

Ordinance 32 Disciplinary Procedure

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ORDINANCE 32 DISCIPLINARY PROCEDURE

Introduction

The ACAS Code of Practice has been used as a guide when drawing up this procedure. The code sets out the basic requirements of fairness that will be appropriate in most cases and provides guidance on the expected standard of reasonable behaviour in organisations.

This Disciplinary procedure forms part of the Terms and Conditions of contracts of employment.

The University is committed to dealing with disciplinary matters fairly and it has an expectation that employees will do the same:-

The University and employees should:-

- Raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions;
- Act consistently.

The University will ensure that:-

Prior to the formal procedure being instigated managers will set and regularly communicate clear expectations and address concerns around behaviour and conduct immediately to 'nip things in the bud' at an early stage.

These communications will be part of day-to-day management expectations and issues will be dealt with immediately and informally.

In recognising potential risks associated with the application of this procedure managers will consider the effects on the people concerned (Appendix D- notes on Management of Risk)

Managers will:

- Recognise the need to manage issues as they arise in the spirit of this procedure to avoid the need for more formal processes being instigated;
- Inform employees of the basis of the problems and give them the opportunity to put their case should they wish to do so, before any decision is made;
- Carry out necessary investigations to establish the facts of the case;
- Invite employees to be accompanied to any disciplinary meetings by a trade union representative or work colleague;
- Allow employees to appeal against any formal decisions taken at the hearing stage.

The University's Employee Assistance Programme (EAP), which enables employees to access confidential support services, provides the opportunity for employees to consider how they can best approach a problem or concern with a view to reaching a resolution. HR can advise on the services available, and information is also available on the HR web site.

1. Scope of the procedure

- 1.1 This procedure is designed to be used when it is believed that an employee may have been negligent in duties, failed to comply with a reasonable instruction, or be suspected of misconduct, serious misconduct or gross misconduct;

All steps must be carried out as soon as possible and without any unreasonable delay by all parties.

Research misconduct will be considered outside the scope of this policy as such matters will be dealt with in accordance with the Procedure for the Investigation of Misconduct in Research which can be found at <http://www.aber.ac.uk/en/hr/employment-information/misconduct>

- 1.2 Potential criminal matters

If the allegation indicates that the employee may have committed a criminal offence, the Director of Human Resources must be informed immediately. He/she will consult with the Pro Vice-Chancellor ((Students and Staff)) or in his or her absence, with a member of the University Executive Group.

2. Informal stage

- 2.1 The day-to-day supervision of employees is part of the management function and is outside the scope of the more formal procedures for dealing with potential breaches of discipline. There are likely to be fewer requirements for referring to the formal procedures if issues of concern are brought to employees' attention at the earliest possible opportunity by their line manager. If the issue is believed to be of a minor nature, the line manager and employee should always seek to resolve the matter through informal discussions, advice or support.

If a manager is in any doubt about whether an incident of misconduct should be dealt with informally, they should seek advice from HR.

- 2.2 The line manager should, in an informal 1 to 1 discussion, explain the basis of his / her concerns, provide any evidence which has come to light and give the employee a chance to respond, listening carefully to what the employee has to say. Informal discussions with employees are not formal disciplinary proceedings. These are informal one to one discussion intended to resolve issues at the lowest possible level.
- 2.3 Where either party feels it may assist in reaching a positive outcome to the meeting, a trade union representative or work colleague together with an HR representative can support the process.
- 2.4 During the course of the meeting, it may become apparent that there is no evidence of misconduct or there is a misinterpretation of events. If this is the case, the line manager will confirm that the matter is closed. No record of the meeting will be retained.
- 2.5 If there is evidence of minor misconduct, the line manager should discuss and agree the improvements necessary within a defined period of time in an agreed improvement plan with regular progress reviews built in. The line manager should also make it clear that any further misconduct, or failure to improve, could lead to the formal procedure being implemented. The agreed improvements, time-plan and implications of lack of improvement

will be communicated to the employee in writing by the line manager as soon as possible and no later than 10 working days after the meeting.

The record of the meeting will not form part of an employee's formal disciplinary record, but if the employee's subsequent pattern of behaviour should lead to the formal disciplinary procedure being initiated, informal records which have been kept for management purposes may be referred to. These records will not be retained for longer than six months unless there is a valid reason to retain them for up to 12 months where there may be a reoccurring issue.

