14. The investigating officer should initially speak to the member of staff to seek his or her explanation of the matter. If, following this initial meeting, it appears that there is possible cause for further action, an investigation will be conducted,

15. The investigating officer should collate evidence and interview the member of staff. Where witness evidence is appropriate, the investigating officer should interview any relevant witnesses. The member of staff should be informed that witnesses are being interviewed as part of the investigation and be invited to nominate witnesses whom he or she wishes to give evidence on his or her behalf. The member of staff and witnesses may be accompanied during an investigation meeting by another member of staff or (where they are a member of that trade union) a trade union representative. A member of the Human Resources Division may also be present to assist with the investigation.

16. Notes will be taken at each investigation meeting. Each person interviewed will be provided with a copy of the notes of their individual meeting and asked to confirm that these notes are an accurate record of the meeting. If the member of staff does not agree with the contents of the notes of the meeting, they should make handwritten amendments (and initial each amendment). A copy of the amended notes should be attached to the original typed version and will be added to the investigation papers. If the individual makes substantive changes to the notes, the changes should be discussed with the individual and consideration should be given as to whether the changes should be referred to in any documents referencing the notes.

17. The investigating officer, with assistance from the Human Resources Division, will review the notes of the investigation meetings and any other documentary evidence that has been gathered. In complex cases, after review of the evidence, it may be necessary to meet a witness or the member of staff again if information needs to be corroborated or clarified.

18. Investigation of a disciplinary matter must be given priority and every effort should be made to minimise delays. The timetable for gathering evidence should be discussed with all parties and will be the shortest time possible.

19. Based on his or her investigation the investigating officer may determine:

- a. That there is no case to answer;
- b. That it is appropriate to deal with the matter informally or under other College procedures or Ordinances; or
- c. That there are sufficient grounds to convene a formal disciplinary hearing.

20. If the investigating officer decides to refer the matter to a formal hearing then a report should be prepared summarising the investigation. The report should include the notes of the investigation meetings and the evidence gathered during the course of the investigation. A member of the Human Resources Division may assist the investigating officer with the report.

SUSPENSION

21. In accordance with Paragraph 22 of Ordinance D7, a decision to suspend an academic member of staff from work should only be taken after careful consideration and where it is necessary to protect

individuals, avoid interference with the investigation and to protect College property. Reasons that may lead to that decision being taken include risk to others, damage to College equipment etc. This is not an exhaustive list. Consideration will also be given to the well-being of the member of staff, and the impact on his or her work and of those researchers and students supported by the academic. Partial suspension will also be considered and implemented where appropriate. If suspended from work under Ordinances or other appropriate procedure made under Part III or Part V of the Appendix:

- a. The member of staff will be invited to a meeting to discuss the reason(s) for suspension, any restrictions on workplace attendance, contact with students, colleagues (including witnesses) and funding bodies. A colleague or union representative can be present at the meeting if desired.
- b. In addition, the member of staff should be provided with information about who to contact if necessary whilst on suspension, and arrangements for providing access to evidence necessary to respond to any allegations or processes. Staff should also be informed of the need to be contactable during normal working hours and to make themselves available to attend meetings as necessary.
- c. If it is not possible to meet with the member of staff in advance of suspension, written notification will be sent to the member of staff and a meeting date will be set up to discuss the reason(s) for the suspension and arrangements during the period of suspension. At the meeting, they may have a colleague or union representative present if desired. The arrangements will be confirmed in writing.
- d. Suspension is not a formal sanction and is to be considered a neutral act to facilitate investigation. Regular contact should be maintained with the member of staff to advise them of the progress of the investigation. Unless otherwise provided in the terms of the suspension, the College will continue to pay the member of staff his or her normal basic salary and he/she will receive his or her normal benefits.
- e. The period of suspension should normally be as short a period as possible i.e. usually three weeks. Suspension for a period longer than this must be approved by the Director of Human Resources or his or her nominee and if this is longer than three weeks it will be reviewed every three weeks.

GRIEVANCE

22. If a member of staff raises grievance issues during the course of a disciplinary investigation, the Director of Human Resources or his or her nominee will review the grievance, discuss the matter with the member of staff and/or his or her representative, and will decide how the grievance should be considered.

23. As a guide, where the grievance constitutes a response to the allegations under investigation then the member of staff's comments will be considered as part of the formal hearing but should, where possible, be decided before the substantive allegations are raised. Where the grievance is unrelated to the substance of the disciplinary hearing, such as either a procedural issue or discrimination, Human Resources may suspend the disciplinary action and decide that the appropriate course of action is for the case to be reviewed separately under the Academic Grievance Procedure.

