

Employee Relations Framework Element 1: Discipline Procedure

1 Introduction

This Policy is part of the Employee Relations Framework which is made up of a number of elements which together encompass all formal policy, procedure and statement documents, including associated forms, relating to Employee Relations in Abertay University.

If you would like this document in a different format (e.g. large print, braille) or need any assistance to access or understand the policy/procedure please contact your School/Service designated HR Partner.

2 Purpose and Scope

This procedure applies to all employees of Abertay University (regardless of length of service). The University expects an appropriate standard of conduct, which includes behaviour and attendance, from all its employees. This Discipline Procedure provides a framework for dealing with cases where an employee's conduct is considered to be unsatisfactory. This document establishes the procedure to be followed and helps ensure consistent and fair treatment for all employees who do not meet the standards of conduct expected and to encourage and support improvement.

This procedure is designed to help and encourage all employees to achieve and maintain standards of conduct and the underlying principle of the procedure is to bring about improvement and it is not to be punitive.

This procedure does not apply to cases involving genuine sickness absence, proposed redundancies and poor performance. In those cases, reference should be made to the appropriate policy or procedure.

3 Core Principles

- Informal action will be considered, where appropriate, to resolve matters of concern in a prompt, timely and supportive manner;
- No disciplinary action will be taken against an employee until the case has been investigated;
- Employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary meeting;
- The Chair of a Disciplinary Hearing will be someone with no prior involvement in the case;
- Employees will be offered the right to be accompanied to any Disciplinary Hearing or Appeal Hearing by a recognised trades union representative, Abertay staff representative or Abertay work colleague;
- Employees will receive a written explanation for any disciplinary action taken and their right to appeal;
- An employee will have the right to appeal against any disciplinary action. In such cases an appeal will not be heard by the same person who issued the disciplinary sanction;

- No disciplinary action will be taken against a recognised trades union representative until the matter has been discussed with a full-time official of the trades union concerned;
- No employee will be dismissed for a first act of misconduct except in the case of gross misconduct or where the employee has not completed his/her probationary period;
- This procedure may be implemented at any stage if the employee's alleged misconduct warrants this;

The University reserves the right to amend the life of any formal warning issued under the Discipline Procedure depending on the circumstances up to a maximum of 12 months.

4 Informal Action

4.1.1 Coaching

Coaching of employees is the responsibility of all Line Managers and should be a regular feature of the employee/manager relationship. It shall normally take the form of a discussion with the employee about how certain work has been carried out, the aim of which is to look at ensuring continuous improvement and at alternative ways to achieve better results. Coaching should be constructive but recognise where there are deficiencies either in conduct or performance, which should also be raised during any performance management (i.e. Pathways) meeting.

4.1.2 Counselling

Counselling shall normally take the form of a discussion between the employee and their Line Manager regarding minor conduct issues. It is important that any discussions are held in private and without undue delay whenever there is cause for concern. A file note of the counselling should be sent to the School/Service designated HR Partner in order to be retained on the employee's personnel file, but will not be taken into account for the purposes of any future Disciplinary Hearings. Counselling would be appropriate where there are areas of concern but they are not sufficient enough to warrant invoking the formal procedure.

It may be identified that additional training, advice and/or support, etc. is needed but the employee should understand the seriousness of the situation. The formal process may be invoked if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation). It is important that arrangements are also put in place to monitor and review the employee's progress over a specific period of time.

4.2 Disciplinary Procedure

4.2.1 The Investigation

The purpose of an informal investigation is for the University to establish a fair and balanced view of the facts relating to any disciplinary allegation against the employee, before deciding whether to proceed with a Disciplinary Hearing.

Depending on the circumstances of the case, the employee may be invited to attend an investigatory interview(s) and statements may be taken from the employee and any witnesses, and/or relevant documents (if any) may be reviewed. The University reserves the right to dispense with an investigatory interview and to proceed directly to a formal Disciplinary Hearing.

If an investigatory interview is deemed necessary, the purpose of carrying it out is solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a Disciplinary Hearing has been held.

Employees must co-operate fully and promptly in any investigation. This will include informing the University of the names of any relevant witnesses, disclosing any relevant documents to the University and attending investigative interviews, if required.

If an employee is absent due to sickness prior to an investigatory interview or Disciplinary Hearing, he/she may be required to attend the University's Occupational Health Service to facilitate an assessment of the employee's fitness to attend the interview/hearing.

The employee's Head of School/Service or Line Manager should consult with their designated HR Partner to seek advice on appointing the most appropriate person to conduct an investigation (i.e. Investigating Officer). This could, for example, be the Line Manager or a Line Manager from another School/Service of the University with support from HR.