- 2.6 Informal discussions will be recorded by the line manager who will need to agree the record of the meeting with the employee. The line manager will give a copy to the employee and keep a copy securely in accordance with the University's Data Protection Policy.
- 2.7 If during an informal discussion it becomes obvious that the matter is potentially serious and should move to a formal process the meeting will be adjourned and the formal procedure in Section 3 should be followed. The employee should be advised that the matter will be taken forward under the formal disciplinary procedure, enabling the employee to continue to exercise their right to be accompanied should they so wish.

3. Formal Disciplinary Procedure

3.1 Stage One

This stage is for dealing with minor offences which are straightforward and where facts are unlikely to be disputed. These should be dealt with by the employee's supervisor or line manager.

The employee will be invited to a meeting in writing by the line manager. The letter will include the details of the allegations that are to be considered, provide any documentation already gathered and relevant to the issue with the letter and outline the individual's rights under the procedure - including the right to be accompanied by a recognised Trade Union (TU) representative or a work colleague and the right to call witnesses. The employee will normally be given 7 working days advance notice of the date of the meeting but should the employee wish to extend the period of consideration of the documents, then a maximum of 10 working days can be given.

The line manager will invite a member of HR to the meeting or discuss the matter with them to ensure consistency in the decision-making process.

At the meeting the employee will be given the opportunity to respond in full to the issues raised in the letter and to provide evidence of any mitigation. Once the employee has provided their response, the manager will adjourn the meeting and make a determination.

At this stage the outcomes can include:-

- Dismissing the matter – the employee will be advised at the meeting. The matter is then formally closed and expunged from their employee record.
- Arranging counselling/training - it may be appropriate to correct a situation without the need for a verbal warning. In such circumstances, training/support will be offered to rectify a situation. A review of progress will take place within a specified period of time by the line manager of the employee, normally not exceeding six months.

- Verbal warning - where the issues of concern are substantiated a verbal warning can be issued and will remain on their employee record for a period of six months. No other warning can be given at this stage of the procedure. The outcome will be communicated to the employee in writing within five working days.
- The employee will have the right of appeal against a verbal warning– refer to Section 6.

3.2 Stage Two

Progression to stage two will be initiated where one of the following circumstances has occurred:

- Stage one has not resulted in the required improvement in conduct;
- More serious or gross misconduct may have taken place (Refer to Appendix C).

The Director of HR or deputy will appoint a Fact-Finding Officer (FFO) to establish the facts of the situation, normally within 5 working days. In exceptional circumstances, if the FFO needs to be replaced during the investigation, the Director of HR or depute will appoint a replacement, again within 5 working days. This is a member of staff who will not be the employee's line manager, nor have had prior involvement in the matter and would be from another department.

3.3 The Investigation

The employee will be advised in writing of the name of the FFO by HR. The letter will include the details of the allegations that are to be considered and the individual's rights under the procedure - including the right to be accompanied by a recognised Trade Union (TU) representative or a work colleague. A copy of the letter to the employee will be sent to the employee's line manager.

The FFO will write to the employee inviting them to attend a meeting. The letter will include details of the allegations that are to be considered and will remind the employee of their rights under the procedure. This meeting will normally be arranged no more than 10 working days after the appointment of the FFO.

At the meeting the employee will be asked to respond to the allegations. If the employee concerned wishes to remain silent when interviewed no assumptions as to their culpability will be made purely as a result of that silence. The FFO will ask questions to establish the facts and may also wish to interview other people in order to obtain further relevant information.

3.4 The FFO will consider whether further witnesses need to be interviewed and relevant documentary evidence gathered.

3.5 Where alleged misconduct is believed to have taken place by an employee who is a representative of a trade union recognised by the University no action under this procedure, other than precautionary suspension, will be taken until a full-time official of that trade union has been informed.

3.6 All interviews will normally be recorded and a copy of the transcriptions of the meetings will be provided to the employee and witnesses normally within a maximum of 5 working days of the meeting. The notes should be annotated with any changes and signed as confirmation that they are a correct record of the meeting and a copy returned to the FFO and HR within a maximum of 5 working days of receipt. If no response is received within

this timeframe then notes/transcripts will be taken as accepted. When an employee chooses not to have the meeting recorded and transcribed, hand written notes will be taken. At the end of the meeting these notes will be signed by those present as a true record and will not normally be transcribed.

3.7 The FFO will inform the employee of any necessary changes to agreed timescales outlining the reasons for these changes.

3.7.1 The FFO will collect any relevant documents including written witness statements.

3.7.2 The FFO will produce a report using the template shown in Appendix F (outlining the findings, conclusions and recommendations), normally within 10 working days of the return of the notes/transcript from the final investigation interview.