CONVENING FORMAL DISCIPLINARY OR APPEAL HEARINGS

24. Once the investigation is completed and if a decision is made to convene a formal disciplinary hearing, arrangements will be made by the Director of Human Resources or his/her nominee in accordance with those prescribed in Paragraph 28 of Ordinance D7 outlined below:

25. The Director of Human Resources or his or her nominee shall be responsible for the conduct of hearings under the Appendix as required and for taking charge of the proceedings, including:

- a. Arranging and notifying the parties of a date for the hearing, which shall be as soon as is reasonably practicable;
- b. Notifying or reminding the member of staff of his or her right to be accompanied by another member of staff or (where they are a member of that trade union) a trade union representative;
- c. Giving the member of staff no less than ten working days' notice to provide their written response to the allegations and availability to attend a formal hearing and giving both parties, where possible, not less than five full working days' notice (running from the deadline for the member of staff to provide their written response to the allegations and availability) of the date for the planned hearing;
- d. Any necessary administrative and accommodation arrangements to enable the hearing to take place;
- e. Any necessary administrative and accommodation arrangements for the attendance of witnesses or persons entitled to make oral representations to the panel;
- f. Upon receipt of relevant documentation, the production and distribution of documents in a timely manner (where possible, by no later than five working days before the hearing) and in accordance with the relevant Ordinance or appropriate procedure to allow for the proper presentation and consideration of the matters before the person or panel conducting the hearing. These documents may include:
 - (1) Any statement of complaint, grievance or appeal;
 - (2) The responses thereto;
 - (3) Any witness statements relied upon by either party; and/or
 - (4) Any other relevant documents.
- g. Once documentation has been circulated in accordance with 25(f) above, no new documents ordinarily will be accepted from the member of staff or the management side, save for where the documents are demonstrably relevant or constitute new material relevant to the case and subject always to the discretion of the Chair which shall not be unreasonably withheld.

26. The person or person(s) conducting the hearing will be convened in accordance with Paragraphs 24-27 of Ordinance D7 as outlined below:

- a. The Director of Human Resources or his or her nominee will be responsible for ensuring that an appropriate individual or panel is chosen to conduct any hearing under the Appendix. The individual(s) shall not have been substantively involved in the case previously, will be independent of the case and people involved, and will (wherever possible) be more senior than the management representative. Throughout the Ordinances concerning staff, where only one individual (rather than a panel) is to conduct the hearing, he or she is referred to as the Chair.
- b. Where a hearing is convened under Part II, Part III, Part IV or Part V, and dismissal is a potential outcome, the hearing shall be conducted by a College Consul and an academic of equivalent seniority with no previous involvement in the case or with any of the people involved.
- c. Appeals against warnings will be heard by one person.
- d. Appeals against dismissal shall consist of a panel of three persons, none of whom shall previously have had any involvement with the case or people concerned and who shall be more senior than the person(s) who reached the decision being appealed. The three person panel shall include one lay member of the Council, one College Consul and one person drawn from a list agreed from time to time by the Council. If no College Consul is eligible, or if the panel is an appeal panel considering the position of a College Consul, two persons will be drawn from the list agreed by the Council. The Director of Human Resources or his or her nominee will determine in his or her discretion a member of the panel to act as Chair.
- e. Panels may be enlarged by one additional person to allow representation by any relevant body (for example, the National Health Service in the case of clinical staff) where the allegation under consideration relates to their performance and it is sensible to hear any allegations and the response to those allegations concurrently. The method for nominating such persons shall be in accordance with procedures laid down by the relevant body or agreed by the Director of Human Resources or his or her nominee. Such provision is not intended to provide for a concurrent decision on the matter by the relevant body.

27. In advance of the hearing, the member of staff should advise the Chair of the name of the person (if any) who will be accompanying them. Exceptionally, the Trade Union may request that two representatives (either regional or local) are present at a formal hearing. The Chair of the hearing will consider this request based on the complexity of the case and, if agreement is given, will specify that one representative will take the main role of spokesperson and the other representative will provide a supporting role assisting the main representative with paperwork and background information. The member of staff's representative(s) may not answer questions on behalf of the member of staff, but the representative with main role as spokesman can address the hearing to present the member of staff's case, question witnesses, respond to views expressed and sum up the case. The member of staff may confer with the person accompanying them during the hearing.

