



## DISCIPLINARY POLICY AND PROCEDURE

### ORDINANCE 22

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1.				
2				
3.				
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## **Contents**

DISCIPLINARY POLICY AND PROCEDURE .....	1
1 Policy, Purpose and Principles .....	3
2 Informal Stage .....	3
3 Formal Stage .....	4
4 Investigation .....	5
5 Suspension .....	6
6 Notification of Formal Proceedings .....	7
7 The Disciplinary Hearing .....	8
8 Formal / Final Written Warnings .....	10
9 Other sanctions short of dismissal .....	10
10 Dismissal .....	10
11 Appeals .....	11
12 Other General Matters .....	12

## **List of Appendices**

Appendix 1 Non exhaustive examples of Misconduct/Gross Misconduct

## **1 Policy, Purpose and Principles**

- 1.1 This Policy and Procedure represents the relevant Ordinance in relation to disciplinary matters. This Ordinance has been negotiated and agreed with the Unions, approved by the Council and forms a term of all relevant employment contracts of staff members of the University.
- 1.2 The purpose of this Disciplinary Policy and Procedure is to encourage staff to maintain required standards of conduct. Its aim is to provide a transparent process to ensure that when disciplinary action must be taken, it is applied in a fair and consistent manner, with minor instances best dealt with informally outwith this procedure. All action taken, either informal or formal, should aim to resolve issues and/or aid improvement wherever possible.
- 1.3 This procedure relates to matters of misconduct. Matters relating to incapability due to ill health or attendance are to be dealt with initially using the Sickness Absence Policy and Procedure, and subsequently the Capability and Supporting Performance Policy and Procedure. Matters relating to work performance shall be dealt with via the Capability and Supporting Performance Policy and Procedure. This procedure does not apply to staff within their period of probation, for which a separate procedure exists. Human Resources (HR) may need to determine the most appropriate procedure to be used in some circumstances. There may be occasions where it is appropriate to transfer to a different procedure. If at any stage after commencing this procedure, the commissioning manager in conjunction with HR considers that the matter should be dealt with under an alternative procedure the discipline case will cease (or in certain circumstances, will be suspended) and the issue will be transferred to the relevant procedure at the appropriate stage. The employee will be notified in writing of this decision and the reason.
- 1.4 It is the responsibility of the Chief People Officer, reporting to the Executive, to implement, monitor and review this procedure across the University. Pro-Vice Chancellors/Heads of College, Heads of School, and Directors of Professional Services are responsible for the implementation of the procedure within Colleges and Professional Services.
- 1.5 In instances where a member of staff employed by the University works in, or is managed by, employees of a third-party organisation, including in cases of secondment, a decision will be made as to whether the matter will be dealt with using this policy, or the policy of the third party.

## **2 Informal Stage**

- 2.1 Managers should first seek to resolve minor allegations of misconduct informally and expediently where possible. The employee's line manager will promptly discuss the matter with the staff member privately and informally, allowing them the opportunity to express their opinion and listening to the employee's point of view, so that the matter can be discussed fully and solutions explored. Appropriate action may include:
  - training and support;

- advice and guidance; and
  - coaching or counselling.
  - finding that no further action is appropriate.
- 2.2 Line managers should make and retain notes of any issue raised and discussed informally, including any agreed outcomes and support, securely and confidentially in accordance with Data Protection principles. The main points and outcome of the discussion, including any targets, should be confirmed in writing to the employee, which may be by email where appropriate. The main purpose of this discussion is to ensure that the employee is made aware of the following matters:
- the concerns in question;
  - the actions required to meet expected standards of conduct, with targets set if appropriate;
  - the timescales within which an improvement is required;
  - that further misconduct and/or a failure to meet the expected standards of conduct could result in the application of the formal disciplinary procedure.
- 2.3 Prior to commencing formal disciplinary action, the line manager should liaise with Human Resources to ensure that all appropriate and reasonable informal resolution has been considered and make the staff member aware that formal action is now being considered.