3.8 The report from the FFO, on which the HR representative will have provided advice, will be sent to the Director of HR or depute in the first instance, who will review the report and then, within 3 days, discuss the report with the Institute Director or Head of Professional Service Department or depute. The Director of HR or depute will arrange a meeting to discuss the findings.

A meeting will normally be held with the individual and their representative within a further 5 working days (if they choose to be accompanied) with the Head of Department or depute and HR Manager or depute who will inform the employee of the outcome of the investigation. A record of the meeting will be given to the employee, normally within 3 working days. The actions may be:-

3.8.1 Dismiss the matter

If the complaint is without foundation the employee will be advised at the meeting. HR will inform the line manager and any witnesses that the matter has been concluded. The matter is then formally closed and expunged from their employee record.

3.8.2 Arrange advice/guidance/training

It may be appropriate to correct a situation without the need for a formal disciplinary hearing. In such circumstances where necessary, further training/guidance will be provided to rectify a situation. A review of progress will take place within a specified period of time by the line manager of the employee, normally not exceeding six months.

If the employee does not engage and accept the recommended actions, the matter may need to be referred back to Section 3.1 onwards for reconsideration.

3.8.3 Refer the case to a disciplinary hearing under the formal disciplinary procedure outlined below.

4. Stage Three

Disciplinary Hearing

4.1 The employee will receive confirmation in writing from HR that the matter will be referred to a formal disciplinary hearing (see Appendix A) to consider the allegations. The disciplinary panel will consist as per the table in Appendix E. The procedure to be followed at the disciplinary hearing is detailed in Appendix A.

- 4.2 The employee will normally be given a minimum of 5 working days' notice of the hearing; told the purpose of it, with the details of the alleged misconduct being outlined; and invited to attend together with their trade union representative or work colleague. Where the evidence to be considered is complex additional time may be allocated. See guidance document for additional information in Appendix A.
- 4.3 The report by the FFO and any evidence they intend to rely upon will be provided to the employee at least 10 working days before the date of the hearing. The letter will include the names of any persons who are to be called to give evidence.
- 4.4 Any written evidence to be introduced by the employee at the hearing, together with the names of any relevant witnesses they wish to call, and their confirmed availability, should be provided to the person conducting the hearing at least three working days in advance of the date of the hearing.

If, for good cause, the employee is unable to attend the hearing, it will be rescheduled to a date normally within 5 working days of the original hearing, or exceptionally at some other mutually agreed time, unless the employee specifies in writing that their trade union representative or work colleague has agreed to present the case on their behalf.

Alternatively, the employee may submit a written statement of case to be considered by the panel in the course of the hearing.

If the employee fails to attend the hearing without good cause or fails to attend the re-arranged hearing without good cause, the matter will be considered by the panel in absentia.

5. Disciplinary outcome

- 5.1 If the complaint is without foundation where possible the employee will be advised at the disciplinary hearing or within 3 working days. HR will inform the line manager and any witnesses that the matter has been concluded. The matter is then formally closed and expunged from their employee record. No record of the complaint will be kept on the employee's files.
- 5.2 Where the panel has a reasonable belief that on the balance of probabilities the allegation(s) have been substantiated or substantiated in part, the following disciplinary action may be taken under this stage of the procedure.

Note: Warnings will normally be issued within 5 working days of the hearing.

5.2.1 Formal verbal warning

For a minor offence or offences, a formal verbal warning may be issued making it clear that further misconduct may render the employee liable to further disciplinary action involving more serious consequences. The employee should be informed that this warning will be noted on his/her employee files for a period not exceeding six months. An employee who has received a formal verbal warning and whose conduct has been acceptable for the period determined shall have that warning removed from their records and shall be notified in writing that this has been done.

5.2.2 First written warning

For more serious allegations, or the repetition of misconduct after a formal verbal warning has previously been given and remains live, a first written warning may be issued setting out the nature of the issue and informing the employee that further misconduct may result in further disciplinary action under this procedure. The warning shall be noted in the employee's files for a period normally not exceeding one year. All warnings shall be disregarded after acceptable conduct for the period of the warning, and the employee notified in writing of its removal from their employee files.