28. If a member of staff is unable to arrange to be accompanied on the date proposed or fails to attend the meeting for reasons outside of their control, the formal hearing will be rearranged for a mutually suitable time, normally within five working days of the original date.

29. In the event that a member of staff repeatedly refuses to attend a formal hearing or cannot attend a rearranged hearing, then he or she may be given the opportunity to respond to the allegation(s) in writing. If a member of staff repeatedly does not attend a rearranged hearing or does not submit a response to the allegation(s) in writing within the provided time scale, the Chair of the hearing may make a decision on appropriate disciplinary action in the member of staff's absence. This decision will be made without the benefit of the member of staff's oral or written statement if he or she has not attended or provided written documentation. The member of staff will be notified in advance that this is a consequence if he or she is unable or unwilling to participate in the process.

CONDUCTING FORMAL DISCIPLINARY OR APPEAL HEARINGS STANDARD

30. The conduct of the hearing shall be in accordance with that prescribed in Paragraphs 31-34 of Ordinance D7 outlined below:

- a. The Chair (of the panel or the individual conducting a hearing) shall set the procedure to be followed as appropriate for the proper consideration of the matter, to include provision for adjournments during the hearing (if necessary) on request by either party (e.g. to allow for the finalisation of actions or proceedings by another body). The Chair shall be guided by the requirement that the evidence, written and oral, must be confined to the matter which is the subject of the hearing. An appeal hearing will not usually be a rerun of the original hearing. The Chair shall have complete discretion as to the admissibility of evidence.
- b. The procedure for a hearing shall generally include the following steps:
 - (1) The Chair shall facilitate any introductions as are necessary and refer to any matters appropriate to the conduct of the hearing;
 - (2) The Chair may make provision for witnesses in appropriate cases (for instance, when sexual harassment is alleged) to give evidence in a way which reduces the witness's distress or discomfort;
 - (3) The party bringing the case before the person or the panel conducting the hearing or his or her representative shall present his or her case and call his or her witnesses if appropriate. Each witness shall be present only to give evidence, to be examined on it and then leave. Exceptionally, if there is no alternative, the witness may also be a party to proceedings;
 - (4) The respondent or their representative may question the party bringing the case and their witnesses;
 - (5) The person or panel conducting the hearing may question the party bringing the case and their witnesses;
 - (6) The respondent or their representative shall present their case and call their witnesses if appropriate. Each witness shall be present only to give evidence, to be examined on it and exceptionally, if there is no alternative, the witness may also be a party to proceedings;

- (7) The party bringing the case or their representative may question the respondent and their witnesses;
- (8) The person or panel conducting the hearing may ask questions of the respondent and their witnesses;
- (9) The party bringing the case or their representative shall make any final representations they wish;
- (10) The respondent or their representative shall make any final representations they wish;
- (11) The Chair may, at their discretion, adjourn or postpone the hearing in order that further evidence may be produced by either party, or pending the outcome of proceedings or action by another body or employer, or to obtain advice; and
- (12) The person or panel conducting the hearing shall consider its decision in private. The person providing support to the person or panel conducting the hearing shall be able to support the person or panel when making its decision but shall not participate in the decision itself.

DISCIPLINARY SANCTIONS

31. Following a formal hearing, the Chair must decide whether the allegations made against the member of staff are to be upheld (whether in whole or in part) or whether they are to be dismissed. Where it is decided that the allegations are to be upheld (whether in whole or in part), consideration must be given to an appropriate disciplinary sanction. Before making any decision, the Chair should take account of the member of staff's disciplinary and general record, length of service, actions taken in any previous similar cases, the explanations given by the member of staff and whether the intended disciplinary sanction is reasonable in all the circumstances.

32. As soon as reasonably practicable following the hearing and normally within ten working days of it, the Chair or representative of the Human Resources Division assisting the Chair will write to the member of staff notifying him or her of the Chair's decision and, if any of the allegations against the member of staff have been upheld, of his or her right of appeal within ten working days of receipt of the decision.

33. Normally, a member of staff will receive two formal written warnings before dismissal. It should be made clear in the first warning letter that, if there is no satisfactory improvement, incremental progression through the salary spine (if relevant) may be withheld or that the member of staff may be excluded from any discretionary fixed salary review being undertaken by the College. It should be made clear that the second warning is a final warning and dismissal will follow if there is no satisfactory improvement. A first formal warning will usually be live for twelve months, although in cases of serious misconduct the period it is live (which in each case shall be specified in the letter to the member of staff) will depend on the circumstances.

