**Proposed Disciplinary Policy**

The revised disciplinary policy was first introduced in December 2020 at a People Policy Forum (PPF), along with a revised capability policy, which has been renamed ‘Improving Performance’. According to HR, it is routine to review and update policies every five years or so, and these policies had last been updated in 2017. It was discussed and was tabled for agreement at the March 2021 PPF. In advance of this meeting, the incoming Equality Officer asked whether we had received an Equality Impact Analysis (EIA) for the policies. We had not received any, and agreed as a committee that we should not attend any meetings about policies without this important documentation in advance. We received an EIA the afternoon before the proposed meeting. There was neither enough time to consider it in advance of the meeting, nor, in any case, was the EIA adequate or contain relevant data, instead insisting that the policy impacted on all groups equally. We disagreed with this and asked for evidence. We did not attend the PPF in March and the disciplinary policy has been in negotiation since. We received further updates on the EIA and finally by August 2021 had one that included the relevant data that enabled us to consider the policy in light of it. Comments on the policy are below.

According to HR, the ‘Improving Performance’ (replacing the capability) policy became effective in July 2021. We are challenging their claim that UCU was appropriately consulted over this policy according to existing practice and ACAS guidelines. We cannot agree to a policy and no union representative can sign off on a policy without confirmation from branch committee or branch meeting. HR know this to be the case. HR have construed an informal meeting to constitute appropriate consultation though this has never been reported back for scrutiny at a branch meeting or committee. HR knew that the branch committee would not sign off until that policy has appropriate equality proofing through an Equality Impact Assessment.

Improving Performance has serious ramifications for all UCU members. It would allow individuals to be targeted for more regular target-driven PDRs and the possibility of demotion if targets were not met. We are seeking clarification from UCU whether this constitutes an abandonment of the National Framework Agreement, which determines pay and grading structures, which Newcastle University is signed up to. The union would also contend that this breaks the agreement that resolved the Raising the Bar dispute of 2016 restoring key features that policy.

In terms of the ***Disciplinary Policy***, these are the points that the committee have raised:

Points of agreement:

* We agree with the insertion of sexual misconduct and race hatred clauses. We would go further and ask university management how often they have used Non Disclosure Agreements (NDAs) in the past 5 years to resolve sexual misconduct cases in particular? Can we have agreement that NDAs will no longer be used in these instances?
* We welcomed the more rigorous EIA that was most recently sent (Aug 2021) with responses to issues that we raised. One thing that was noted in the more informative EIA was that colleagues of colour were over-represented in formal disciplinary hearings and we have highlighted this to HR.
* We welcome the accompanying guidelines to line managers. We have confirmed that the guidelines will be available to all staff on the internal servers. We would encourage members to read them and ensure that line managers are following the guidelines.

Discussion

We made the point that there is lots of vague, ambiguous language that is open to interpretation, and therefore abuse. HR have included extra steps that need to be taken by line managers, such as checking with them first before suspension etc. and have included guidelines to managers.

Initially, colleagues were not entitled to TU representation at the informal, investigation stage. We have fought to include that unless it *unduly* delays the process, then colleagues can take a representative with them. We have also ensured that if notes from the meeting/investigation are not agreed within three days, they are not taken as agreed, but that HR can continue with the process.

We have issues with the Appendix – standards of behaviour, including ‘Disrespectful to colleagues, students, or **third parties**…’

Points of disagreement

**2.5 Demotion** – a change to our contracts and terms and conditions. Nowhere in the contract does it say that colleagues may be demoted. Where has this ‘best practice’ emerged from?

Demotion is not feasible with academic colleagues – it is a change to contract and terms and conditions that we could not agree to.

HR have argued that demotion exists in the current policy under ‘other sanctions’. However, with the revised policy, demotion would be *by consent*. This may seem better, but by consenting to the demotion (and this would be framed as either demotion or dismissal), you would be unable to *appeal* the decision. You also would not be able to apply for promotion for 52 weeks, and even if you applied, there is no guarantee that you would ever be promoted back to your original position.   
  
We believe this this a way for HR to get people out the door without bothersome employment tribunals. There have been three employment tribunals against the employer over the past six months. If a member is unfairly dismissed, that decision can be appealed. If a colleague consents to demotion, and their working conditions have deteriorated and they feel under-appreciated, it is likely they will resign, because they would not be able to claim constructive dismissal at tribunal.