5.2.3 Final, or combined first and final, written warning

For a serious issue which might justify summary dismissal for gross misconduct, but where the panel conducting the hearing decides that a lesser penalty is appropriate in the circumstances, or for an offence after a first written warning has been given and is still live, a final (or combined first and final) written warning may be issued setting out the nature of the offence and informing the employee that further misconduct may render him/her liable to further action under this procedure that could result in dismissal. The warning shall be noted in the employee's files for a period of one year. Where the warning is issued as an alternative to dismissal the period of the warning will be two years. The arrangements for noting the warning on the employee's personal file and its subsequent removal after the specified period of acceptable conduct are set out in the preceding paragraph. The panel will consider any patterns of behaviour which may signal an alternative approach is required in respect of timescale that a warning should remain on the file for a maximum of two years.

5.2.4 Dismissal

For an act or acts of further misconduct, other than gross misconduct, by an employee who is under a final written warning, he/she may be liable to dismissal with notice or with pay in lieu of notice.

5.2.5 Summary Dismissal

In cases where gross misconduct is alleged and is established on the balance of probabilities, the employee may be liable to summary dismissal with immediate effect and without notice.

5.2.6 Alternative sanctions

Immediate disciplinary demotion, redeployment or suspension without pay, recovery of monies or other penalty short of dismissal, may be imposed in conjunction with a final or combined first and final written warning, as an alternative to dismissal, subject to provision for doing so being in accordance with the employee's terms of employment, or by agreement with the employee.

6. APPEALS

- 6.1 An employee has the right to appeal (on the grounds outlined in section 6.2 below) about any formal disciplinary action within 5 working days of receiving written notification of the disciplinary action. Details relating to the conduct of disciplinary appeal hearings and the nature of the appeal panel are in Appendices B and E. If there is an appeal, those involved in the initial disciplinary hearing decision will not take part in the making of the decision at

the appeal stage. The Chair of the disciplinary panel will normally be called to present the reasons for their decision at the appeal. In his /her absence another member of the panel may depute.

- 6.2 The opportunity to appeal against a disciplinary decision is essential to natural justice, and appeals may be raised by employees on any number of grounds.

The decision to appeal must be indicated in writing within the time limit above. The employee should state the ground(s) for the appeal either at that time or at the latest within five working days of submitting their notification of appeal.

Grounds for appeal may include:

- The employee considers that the procedures followed by the person(s) conducting the hearing were in some way defective (see table at Appendix E for panel composition);
- The employee considers the penalty imposed to be inappropriate or inconsistent with previous practice;
- The employee wishes to introduce new evidence that has subsequently come to light and which, had it been known at the time of the hearing, could have affected the decision.
- The employee believes the penalty is too harsh.

Disciplinary sanctions will take place immediately except in cases of demotion or re- deployment. If the appeal is unsuccessful the deferred disciplinary action will be imposed after the appeal hearing. Where the employee has been dismissed with notice, the appeal will normally be heard during the period covered by that period of notice.

- 6.3 On completion of the proceedings, the decision of the appeal panel may be announced by the Chair of the appeal panel. The decision will be confirmed in writing within 5 working days to the employee and his/her line manager by the HR representative present at the hearing. No further right of appeal will be available to the employee within the University.

7. Suspension or re-allocation of duties

It should be made clear that suspension or re-allocation of duties is not an assumption of guilt and is not considered a disciplinary sanction. All options to avoid a suspension where possible will be considered but if any of the following is relevant the matter should be referred to the Director of Human Resources or depute who will bring it to the attention of the Pro Vice-Chancellor (Students and Staff Services) (or in their absence another member of the University Executive) who may consider suspension or re-allocation of duties on full pay during the investigation:

- If the presence of the employee is likely to hinder the investigation;
- if the continued presence of the employee is thought to pose a threat to the health and safety of staff, students or other members of the University;
- If it becomes clear during the investigation that a serious breach of discipline may have occurred, such that the continued presence of the employee might compromise either themselves or the University then either suspension or the allocation of alternative duties might be considered.

The reasons for and conditions of the suspension will be given in writing within three working days by the Director of Human Resources or depute. Any decision to suspend on a precautionary basis will be reviewed as a minimum requirement every 10 working days and on a regular basis thereafter by the Pro Vice-Chancellor ((Students and Staff Services) or the member of the

University Executive who made the decision to suspend. The outcome of each review will be confirmed in writing to the employee by HR.

8. Revision or Termination of this Procedure

- This procedure will be periodically reviewed in consultation with the Trade Unions recognised by the University. The procedure will be included in the University's Ordinances and any changes agreed by Council.

