**Summary of staff member’s rights in a disciplinary process**

**The following rights of the staff member must be observed during the process of taking disciplinary action:**

* **the staff member shall be presumed to be innocent until proved guilty**

(It is important that the HoDs/manager’s conduct and attitude towards the staff member conveys this principle).

* **the staff member has the opportunity to state their case**

(This means that the HoD/manager must keep an open mind to what the staff member may say in their defence. A decision as to the guilt of a person or the penalty cannot be determined until such time as all of the information has been considered. The HoD/manager does not prove that the staff member is guilty beyond reasonable doubt just that the behaviour/misconduct was likely on a balance of probabilities having looked at all the evidence).

* **the staff member must be able to present an informed defence**

(This means that the staff member must be given a reasonable period to prepare. The staff member also needs to be clear on what they have allegedly done or not done. The staff member also needs to be provided with any documentation that will be presented at the hearing).

* **the staff member must be able to enlist the support required**

(The staff member has right to representation of their choice provided that for level 1 and 2 hearings this is a staff member at Rhodes or for level 3 hearings, this can be a union official or a legal representative. The Chair may to object to there being more than one representative e.g. sometimes the union likes to bring more than one person along but should ask for the reason for more than one representative being there and make a decision based on that. The chair needs to consider the impact on witnesses).

* **all circumstances have been considered fully and objectively before a decision is taken**

(There are two decisions to be taken: (i) Is the person guilty or not of the charges and (ii), if yes, what is an appropriate penalty. In both cases all the facts need to be considered).

* **the staff member is treated fairly and consistently to others, irrespective of rank or status**

(All staff should be treated with dignity and respect in this process e.g. ensure that communication is prompt, don’t call the staff member rude names, and don’t pass judgement on an issue and be fair).

* **the staff member has a right to call witnesses**

(Any witnesses that the staff member or his/her representative believe should testify should be allowed. It is up to the staff member to ensure that his/her witnesses are willing to testify and are available. The Chair should be reasonable about postponements due to unavailability of witnesses. The University as a right to cross examine the witnesses of the staff member).

* **the staff member has a right to cross examine the institution’s witness**

(Just as the University can cross examine the witnesses of the staff member, the same applies for the University’s witnesses).

* **no disciplinary penalty shall be imposed until the appropriate procedure has been exhausted**

(There are two parts to a disciplinary hearing: (i) the first part considering the evidence to make a determination if the staff member is guilty or not; and if guilty (ii) considering evidence (mitigating and aggravating circumstances) as regards what the appropriate penalty will be).

* **if the University is considering suspension, the staff member has the right to make a case to NOT be suspended before a final decision is made**

(Where a supervisor or manager has made a recommendation to suspend the staff member, the Director/Dean need to consider this recommendation along with the views of the staff member. No suspension should take place without such a hearing).

* **the staff member must receive written notification of the outcome of the hearing**

(After a decision is taken, the staff member should receive notification in writing. Not only is this respectful, it also ensures that the staff member is advised of his/her rights).

* **the staff member must be advised of the right to appeal**

(For level 1 and 2 there is an internal appeal procedure. For level 3 which would usually result in dismissal, the appeal is handled by the CCMA. It is up to the staff member to make this submission to the CCMA).