### **3 Formal Stage**

- 3.1 In certain circumstances it may be appropriate to investigate a matter formally, such as where informal action does not bring about the required improvement, or where at the outset the misconduct is considered to be more serious or to constitute gross misconduct (see appendix 1). In such cases the informal steps as outlined in section 2 above may not be appropriate and the formal disciplinary procedure will be followed.
- 3.2 Before any formal disciplinary action is taken the employee will be advised of the allegation(s) in writing, be advised that they may be accompanied by a colleague or trade union representative and given an opportunity to state their case in response at a disciplinary hearing. The right to representation does not apply to any informal meeting or to suspension meetings.
- 3.3 No formal disciplinary hearing will be arranged, or any formal decision made until the matter has been investigated. Investigations shall be undertaken in an open, transparent and timely manner by individual(s) who are trained and independent of the area and matters concerned and nominated by the Pro-Vice Chancellor/Head of College/Director in conjunction with Human Resources. Any investigation should be undertaken promptly and should not unreasonably delay the next step of the process.
- 3.4 There may be occasions when, depending on the seriousness of the misconduct involved, it is appropriate to enter the procedure at the stage of a final warning or dismissal (which may include dismissal without notice).

- 3.5 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct.
- 3.6 The University will endeavour to deal with disciplinary matters promptly and without undue delay and expects the employee to cooperate to achieve that aim.
- 3.7 Except for time limits for prior notification of meetings or disclosure of documentation before meetings, timescales are indicative. There may be circumstances, particularly for complex cases, where the standard timescales set out in this procedure are not realistic. If it is not possible to respond or act within the time limits referred to in this procedure, the employee will be given an explanation for the delay and told when a response can be expected. The time limits may also be varied by mutual agreement in individual cases.
- 3.8 Misconduct outside of work may need to be dealt with under the University's formal Disciplinary Procedure where it is considered that it has a direct bearing upon the employment relationship and/or the employee's role.

#### **4 Investigation**

- 4.1 The staff member subject to the investigation should be made aware that an investigation will be undertaken and should be provided with a brief summary of the reasons for this, and the practical measures involved, including the identity of those conducting the investigation, the indicative timescales and the next steps in the investigatory process.
- 4.2 The purpose of the investigation is to establish the relevant facts of the matter concerned and report the findings to the Pro Vice Chancellor / Head of College / Director who commissioned the investigation in the first instance. The individual(s) who have carried out the investigation may attend any subsequent disciplinary hearing to present their findings and answer questions but will not form part of the decision-making process.
- 4.3 Following the investigation there are three possible outcomes:
- No case to answer thus no further action to be taken. Including a clear acknowledgement, in writing, to the employee that no action is appropriate.
  - If found that there is a case to answer, informal action to follow (as outlined in section 2).
  - If found to be a case to answer, formal disciplinary action to follow, with a Disciplinary Hearing to be arranged.
- 4.4 Investigations should be carried out as quickly as is practicable and without unreasonable delay in order to decide whether there is a case to answer (see 3.3 above). Any delays shall be reported on and the parties concerned kept abreast of progress. Responsibility also rests with the staff member concerned to cooperate with the process. The period from when the formal procedure is

first invoked until the end of the investigation should not normally last longer than 2 months, where this is not possible, any delays shall be reported on, and the parties concerned kept abreast of progress and proposed time-scales.

- 4.5 Investigations that have been undertaken in one procedure may be used as and where appropriate to inform another procedure. Such an example would be an investigation carried out into a Grievance then subsequently resulting in disciplinary action, and the initial investigation used so as not to repeat or lengthen the investigatory process.

## **5 Suspension**

- 5.1 If it is considered that the alleged misconduct may constitute gross misconduct there may be circumstances where it is appropriate to remove the employee from the workplace and suspend them on normal pay during an investigation and disciplinary procedure. This would normally be where the presence of the employee could prejudice an investigation, cause a disruption or where their presence at work may be intimidating to potential witnesses or cause reputational damage to the University. Each case will be considered individually. Wherever possible the employee will be informed of suspension in a meeting. Suspension is a neutral act and not a disciplinary sanction and can take place at the commencement of the investigation or during the investigation if findings deem that suspension may be deemed appropriate.
- 5.2 Suspension can only take place with the approval of the Chief People Officer, or other person whom they nominate. Suspension can only be taken, and lifted, by a manager authorised to take disciplinary action.
- 5.3 Consideration will be given to alternatives to suspension, e.g. changing work location if appropriate, with suspension being the last resort in most cases.
- 5.4 In circumstances where it is necessary to immediately protect the University's interests (for example, where there are serious safety concerns) and where an authorised manager is not available to suspend an employee, a manager may instruct the employee to leave the place of work and stay away until further notice. This must be reported to an authorised manager and the Chief People Officer or other person whom they nominate as soon as possible so that they can determine whether the employee is to be formally suspended in accordance with paragraph 5.1 of this procedure.
- 5.5 The following principles apply to any period of suspension:
- suspension from duty is not a pre-judgement of guilt and is not a disciplinary sanction;
  - suspension will normally take place in a face-to-face meeting but if this is not possible suspension will not be delayed but will be notified in writing;
  - the reasons for the suspension must be stated clearly to the employee in writing;