9. Welsh Language – Employee Rights

In accordance with the Welsh Language Standards that came into effect on 1 April 2018 employees have the right to use the Welsh language to

- (a) make a complaint;
- (b) respond to a complaint or allegation;

and employees also have the right to use the Welsh language in meetings where they are the subject of

- (c) complaints and allegations (or have made the complaint)
- (d) disciplinary proceedings
- (e) effective contribution scheme discussions
- (f) individual consultation meetings

A simultaneous translation service from Welsh to English will be provided at the meeting when the meeting cannot be conducted solely in Welsh.

The university has, in conjunction with its recognised trade unions, incorporated the above requirements into all relevant HR policy and procedural documents.

Appendix A

Procedure for formal disciplinary hearings

The chair of the disciplinary panel will:-

- Introduce those present to the employee and explain the purpose of the formal hearing; namely, to consider whether disciplinary action should be taken in accordance with the University's Disciplinary Procedure and that the meeting will be conducted in such a manner that the allegation(s) against the employee are fully and properly explored;
- Confirm that the employee and his/her representative have received copies of documents or written statements which have been produced in support of the case against the employee;
- Explain how the hearing will be conducted, and confirm that participants will be allowed to present their evidence without interruption;
- Ensure that the standard of proof required at the hearing will be on the basis of the balance of probabilities, i.e. that it is more likely that something happened than it did not.

The hearing will normally be recorded. A copy of the recording will be kept but will not be transcribed as a matter of course. Where an appeal is subsequently received, the recording will only be transcribed where all parties agree that it is necessary to assist the appeal process. Where agreement is not reached a copy of the recording will be issued to the employee and the panel members. When an employee chooses not to have the meeting recorded and transcribed, hand written notes will be taken. At the end of the meeting these notes will be signed by those present as a true record and will not normally be transcribed.

1. Presentation of the Allegations

The chair of the panel will state the allegation(s) outlined in the letter to the employee. The fact finding officer will then be asked to present the evidence. Witnesses may be called if required. The employee, the employee's representative, and the panel members may question any witnesses called. Each witness will be called to give evidence and will withdraw after giving evidence but may be recalled at the request of the person conducting the hearing.

In exceptional circumstances, where a witness feels unable to attend the hearing e.g. medical grounds, adjustments to the process will be considered. For example, to enable the witness to attend, questions may be put to them on behalf of the employee via their representative and/or the panel.

If the witness cannot attend, the evidence contained in their written statement will be assessed based on the facts and appropriate weighting given on a case-by-case basis.

'The ACAS code'. (Disciplinary section 12) says:

"Employers and employees (and their companions) should make every effort to attend the meeting. At the meeting the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be given an opportunity to raise points about any information provided by witnesses. Where an employer or employee intends to call relevant witnesses, they should give advance notice that they intend to do this."

2. Employee's reply

The employee or his/her representative will be given an opportunity to state his/her case. The employee or his/her representative will be given an opportunity to ask questions, present evidence, and call witnesses in turn. The panel members may question the employee and/or any witnesses called. Each witness will withdraw after giving evidence but may be recalled at the request of the Chair or with his/her consent.

3. Adjournments

The Chair may adjourn the proceedings at any stage if this appears necessary or appropriate or is requested by other parties. If adjourning for the purpose of enabling further information to be obtained, he/she will specify the nature of the information required. Any adjournment will normally be for a stated period.

4. Summing up

After general questioning and discussion, the Chair will ask the person presenting the evidence giving rise to the allegation(s) and the employee or his/her representative to give a short summary of the key points of their case. The employee or his/her representative against whom the allegation(s) lies will be allowed to conclude the summing up. No new evidence will be introduced at this stage.

5. Adjournment and decision

The Chair will then close the hearing to enable the panel to consider the evidence and decide whether or not formal disciplinary action is appropriate. The fact-finding officer and the employee together with his/her representative, will then withdraw.

Based on the facts, the Chair will decide on the balance of probability whether or not formal disciplinary action is appropriate.

Where the Chair decides that formal disciplinary action is not required, the member of staff will be informed of this in writing normally within 5 working days of the hearing. All information relating to the complaint will be removed from the records.

If the Chair decides that formal disciplinary action is required, before deciding on what form that should take, he/she will consider:

- the finding of fact for each of the allegations
- the gravity of the offence;
- the action taken in any similar cases in the past;
- the employee's disciplinary record - including any current warnings;
- any mitigating circumstances.

The decision will be taken as soon as possible, and no later than two working days. Where possible the decision will be communicated in person by the Chair of the panel following the adjournment and a written confirmation will follow within five working days. Written confirmation will be sent by agreement with the employee in person, by post, internal mail or by email with a read receipt requested.