34. Exceptionally, where an allegation of serious or gross misconduct has been proved, the nature of the concern with the member of staff's conduct may warrant a final written warning being issued or

the member of staff being dismissed (whether with notice or summarily) in each case in circumstances where no previous warnings have been issued.

35. **Gross Misconduct.** The following list (which is not exclusive or exhaustive) sets out offences are considered serious enough that they may warrant summary dismissal without prior formal warnings:

- Theft, fraud and deliberate falsification of records;
- Physical violence;
- Bullying and/or harassment;
- Deliberate damage to property;
- Serious insubordination as demonstrated by wilful refusal to carry out reasonable requirements of the post or management requests;
- Misuse of College property or name;
- Serious misuse of [computer facilities](#), including use of internet and email;
- Bringing the College into disrepute;
- Serious failure of competence through alcohol or illegal drugs, or breach of a local requirement to be alcohol free at work;
- Negligence with serious consequences which causes or might cause unacceptable loss, damage or injury;
- Serious infringements of health and safety rules;
- Serious breach of confidence (subject to the Public Interest Disclosure Act 1998);
- Knowingly or recklessly disclosing personal data in breach of the Data Protection Act;
- Conviction of any criminal offence which the College views as making the individual unfit to hold his or her post;
- Vexatious or malicious behaviour;
- Fraudulent absence from work; and
- Serious discriminatory behaviour on the grounds of race, gender reassignment, marriage and civil partnership, pregnancy and maternity, religion or belief (including lack of belief), sexual orientation, disability, or age.

36. In cases of gross misconduct, the member of staff may be dismissed summarily without notice.

37. If, following a formal hearing, dismissal is considered appropriate then the Chair, or representative of the Human Resources Division assisting the Chair, will confirm the decision to dismiss in writing. The letter will contain the reasons for the dismissal, the date the member of staff's employment will end and the right to appeal.

APPEALS

38. In all cases of formal action, the member of staff has the right of appeal against the decision to issue a formal written warning or to dismiss or against any other sanction. The member of staff must submit grounds for appeal within ten working days of receipt of the written notification of the sanction

39. Appeal hearings will be conducted in accordance with the following terms of reference:

- a. To review whether the matter under consideration was adequately investigated and substantiated;
- b. To review whether the College's procedures were correctly and fairly implemented; and
- c. To consider whether the disciplinary action was reasonable in the circumstances known to management at the time of the disciplinary hearing.

40. If new evidence is introduced during an appeal hearing, it may be referred by the person or panel hearing the appeal back to the original Chair, in order that he or she may review the disciplinary sanction. The appeal hearing may be reconvened in the event that the member of staff does not accept the subsequent decision of the Chair.

41. The panel or person hearing the appeal may be assisted by a member of staff from the Human Resources Division, who will not have had previous substantive involvement in the case. The member of staff has a right to be accompanied by another member of staff or (where they are a member of that trade union) a trade union representative at the appeal hearing. All appeal hearings will be convened as soon as practicable.

42. The outcome of the appeal hearing, with reasons for the decision, will be confirmed in writing. The Human Resources representative will assist with the preparation and dissemination of the decision.

43. In the event that an appeal panel decides to reinstate a member of staff who has been dismissed, this will be done in a manner which maintains continuous service and without loss of pay. The College reserves the right, in appropriate cases, to conduct and factor into its decision regarding such payments to a member of staff an assessment of any income received by the member of staff while not in College employment.

44. The College regards the appeal decision as final.

GENERAL

45. Notes will be taken of any formal meeting under this Ordinance. Notes usually will be taken by a member of HR. A copy of the notes will be sent to the member of staff as soon as practicable after the meeting. If the member of staff does not agree with the contents of the notes of the meeting, they should make handwritten amendments (and initial each amendment). A copy of the amended notes should be attached to the original typed version and will be added to the hearing papers. If the individual makes substantive changes to the notes, the changes should be discussed with the individual and consideration should be given as to whether the changes should be referred to in any documents referencing the notes.

46. Notes and records of matters dealt with under the Disciplinary Procedure should be handled on a confidential basis and stored securely. The outcome of all disciplinary action will be monitored centrally by the College to comply with statutory requirements. Spent disciplinary records may be retained by the Human Resources Division in a separate file for reference in the event of a dispute or legal proceedings but not for reference in the event of a further disciplinary action. Retention of this information should be reviewed periodically in accordance with the requirements of the Data Protection Act.

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