- The period of suspension will be as short as possible, and kept under review, generally for an initial period of four weeks at which point consideration will be given to whether to lift or extend the suspension. Where extended, regular review dates will be agreed.
- 5.6 Where an employee holds two or more roles at the University, it may be appropriate to suspend the individual from all roles. However, each case will be considered on an individual basis.
- 5.7 During any period of suspension, the employee must not discuss the case with, and must not contact, any fellow workers or students at the University, or visit University property or access University facilities including email and databases without first obtaining authority. A letter will notify the employee who to contact in such circumstances. Authority will be granted (subject to any conditions considered appropriate) to enable the employee to prepare their response. Staff may contact their Trade Union representative whilst suspended. During any period of suspension, the employee should remain mindful of their duty not to act in a way that may be prejudicial to the University's interests or reputation, for example through their use of social media. Expectations around matters such as conduct and means of communication during the period for suspension will be made known to the individual at the outset when suspension is confirmed.
- 5.8 Whilst suspended, the employee is expected to remain contactable during normal working hours and to be available for any meeting which may be arranged as part of the investigation (which might include a meeting or meetings with the Investigating Officer) or subsequent disciplinary hearing, if applicable.

## **6 Notification of Formal Proceedings**

- 6.1 If, following the investigation, there is found to be a disciplinary case to answer, the staff member will be invited in writing to attend a disciplinary hearing. The notice will usually be provided no later than 10 working days in advance of the hearing.
- 6.2 At least 10 working days before the date of the disciplinary hearing, the staff member will be provided with the following in writing:
  - confirmation that there will be a disciplinary hearing under the disciplinary procedure;
  - the date, time and venue of the disciplinary hearing;
  - details of the allegations and copies of all relevant evidence that will be referred to during proceedings. This may include written documents and witness statements, depending upon the details of the case. The exact material to be provided to the staff member shall vary according to details of the case;
  - the names of the disciplinary panel members;

- the names of any witnesses being called in support of the University's case against the employee;
- the seriousness of the alleged misconduct and the possible disciplinary action that may be taken. Where an act of Gross Misconduct is alleged, summary dismissal will be noted as a possible outcome (dismissal without notice).
- their right to be accompanied by a fellow worker or trade union representative.

This letter should also advise the employee of their opportunity at the hearing to:

- call witnesses and how to do so (giving adequate notice of their intention to do so);
- ask questions;
- present their case and supporting evidence, which may include written documents and witness statements;
- present mitigating circumstances they may wish to be taken into account.

6.3 Where the staff member decides to rely upon any evidence, they should provide this at least five working days in advance of the disciplinary hearing. The purpose of calling a witness would normally be to contribute to establishing the facts of the case. Witnesses who are to testify to the character of an individual can do so in writing. The staff member will be advised in writing of the timescales and the process for providing such information.

6.4 During formal proceedings the staff member can be accompanied by a colleague or trades union representative. If the employee wishes to exercise their right to be accompanied at the disciplinary hearing, they should give advance notice of this to chair of the disciplinary panel, stating the name of their chosen companion and whether they are a fellow worker or trade union representative. For staff requiring certification to practice, where the outcome of the case may have the potential to impact upon the individual's future professional certification to practice, the panel will determine in advance whether a companion may be a legally qualified professional.

## **7 The Disciplinary Hearing**

7.1 A panel will be established to consider and hear the case concerned. The panel membership will vary depending upon the seriousness of the alleged misconduct and the seniority of the staff member involved but will consist of a member of the University Executive, who has the discretion to be accompanied by another senior member of staff with no previous involvement in the case.