Appendix B

Procedure for the hearing of appeals

The following arrangements will apply:

(Please refer to chart in **Appendix E**)

1. Appeals against a formal warning or penalty short of dismissal will be heard by a panel Chaired by Pro Vice-Chancellor (Staff and Students) or a member of the University Executive in her absence, and an Institute Director or Head of Professional Services Department in the case of business support staff. Appeal panel members will not be from the same department as the appellant or have had any earlier involvement with this or any other case involving the appellant.
2. Appeals against dismissal will be heard by three persons drawn from a standing panel appointed by the Council of the University. The Vice-Chancellor or a Pro Vice-Chancellor will Chair the hearing sitting with either an Institute Director or Head of Professional Services Department and a lay member of Council. None of those hearing the appeal will be from the same department as the appellant or have had any earlier involvement with this or any other case involving the appellant.
3. The appeal hearing shall normally be convened within 7 working days. Human Resources will be responsible for making the arrangements for the hearing of the appeal and a representative from Human Resources will be present at the hearing to advise on procedure and to provide administrative support. The HR representative will not have been involved in the disciplinary hearing.
4. Where the facts on which the original decision was based are not in dispute, the appeal panel will base their considerations on the evidence provided at the disciplinary hearing. The only additional material that can be introduced is material that could not be provided at the time of the disciplinary hearing. This may involve the calling of additional witnesses with the consent of the Chair of the appeal panel. The Chair of the appeal panel will agree to consider additional information only if evidence has been provided that this information could not have been made available at the time of the hearing. This additional material can be provided by the employee or his/her representative.
5. The employee will be invited to the appeal meeting in writing by HR. The letter will include the nature of the reasons for appeal that are to be considered, provided with any documentation relevant to the issue and outlining the individual's rights under the procedure - including the right to be accompanied by a recognised Trade Union (TU) representative or a work colleague. The employee will normally be given 7 working days advance notice of the date of the meeting which should allow sufficient time to arrange to be represented at the hearing and to consult that person before the appeal hearing is held.

The employee will be given the opportunity in a meeting with the appeals panel to outline their reasons for appeal in full and to provide evidence. The employee will then withdraw, and the Chair of the disciplinary panel will be invited to present the rationale for disciplinary panel's decision. Once the cases have been presented, the chair will adjourn the meeting to enable the panel to make a determination.

6. The employee will be informed in writing of the arrangements for the appeal hearing and his/her rights under the procedure. This information will be given to the employee and

his/her representative at least 10 working days prior to the appeal hearing the letter will include the names of any additional witnesses.

7. If, for good cause, the employee or the Chair of the original hearing is unable to attend the appeal hearing, it will be rescheduled to a date normally within 10 working days, or some other date mutually agreed, of the original appeal hearing of which he/she and his/her representative (if any) will be informed without delay.

Appendix C

Gross misconduct

Some acts or omissions are so serious in themselves that they may justify dismissal without notice for a first offence. Where an action or omission is so serious or has resulted in a fundamental breakdown of trust and confidence in the employee to the extent that the employment relationship has broken down, dismissal on the grounds of gross misconduct may result.

Examples of gross misconduct may include:

- stealing from members of staff, students or the public; (*refer to Fraud Policy/Financial Regulations)
- dishonesty;
- gross negligence;
- sexual misconduct at work;
- fighting, physical assault;
- falsification of a qualification which is a stated requirement of the employment or which results in a financial gain; *
- deliberate damage to or serious misuse of the University's property;
- being under the influence of alcohol or drugs at work;
- falsification of records or claims for personal gain;*
- downloading, viewing and/or sharing offensive and/or illegal materials from the internet or other sources;
- Bringing the University into serious disrepute;
- Serious breaches of Health and Safety.

This list is neither exclusive nor exhaustive. Other acts of misconduct may come within the general definition of gross misconduct.

Appendix D

Notes on Management of Risk

By the very nature of a disciplinary process any assessment of risk which is undertaken will be dynamic, i.e. it is unlikely to be completed or evaluated until the meeting is being held. These advice notes should be considered in relation to all employees and witnesses involved in a disciplinary hearing or investigation.

An exception would be if the person concerned was on sick leave, in which case HR would liaise with Occupational Health for advice. This would similarly apply if the employee is still in work but has been referred to Occupational Health.

HR will always consider the points below and evaluate each one according to the individual case.