4.2.2 Suspension

In some circumstances, an employee may be immediately suspended from work on full pay and contractual benefits. Any decision to suspend will be confirmed in writing to the employee and the suspension will be for no longer than is necessary to investigate the allegations. Suspension is not a disciplinary action in itself and does not imply that any decision has already been made about any allegations.

The University may contact the suspended employee at any time during the period of suspension to clarify any issues and/or to invite them to attend the University in order to assist with the investigation. While suspended employees are normally requested not to visit the University premises or to contact members of staff, students, suppliers, contractors, or members of the University Court. Such restrictions will be detailed in a letter of suspension.

4.2.3 Notification of a Disciplinary Hearing

Where upon completion of the investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct; the employee will be required to attend a Disciplinary Hearing with a Management Representative and a HR Partner.

Prior to the Disciplinary Hearing, the University will:

- Advise the employee, in writing, of the date, time and place of the Disciplinary Hearing within five working days' notice where possible;
- Advise the employee of their right to be accompanied;
- Tell the employee the purpose of the Disciplinary Hearing and that it will be held under the University's Disciplinary Procedure;
- Give the employee written details of the allegations against the employee and the basis for those allegations;

Where appropriate, provide the employee with:

- A summary of relevant information gathered during the investigation
- A copy of any relevant documents which will be used at the Disciplinary Hearing
- A copy of the University Discipline Procedure

Where the employee is unable to attend a Disciplinary Hearing and provides a good reason for failing to attend, the hearing will be rescheduled for an alternative time. If the employee is persistently unable to attend the hearing or fails to attend without good reason, the University may have to make a decision based on the available evidence.

4.2.4 Right to be accompanied

An employee has the right to be accompanied by a recognised trades union representative, Abertay staff representatives or current Abertay work colleague employed by the University at all stages of the formal disciplinary procedure, including an appeal. For the avoidance of doubt, legal representation or representation by anyone outside of this group is not permitted. The University may permit the employee to bring a companion who is not a work colleague or recognised trades union representative (for example a family member or interpreter) if this will help overcome the effect of any disability or if the employee has difficulty in understanding English, but this does not extend to a legal representative. Any meetings with the employee regarding the case will be rescheduled if the chosen companion cannot attend; it will be rescheduled providing the employee proposes an alternative date and time within 5 working days of the original date.

The companion is permitted to confer with the employee and address the Disciplinary Hearing by making representations or asking questions, but not to answer questions that are directly put to the employee. They must also not interfere with, or prevent people from contributing to, the Disciplinary Hearing.

If the employee's choice of companion is unreasonable they may be asked to choose someone else, for example if in the opinion of the management representative and HR Partner the companion may have a conflict of interest, or may prejudice the meeting, or be unavailable at the time the meeting is scheduled and will not be available for more than five working days after the date set down for the meeting.

4.2.5 Procedure at the Disciplinary Hearing

The Disciplinary Hearing will normally be conducted by the employee's Line Manager or Head of School/Service together with a HR Partner. The University reserves the right to appoint a suitable alternative to the employee's Line Manager or Head of School/Service should circumstances require this, e.g. unavailability, inappropriateness.

At the Disciplinary Hearing, the University will go through the allegations against the employee and the evidence it has gathered. The employee will be entitled to put forward an explanation of his/her conduct and/or mitigating factors and present any evidence of their own. The employee may ask relevant witnesses to appear at the Disciplinary Hearing, provided they give the University sufficient advance notice to arrange their attendance. The University may adjourn the disciplinary proceedings if it appears necessary or desirable to do so, for example if further investigation is needed, and the employee will be informed of the period of any adjournment.

As soon as possible after the conclusion of the disciplinary proceedings, the Management and HR Partner will convey the outcome to the employee and will inform the employee what disciplinary action, if any, is to be taken. The decision and the reasons for this will be confirmed in writing. The employee will also be notified of their right of appeal under this procedure.

4.3 Levels of Disciplinary Action

If following the Disciplinary Hearing it is decided that formal disciplinary action is necessary, the usual levels of action for misconduct are outlined below. Each case will be assessed on its own merits. After the 'live' period, the warning will remain permanently on the employee's personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

4.3.1 Recorded Verbal Warning

A recorded verbal warning may be issued in cases of minor acts of misconduct where the employee has no other active warnings on their disciplinary record.

The warning will:

- Set out the nature of the misconduct;
 - Advise of the change in behaviour required;
 - Inform the employee that further misconduct is liable to result in further disciplinary action under this procedure;
 - Specify the period for which the warning will remain 'live', usually 6 months;
- and
- State that the employee may appeal against the warning.

4.3.2 First Written Warning

Where either further minor acts of misconduct have been committed by an employee following a recorded verbal warning that remains 'live' on their disciplinary record, or a more serious act of misconduct has been committed, the employee may receive a first written warning.