7.2 The individuals(s) who have conducted the investigation will attend the disciplinary hearing to present the findings of the investigation to the panel and to answer questions from the employee (or their companion) and the panel. The investigating officer(s) will not otherwise take part in the hearing, and they will not participate in the decision-making process.



- 7.3 The staff member will then be given the opportunity to state the case, including if there are any special circumstances to be considered. The staff member will be invited to either accept or deny the allegation(s). If the staff member does not accept the allegation(s) the hearing shall proceed as though the staff member denied the allegation.
- 7.4 At appropriate points in the process, the staff member, the investigator and the panel will have the opportunity to challenge the evidence provided and question any witnesses. The investigator(s) and the staff member may each make a closing statement.
- 7.5 If accompanied, the companion may address the disciplinary hearing to put forward and sum up the staff member's case, respond on behalf of the staff member to any views expressed at the meeting and confer with them during the hearing. The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or act in a manner which prevents the University from presenting its case, including evidence from relevant witnesses.
- 7.6 The purpose of the disciplinary hearing is to give the employee an opportunity to state their case and to answer the allegations made against them.
- 7.7 The disciplinary panel will hear the case and following the disciplinary hearing, will adjourn to consider the evidence. The panel may conclude one of the following courses of action, according to the circumstances of the case:
- Take no disciplinary action.
  - Recommend that the issue is dealt with informally by the employee's line manager.
  - Give a first formal written warning if there has been either a repeated minor breach in conduct, or a first but more serious breach of discipline.
  - Give a final written warning if there has been an insufficient response to previous warnings and conduct is still unsatisfactory, or in the case of a first but sufficiently serious breach of discipline.
  - Give the employee another sanction short of dismissal (see section 9).
  - Give the employee a sanction comprising a combination of the above.
  - Give the employee notice of dismissal if, following a final written warning, conduct remains unsatisfactory, and the employee still fails to reach or maintain the prescribed standards.
  - Dismiss the employee summarily without notice and without there having been any previous disciplinary warnings when there has been gross misconduct and circumstances make this an appropriate outcome.
- 7.8 The staff member will be informed of the outcome in writing within 5 working days after the panel. Where the usual timeframe is not practicable, this will be communicated to the staff member, with reasons and an alternative timeframe.

## **8 Formal/Final Written Warnings**

- 8.1 The warning will include written details of the nature of the misconduct, the change in behaviour required, any support which will be available, the timescale during which the warning will remain live, and the right to, and arrangements for appeal. In relation to both formal and final warnings, such warnings will remain live for a period of 12 months, with the Chair of the Disciplinary Hearing having the discretion to amend the timescales in light of the specific circumstances.
- 8.2 The warning will also inform the staff member that further consequences will be considered if further misconduct occurs, and that this could include dismissal.
- 8.3 The warning will be disregarded for further disciplinary purposes after the timeframe set out when the warning is given, unless there are circumstances which justify a longer period, and which are explained in the letter to the staff member confirming the outcome of the disciplinary hearing. A spent warning may be taken into account when determining the question of penalty (only) in any future case where the nature of the alleged misconduct is the same or similar.

## **9 Other sanctions short of dismissal**

- 9.1 Other sanctions may be considered at the discretion of the University as an alternative to dismissal, including for example (although this is not intended to form an exhaustive list):
  - Demotion, which may include demotion to a post of a lower grade, with resulting reduction in salary.
  - Restriction/alteration of duties/change to terms of employment.
  - Withholding of incremental progression and/or bonus payment (where applicable) for a specified period.
  - The removal of a title or office held in addition to the substantive appointment.
  - Transfer to a different role, service or site.
  - Mediation, appropriate course of training, retraining or counselling, or an apology.

## **10 Dismissal**

- 10.1 In reaching a decision to dismiss, prior careful consideration of other options will be given. All relevant factors will also be considered including length of service, disciplinary record, mitigating circumstances, consistency of outcome in other similar cases, and likely impact of dismissal upon the employee's chosen career path. If, in all the circumstances, other sanctions are deemed inappropriate, and the staff member is to be dismissed, the staff member will be provided in writing with reasons for dismissal, the date on which the

employment will terminate, and the right of appeal and arrangements for appeal.