- Consider whether there is a risk to any individual involved, either emotional or physical
- Offer and discuss Employee Assistance Programme support and/or Counselling
- Offer a recess or comfort break as appropriate, including drinks, fresh air etc. Keep this in mind throughout all meetings and offer on a regular basis.
- If necessary, ask how the person concerned will get back to their office, consider if they need to be accompanied, if they are driving, ascertain that they feel comfortable and are safe to drive, if not offer support or a lift.
- If an employee is suspended or off work, assess their fitness to return home particularly if they live alone.
- If the employee is suspended, ascertain if they are driving home, assess their fitness to drive/offer assistance as necessary.
- If it is considered that an employee or witness is in a distressed state, ask a colleague trained in mental first aid to assess their state of mind.

If there is a clinical diagnosis or report available BEFORE the onset of the meeting/s then Occupational Health or GP reports need to be accessed and acted upon. If these reports are not evident prior to the disciplinary process, then follow guidelines as above.

RISK ASSESSMENT CHECKLIST ER

CASE WORK - GENERIC ASSESSMENT

APPLICABLE TO

ALL EMPLOYEES

ASSESSOR - H HINKIN

DATE

RISK CALCULATOR

1 =Minor 2=Serious 3=Major

1= Unlikely 2=Possible 3=Probabl

1 to 3=Low 4 to 6 7 to 9
=Medium =High

NO.	HAZARD	TO WHOM	RISK RATING	PROBABILITY	RISK	CONTROL MEASURES
1	Suspension	Employee	1	2	Low	Reasons for decision to be provided. Support offered by way of counselling and OH services. Confidentiality of process. Build review of decision into procedure. Support offered by employee/TU representative.
2	RTW following suspension	Employee/others involved e.g. Witnesses/line manager	1	2	Low	Confidentiality of process. Involve employee and representative. Communicate to staff if ongoing process
3	Child protection allegations	Employee/ others involved e.g. Witnesses/line manager	3	3	High	Involve appropriate external agencies. Liaise with Comms Team. Stress to all involved confidentiality of process. TU involvement, support via counselling and OH services.
4	Press Coverage	Employee/ Co- workers/witnesses/ employer	1	2	Low	Confidentiality of process. Advise employee and representative of any coverage. Communicate to staff if ongoing process. Offer support from HR. Consider staff updates. Advise EAP provider so that tailored support can be available.
5	Malicious allegations	Complainant and Employee	1	2	Low	Stress in policy framework what action can be taken against malicious complainants. Support for Employee via Counselling and OH. Mediation or facilitation post complaint being offered to the parties.
6	Psychological impact during process	Employee	1	2	Low	Reasons for decision to be provided. Support offered by way of counselling and OH services. Confidentiality of process. Ensure process is followed. Support offered by employee/TU representative. Keep employee updated on progress.

7	Psychological impact post process	Employee/ Co- Workers/ witnesses/employer/ Investigating Officer	1	2	Low	Support via OH and counselling. Mediation/facilitation of first meet. Confidentiality of process stressed to those involved. Clarity given that outcomes are not communicated in detail. Ensure any training or support required is put in place and monitored.
8	Impact on physical health or wellbeing during process	Employee/ Co- Workers/ witnesses/employer/ Investigating Officer	1	2	Low	Support via OH and counselling. Mediation/facilitation of first meet. Confidentiality of process stressed to those involved. Clarity given that outcomes are not communicated in detail. Ensure any training or support required is put in place and monitored.
9	Complaints against colleagues	Complainant and accused/line manager	1	2	Low	Support and clarity concerning process to be followed. Confidentiality of process and roles of the parties explained. Consider separation of parties/mediation/informal approach to resolve. Offer support via OH and counselling.
10	Sickness during process	Employee/witness	1	2	Low	Seek advice from OH regarding continuation, adjustments to process or whether process needs to be delayed or continued in their absence
10	Sickness during process	Investigating Officer	1	1	Low	Consider whether new IO should be appointed based on likely duration of absence versus stage of completion. Involve OH as appropriate.
11	Resignation during process of employee under investigation	Complainant/Line Manager	1	1	Low	Communicate that process ends due to resignation - unilateral act. Offer support via counselling service.

Appendix E

Levels of Decision Making

No panel member involved in the decision making process or in an advisory capacity at the hearing stage should be involved at the appeal stage.

