

Adopted: 25th April 2017

Amended format: September 2019

DISCIPLINARY PROCEDURE

PURPOSE

This procedure aims to encourage improvement in individual conduct and work performance, but where there is no improvement the procedure allows for disciplinary sanctions, up to dismissal, to be imposed in a fair and systematic way.

SCOPE

This procedure applies to all AUKCAP employees.

All employees and volunteers with either receive a copy of this procedure or be advised how to obtain a copy on their appointment. The procedure will also be referred to in AUKCAPs terms of employment.

PROCEDURE

An individual may become subject to this procedure starting at any stage if his/her alleged misconduct warrants this.

AUKCAP will endeavour to ensure that the disciplinary procedure is carried out in a timely manner.

Employees of AUKCAP will not normally be dismissed for a first act of misconduct except in cases of Gross Misconduct (examples of which are given below) where the penalty will usually be dismissal without notice.

1. No disciplinary action will be taken until the matter has been investigated.
2. Only a person with authority delegated by the AUKCAP Board can impose disciplinary sanctions.
3. At all stages in the Disciplinary/Dismissal Procedure employees will be advised of the nature of the complaint against them, and will be given an opportunity to state their case, respond to the evidence gathered during the investigation and present their own evidence at a hearing before any decision is made. If an employee wishes to call evidence from witnesses s/he must give notice in advance to the manager

- holding the hearing.
4. Employees must take all reasonable steps to attend disciplinary hearings, and hearings may be held in their absence if they do not attend.
 5. Employees are entitled to ask to be accompanied at all disciplinary/dismissal hearings including at appeal hearings. The companion may be a work colleague or, alternatively, an appropriate trade union official who is either a full time official employed by the union or a lay official who the union has certified as having experience of or having received training in acting as a workers' companion at disciplinary or grievance hearings.

Employees must make their own arrangements to be accompanied, and must make their request to be accompanied to the Manager holding the hearing in good time before the date of the hearing. AUKCAP is entitled to refuse unreasonable requests to be accompanied.

If a proposed companion is unable to attend at the suggested time, the employee must propose an alternative date at a reasonable time within the five working days following the hearing date. If no suitable alternative time which is mutually acceptable can be found within this five day period, the employee must seek another companion.

6. An employee has the right to appeal against any disciplinary action. As far as practicable, this appeal will be processed by a person or body not involved in determining the original sanction.

1. THE INVESTIGATION

- 1.1 No disciplinary action will be taken until the matter has been investigated. This investigation will usually be carried out by an employee or a trustee of AUKCAP. However, an independent person may be asked to undertake the investigation, or assist with the investigation, if the circumstances are deemed to warrant it. This person, as far as is practicable, will not then hold the disciplinary hearing.
- 1.2 The investigation can include interviews with the staff member concerned, colleagues including any aggrieved person and any other witnesses.
- 1.3 Having established the facts, a decision will be taken on how the matter should be dealt with.
- 1.4 For the avoidance of doubt, investigatory meetings held to establish the facts of a case are not formal disciplinary meetings.

2. FORMAL ACTION

2.1 Notification in writing

- ◆ The first step in any formal process, following the investigation, will be to let the employee know in writing what it is they are alleged to have done wrong. So far as is reasonably practicable, the documentary evidence gathered during the investigation will be provided to the employee in advance of a hearing.
- ◆ The letter will also invite the individual to a hearing at which the problem can be discussed.

2.2 Failure to attend disciplinary hearing

- ◆ If the employee is unable to attend the hearing, they must notify the person presiding at the hearing or the Chief Executive as soon as possible and give the reason for non-attendance— preferably in advance of the meeting. Where employees fail to attend because of circumstances outside their control (for example unforeseeable transport difficulties or an illness in the family), then arrangements will be made to re-arrange the hearing.
- ◆ If the employee does not attend the rearranged hearing (for any reason) AUKCAP may hold it and make a decision in the employee's absence.

2.3 Deciding on action

- ◆ Depending on what is said at the disciplinary hearing, the presiding officer will decide whether or not to take disciplinary action and if so what action is appropriate.
- ◆ There is a choice of actions that can be taken and these are indicated below. If the employee's misconduct or poor performance – or its continuance – is sufficiently serious, it may be appropriate to move directly to a final written warning for a first "offence". In cases of gross misconduct, AUKCAP may decide to dismiss even though the employee has not previously received a warning for misconduct.

2.4 Oral warning

- ◆ Where minor misconduct or poor performance has occurred, the employee may be given an oral warning. Oral warnings will normally be disregarded for disciplinary purposes after 6 months.
- ◆ A file note will be kept of the oral warning with a record of key points from the hearing. A copy of this note along with information about the right to appeal will be given to the employee.