The warning will:

Set out the nature of the misconduct;

- Advise of is the change in behaviour required;
 - Inform the employee that further misconduct is liable to result in further disciplinary action under this procedure;
 - Specify the period for which the warning will remain 'live', usually 12 months;
- and
- State that the employee may appeal against the warning.

The employee's conduct may be reviewed at the end of the warning's active period and if it has not improved the University may decide to extend the active period.

4.3.3 Final Written Warning

A final written warning may be issued where either (a) an act of misconduct is committed that University considers is sufficiently serious to warrant a final written warning even though there are no other active warnings on the employee's record; or (b) an employee commits further acts of misconduct after a first written warning has been issued and remains 'live', a final written warning may be given.

The warning will:

- Set out the nature of the misconduct;
 - Advise of the change in behaviour required;
 - Inform the employee that further misconduct is likely to result in his/her dismissal;
 - Specify the period for which the warning will remain 'live', usually 18 months;
- and
- State that the employee may appeal against the warning.

The employee's conduct may be reviewed at the end of the warning's active period and if it has not improved sufficiently, the University may decide to extend the active period.

4.3.4 Dismissal

A dismissal will usually be appropriate for (a) any misconduct during the employee's probationary period; (b) where the employee has committed further acts of misconduct where there is an active final written warning on the employee's record; or (c) where an employee has committed an act of gross misconduct, regardless of whether there are active warnings on the employee's record.

Gross misconduct will usually result in immediate dismissal without notice and payment in lieu of notice (summary dismissal).

4.3.5 Gross Misconduct

Gross misconduct is an act, or acts, which have the effect of destroying the employment relationship between the employee and University, making trust and a continued working relationship impossible.

The following list is neither exhaustive nor exclusive but gives an indication of the types of misconduct which will normally result in summary dismissal:

- Dishonesty, theft, fraud and deliberate falsification of records;
- Fighting, assault on another person;
- Deliberate damage to University property;
- Serious bullying and harassment;
- Serious incapability through alcohol or being under the influence of illegal drugs;
- Serious negligence which causes unacceptable loss, damage or injury;
- Serious insubordination;
- Serious breach of Social Media & Personal Website Policy
- Serious infringement of health and safety rules;
- Serious breach of the University's IS Email and Internet usage Policy;
- Unauthorised entry to computer records;
- Indecent, abusive or threatening behaviour to any person whilst engaged, or purporting to be engaged, on University business;
- Wilful provision of false or misleading information, or wilful non-disclosure of information, either during the recruitment process or in subsequent employment which materially affects the contract of employment;
- Breach of confidentiality (subject of the Public Interest (Disclosure) Act 1988) or breach of authority vested in a job;
- Non-disclosure of an interest (conflict of interest), whether direct or indirect, in a contractual agreement between an agency and the University;
- Serious breach of Standing Orders or Financial Regulations;
- Serious discriminatory acts or omissions contrary to or inconsistent with the University's policy on equality and diversity;
- Conduct which may bring the name of the University into disrepute;
- Deliberate or reckless lack of fairness in carrying out the marking of examination papers and/or the assessments of students;
- Unauthorised disclosure of information relating to examinations and/or assessments.

4.4 Appeals

An employee, who wishes to appeal against any disciplinary action given, should appeal in writing to the Head of Human Resources within 5 working days of receipt of the written notification of the Disciplinary Hearing decision. The employee's appeal will be heard by the

next level of management and a HR Partner. The employee is entitled to be accompanied to an Appeal Hearing (see section 1.4.4).

An appeal would be held as soon as is practical to do so. The appeal decision will be provided in writing, the decision made on appeal shall be final.

4.5 Grievances raised by an employee facing disciplinary action

Where an employee raises a grievance(s) which in the opinion of HR is linked either to the issues which have given rise to disciplinary action or to the manner in which the disciplinary process has or is being conducted, the University may determine that the employee's complaint be considered and addressed within the operation of the Disciplinary Procedure.

4.6 Confidentiality, Documentation & Data Protection

The University aims to deal with disciplinary matters sensitively and with due respect for all

The University aims to deal with disciplinary matters sensitively and with due respect for all individuals involved. All documentation relating to the disciplinary investigation and outcome will be retained within Human Resources and will be held and processed in accordance with the Data Protection Act 1998. Employees (including witnesses) must not make electronic recordings of any meetings or hearings conducted under this procedure.

All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter. Any breach of confidentiality may result in disciplinary action.

4.7 The Principal, Vice Principal or Secretary to Court

This procedure also applies to the Principal, Vice Principal and Secretary to Court. However, in such circumstances a copy of the 'Process for specified senior roles in relation to the Grievance Procedure and Discipline Procedure' should be requested from the Head of Human Resources.

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