Action	Fact-finding Officer	Decision making person/panel	Appeal
Minor matters – Verbal warning only	-	Line Manager	Institute Manager/Head of Professional Service
Matter referred to a disciplinary panel by the FFO	FFO should be of a higher grade than the employee subject to the investigation and from a different department.	Panel 1. Institute Director 2. Head of Professional Service Department In advisory capacity: HR Manager	<i>Against written or final written warning</i> 1. Pro VC (Students and Staff) (Chair) or member of University Executive in her absence 2. Institute Director or Head of Professional Services Department In advisory capacity: HR Manager
			<i>Against dismissal</i> 1. VC/ Pro VC 2. Institute Director or Head of Professional Services Department 3. Lay member of council In advisory capacity: Deputy or Director of HR

Appendix F

Investigation report template- (please note this is for use as an example only and is not definitive).

STRICTLY PRIVATE & CONFIDENTIAL

Investigation Report

Into Complaint of (xxx)

[DATE]

Author.....

CONTENTS

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5	Allegations & Findings	5
6	Conclusions	6-7
7	<i>[Recommendations - if appropriate]</i>	7

Appendices:

No	Document	Date
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1. Introduction and Background

1.1 This report is based upon my interviews with the complainant (xx), (yy), the subject of the complaint, and a number of individuals mentioned by (xx), (yy) and other witnesses in the course of this investigation.

1.2 Terms of Reference

1.2.1 I was appointed as investigator to explore the allegations detailed in (xx) letter [DATE] (attached at Appendix 1 of this report).

1.2.2 It was agreed with Aberystwyth University that I would provide a preliminary report based on my interviews with (xx) and (yy) and the examination of any relevant files and correspondence. Aberystwyth University would then take a view as to whether it was necessary to investigate the matter further, by interviewing individuals mentioned either by xx or yy. I provided a preliminary report in [date] and was instructed by [NAME] to extend the investigation by interviewing further witnesses.

2. Methodology

2.1 This report is based on:

- Interview with xx on [date/s]
- an interview with yy on [date]
- an examination of xx personnel file held by Aberystwyth University
- an examination of xx/yy’s personnel file held by Aberystwyth University
- Interviews with:
 - o
 - o
 - o
 - o
 - o

2.2 Email exchange and correspondence between various parties were also reviewed as were xx’s appraisal documents for the last four years.

2.3 All those interviewed were asked to confirm that the statements prepared were an accurate record of their interviews with me. Signed copies of these statements are included in Appendices X-X.

3. Chronology of events

3.1 A chronology of events is set out below.

3.2 xx has had difficulty in providing exact dates of the incidents that she alleges. From the interviews conducted, I have attempted to piece together a chronology of events and place either an exact or approximate date of the incidents alleged by xx.

Date	Incident/Event	Evidence
[date]	example	Statement (Appendix 2) Statement (Appendix 3)
[date]	example	
[date]	example	Letter
[date]	Management meeting incident regarding	Notes (appendix...)
[date]	Alleged behaviour.....(example)	letter
[date]	Incident.....	letter
[date]	Incident.....	statement
[date]	Incident.....	Grievance Letter
[date]	incident	Letter

4. Overview of allegations

- 4.1 The allegations made by xx are those set out in detail in their Letter [DATE] (Appendix 1) and the statement prepared following my interview with her, signed by her as an accurate record of that meeting (Appendix 2).
- 4.2 xx commenced employment with Aberystwyth University 11 years ago on [date] and is employed as a xxxxxxx, a position she has held for xxx years since [date].

This section of the report should set out each allegation in turn taken from the complaint Letter and interview/s. Try to use some quotes where appropriate.

5. Allegation and Findings

The section of the report should go through each allegation in turn and outline whether you have found evidence to support that allegation and what that evidence is. If you have been unable to find evidence for example if there were no witnesses, then the term 'I have been unable to substantiate this allegation' is often used. It does not mean the allegation is untrue necessarily, just that you have found no evidence to support it.

6. Conclusions

This section of the report summarises your conclusions against each of the allegations

If your overall finding is that there is evidence to support the allegation, you should state that there would appear to be a prima facie case to answer.

7. Recommendations

You may not always be asked to provide recommendations in your report. This should be agreed at the outset when you discuss the scope of the investigation. Sometimes it may be more appropriate to provide recommendations in a separate document or verbally in a meeting or over the telephone.

In this section, you may wish to put forward recommendations for change limited to policy or training issues, for example:

- 7.1 Appraisal Policy - review the definitions for "outstanding" and "good" and consider re-training managers in the appropriate use of each score.
- 7.2 Dignity and Respect at Work - Consider implementing a suitable training programme for all senior managers to reinforce what is acceptable and not acceptable conduct

Author

Job Title

Date