## **11 Appeals**

- 11.1 A staff member has a right of appeal against any form of action under the formal Disciplinary Procedure. The staff member's written outcome letter will include details of the arrangements to follow should the staff member decide to appeal.
- 11.2. Staff intending to appeal against the decision of a disciplinary hearing must do so promptly, within 10 working days of receipt of the letter of confirmation of formal disciplinary action. Should the individual require additional time to submit an appeal, they may make a request for a reasonable extension of time. This request must be made within the 10 day time-frame. Any such request for an extension of time will be granted at the discretion of the University.
- 11.3. The appeal must be communicated in writing, stating the grounds upon which the appeal is made. Grounds for appeal may fall within one or more of the following categories:
  - The investigation or disciplinary hearing was flawed, or the process was not followed correctly;
  - there is new evidence relevant to the case which was not previously available; or
  - the findings are not supported by the evidence and/or sanction is disproportionate in all the circumstances.
- 11.4. The University will, as far as reasonably practical, seek to hear the appeal within 28 working days of receipt of the submitted appeal. The employee will be informed in writing of the date of and arrangements for the appeal hearing no later than 7 working days in advance of the appeal hearing.
- 11.5 The appeal panel will comprise two senior members of staff (one of whom being of no less seniority than the staff member who issued the sanction being appealed). A member of the Human Resources Department will support the meeting. Panel members will not have previous involvement in the case. Where the appeal is against dismissal, one member of the panel will be a lay member of the University Council.
- 11.6 The appeal will be a review of the decision taken by the Disciplinary Panel that conducted the disciplinary hearing and will not be a rehearing of the case.
- 11.7 In exceptional cases, the appeal panel may agree for the appeal to be a full rehearing of the case or decide to remit the case to a new appeal panel to re-examine the case and make new findings. Whether a case is exceptional and merits a full rehearing shall be at the complete discretion of the appeal panel.
- 11.8 At the appeal meeting the documentary evidence made available at the disciplinary hearing will be made available for reference purposes. As the

purpose of the appeal is not a reconsideration of all matters, it is the responsibility of the staff member to state their case and bring to the attention of the panel all relevant documentary evidence that should be considered. Based on the appeal case presented and the associated evidence, the appeal panel may:

- uphold the disciplinary action taken;
- reject the disciplinary action taken;
- reduce the level of disciplinary action taken; or
- require a rehearing of the whole or part of the case.

11.9 If the decision of the Disciplinary Panel is to dismiss the employee, an appeal will not prevent or delay the dismissal but if the outcome of the appeal overturns the dismissal, then the employee will be reinstated and paid any back pay. Where an appeal against dismissal fails, the termination date will be as set out in the disciplinary outcome letter.

11.10 The staff member will be informed in writing of the appeal outcome, usually within 10 working days of the appeal meeting. If the timescales are to be longer, this will be communicated to the employee. The appeal panel's decision is final within the procedures of the University.

## **12 Other General Matters**

12.1 If a staff member is absent due to sickness prior to the hearing or during the investigation process, they may be invited to visit/or attend a virtual meeting with the University's Occupational Health Service to assess their fitness to attend a hearing, and to give advice on any special requirements or adjustments for the investigation/hearing. Staff members may elect to submit a written statement to the panel, and for the hearing to take place in their absence.

12.2 Where a staff member seeks to activate a formal procedure, e.g. submits a grievance or an appeal within another procedure, during a disciplinary process which is related to the case the disciplinary panel may deem it appropriate to deal with the issues as part of, or concurrently with this procedure including under a single investigation and hearing. Alternatively, the disciplinary panel may deem it appropriate to temporarily suspend the disciplinary proceedings pending the outcome of the other procedural process in order to safeguard the fairness of the process. Each case will be considered on an individual basis.

12.3 Where a staff member believes that disability or language skills (e.g. English is not their first language) may impact on the ability to participate as appropriate in the procedure, it is the individual's responsibility to raise this with Human Resources as soon as possible. In such cases the University will consider providing appropriate reasonable support/adjustments during formal proceedings. Panel members shall be advised of any reasonable adjustments to be made.