2.5 Written warning in the case of poor performance

- ◆ Following the meeting, the employee who is found to be performing poorly will be given a written warning setting out:
 - the performance problem;
 - the improvement that is required;

- the timescale for achieving this improvement;
 - information about the right to appeal.
- ◆ The employee will be informed that failure to improve will lead to further disciplinary action. A copy of the warning will be kept, but it will usually be disregarded for disciplinary purposes after a period of 12 months unless stated otherwise.

2.6 **Action in the case of misconduct or poor performance**

- ◆ Where, following a disciplinary hearing the employee is found to have committed misconduct, the usual first step (if an oral warning is not appropriate) is to give a written warning. The warning will set out the nature of the misconduct, the improvement that is required and the timescale over which the improvement is to be achieved.
- ◆ The employee will be informed that failure to improve performance, or any further misconduct within a specified timescale, will lead to further disciplinary action. A record of the warning will be kept, but it will normally be disregarded for disciplinary purposes after a period of 12 months unless stated otherwise.

2.7 **Final written warning**

- ◆ Where there is a failure to improve work performance or there is further misconduct in the timescale set in a written warning, or where a first offence is sufficiently serious, the employee may be issued with a final written warning.
- ◆ The final written warning will give details of the complaint. It will warn the employee that another act of misconduct, or failure to improve their work performance will lead to dismissal. A final written warning will normally be disregarded for disciplinary purposes after period of 12 months unless specified otherwise.

2.8 **Dismissal**

- ◆ If the employee's performance still fails to improve, or if there is further misconduct, the final stage in the disciplinary process will be dismissal.
- ◆ The employee will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will terminate, the appropriate period of notice and their right of appeal.

3. **GROSS MISCONDUCT**

- 3.1 If after investigation and any disciplinary hearing it is believed that an employee has committed an offence such as those listed below (the list is not exhaustive) the normal consequence will be summary dismissal:
- theft or fraud (or attempted theft or fraud);
 - insubordination or refusal to carry out reasonable instructions;

- physical violence, bullying or offensive behaviour;
- deliberate damage to property;
- misuse of AUKCAPs property or name;
- inappropriate use of the internet, social media or computer misuse;
- an act, whether inside or outside work, which does or could bring disrepute or shame on AUKCAP;
- alcohol or illegal drug use affecting work;
- causing loss, damage or injury through serious carelessness;
- gross negligence or incompetence in the employee's duties;
- a serious breach of health and safety rules;
- a serious breach of confidence;
- deliberate falsification of records, including mis-statements made as part of an application for employment;
- a criminal offence outside work considered detrimental to AUKCAPs interests and making the employee unsuitable to continue work;
- an act of discrimination or harassment; or
- any other act or omission which destroys the Organisation's trust and confidence in the employee or for which summary dismissal is a reasonable consequence.

3.2 No employee will be dismissed for gross misconduct without first being given the opportunity to put their case at a disciplinary hearing.

3.3 If, on completing the investigation and disciplinary procedure, AUKCAP is satisfied that gross misconduct has occurred, the result will normally be summary dismissal.

4. SUSPENSION

While an alleged offence is being investigated the employee may be suspended, during which time he or she will be paid their normal pay. Suspension is not a disciplinary sanction and should not be viewed as any indication of a belief in any misdemeanour.

5. APPEALS

5.1 An employee who wishes to appeal against any disciplinary decision must do so by writing to the Manager of the manager that took the decision within five working days from receipt of the written confirmation of the decision. Details of the reasons for the appeal must be provided.

5.2 That manager may pass the appeal to be heard by another person(s). As far as possible, the appeal will be heard by a more senior manager than the manager who made the disciplinary decision, or member/s of the Board of Trustees not previously involved in the case.

5.3 All participants in the appeal hearing will have prior access to all relevant evidence and documentation including the notes of the original hearing.

- 5.4 The person(s) holding the appeal has the authority to quash, reduce or in exceptional cases increase the original disciplinary penalty. The decision in the appeal shall be final, and no further right of appeal will be available to the employee.
- 5.5 Disciplinary or dismissal action will take effect before the appeal hearing, including termination of employment. Where an appeal against dismissal is upheld any deficit in remuneration or continuity of employment will be restored.
- 6. CONFIDENTIALITY**
Records of disciplinary proceedings will be kept confidential.

MONITORING

This document will be reviewed within 36 months of adoption.

Disciplinary policy approved: 01/09/2020 (Date)



Signed by Chair of Trustees