- 12.4 Employees shall have the right to use Welsh or English (as may be preferred) at all stages of the procedure, and translation facilities will be arranged where appropriate. Where possible the University will seek to ensure that any panels are diverse in terms of sociodemographic characteristics.
- 12.5 No formal disciplinary action should be taken against accredited Trade Union representatives until there has been discussion with the appropriate official employed by the Trade Union, in order to ensure compliance with the provisions of employment legislation.
- 12.6 Where staff are charged with or convicted of a criminal offence, they are required to inform the University as soon as possible. This shall not be regarded as an automatic reason for disciplinary action. Consideration will be given to whether the staff member's conduct or conviction merits action because of its employment implications. Factors may include, for example: whether the offence or the type of conduct that it exemplifies makes the individual unsuitable in relation to the type of work they do, the potential impact on other staff; and the likelihood and potential severity of damage to the University's reputation. The facts of the case will be established to determine whether the conduct may warrant formal disciplinary action. Any investigation and subsequent disciplinary action will be separate to any police investigation and judicial process. The University may, depending on the circumstances, take fair and reasonable action in relation to employment prior to the outcome of legal proceedings.
- 12.7 Records of disciplinary action will be kept confidential and retained in accordance with the University's Information Security Policy. The handling of personal data is controlled by the General Data Protection Regulation (GDPR) and associated legislation.

## **13 Review**

- 13.1 This Policy and Procedure will be reviewed 12 months from its implementation, and then at regular intervals of not less than three years and will at all times be read and applied subject to the general law. All reviews will be undertaken in consultation with the recognised campus Trade Unions and any changes agreed with them, prior to approval from the University Council.

## **14 Equality Impact Assessment**

- 14.1 This Policy has been Equality Impact Assessed based on consultation and information available at the time of the Policy being developed. A further Equality Impact Assessment will be carried out in conjunction with any review of the Policy.

## APPENDIX 1

The following are examples of **misconduct** although this is not intended to form an exhaustive list:

- Bullying and/or harassment
- Unauthorised absence.
- Failure to comply with reasonable and legitimate instructions.
- Unsatisfactory timekeeping.
- Verbal abuse.
- Making persistent trivial and unfounded grievance complaints against other individuals.
- Misuse of the University's computer systems, including hardware, software, email, intranet and internet; and as covered in the University's Acceptable Use Policy.
- A breach of the University's Use of Social Media Policy
- Academic misconduct (including research misconduct)
- A breach of Code of Ethics.

**Gross misconduct** may be sufficiently serious to warrant summary dismissal, which is dismissal without notice or payment in lieu of notice, even in the absence of any prior disciplinary warnings, and which is sufficiently serious to destroy the University's trust and confidence in the employment relationship.

The following list provides some examples of offences which are usually regarded as gross misconduct although this is not intended to form a comprehensive or exhaustive list:

- Unauthorised possession of goods belonging to the University, its staff or students.
- Theft.
- Fraud.
- Deliberate falsification of records.
- Corruption or bribery.
- Serious academic misconduct
- Serious breaches of the Code of Ethics.
- Physical violence and/or threatening behaviour.
- Bullying where this is intentional and of a serious and/or prolonged nature
- All forms of sexual violence and sexual harassment.
- Victimisation where this is intentional and of a serious and/or prolonged nature.
- Unlawful and/or serious harassment of other members of the University community, including staff, students and visitors.
- Deliberate unlawful and/or serious discrimination.
- Making vexatious or malicious allegations against another individual under the grievance or the public interest disclosure policy.
- Gross and deliberate misuse of University property or name.
- Carrying out covert recording in the workplace (without the prior approval of the relevant parties).
- Serious misuse of the University's IT resources such as deliberately accessing internet sites for personal use which contain pornographic, offensive or obscene material.

- Unreasonable behaviour that causes serious damage to the reputation of the University, including both off duty and off campus incidents, and including through the improper use of social media.
- Conduct seriously and detrimentally affected due to alcohol, drug, or substance misuse
- Deliberate and serious damage to property.
- Causing loss, damage or injury through gross negligence.
- A serious breach of health and safety regulations.
- A serious breach of confidentiality/misuse of confidentiality.
- Conviction of a criminal offence which makes the individual unsuitable in relation to the type of work s/he does, or unacceptable to other staff, and the likelihood and potential severity of damage to the University's reputation.