

Committee	HR&R		
Agenda Item	3.1		
Date paper prepared	10/10/2022	Date of committee meeting	27/10/2022
Subject	HR Policies and Procedures – Staff Disciplinary Policy and Procedure		
Author	Judith Fenton, HR&OD Lead		
Action requested	For approval		
Purpose of the paper	To share the policy for approval		
Brief summary of the paper	<p>The paper shares our drafted Staff Disciplinary Policy and Procedure. The document has been developed in partnership with SMT, union colleagues, and key staff. LNCC approved the policy for implementation for Employees who joined from August 2021, and for employees who TUPE'd to SUHI from NAFC on 1st August 2021. The rationale being that this process is marked for national negotiation and that, therefore, as the SIC policy was collectively bargained, it should not be amended at this point. We will be required to use both this policy and the SIC one until both are superseded by a national policy.</p> <p>EIS-FELA wish it noted that there are differences between what would be normally regarded as gross misconduct (and action short of dismissal) within this new disciplinary policy and procedure, applicable to new SUHI employees (from 1st Aug 2021) and ex-NAFC employees, and what is regarded as gross misconduct (and action short of dismissal) for ex-SIC employees. This inconsistency means we could potentially be treating SUHI employees differently for the same "offence".</p> <p>Management acknowledge this risk but we do not think it appropriate to simply 'match' the SIC policy in this area, which does not capture our position. HR would assess the risk as minimal – in such circumstances we would seek to use consistency and take a common sense approach based on case law.</p>		

Consultation	SMG and LNCC
Resource implications	None identified
Risk implications	A failure to have a policy in place runs a significant risk in our ability to follow best practice and legislation in the area of staff conduct. There is a residual risk in the fact that we are not able to have 'one policy for all' in this area but the central logging of cases by HR and the HR support offered throughout a disciplinary process, should minimise this risk
Link with strategy	N/A
Equality, Diversity and Inclusion	Summarise how any actual or potential (positive or negative) equality, diversity, and inclusion implications have been considered in the development of the paper. Please refer to the Equality, Diversity and Inclusiveness Policy for more information.
Island Community Impact	Summarise how any actual or potential (positive or negative) impacts on island communities have been considered in the development of the paper.
Paper status	<input checked="" type="checkbox"/> Open – The paper may be circulated to non-members of the committee and published online without restriction. <input type="checkbox"/> Restricted – The paper must not be circulated to non-members or published online until after the committee meeting.

	<input type="checkbox"/> Confidential - The paper must not be circulated beyond the committee members and should not be published online. [Please note papers may still be subject to Freedom of Information requests – see below].
Freedom of information	Open If closed/ withheld, select date this will become 'open': Enter a date.

Staff Disciplinary Policy and Procedure

1. Purpose

1.1 Shetland UHI recognises that it is the responsibility of all staff to ensure that acceptable levels of attendance, conduct, behaviour, and performance are maintained at all times. The purpose of this policy and procedure is intended to address situations where the conduct or behaviour of a staff member falls below acceptable standards.

Shetland UHI's Vision:

Shetland UHI will be an inspirational hub of innovation and learning designed to meet the needs of the people of Shetland, nationally and internationally.

Shetland UHI's Values:

We will achieve our Vision by:

- ***Working together*** - Fostering activity and interaction across the organisation and between staff and students.
- ***Working for Shetland*** - Addressing skills needs, supporting innovation and applied research for the Shetland economy as the university for Shetland, with the University for the Highlands and Islands (UHI).
- ***Working sustainably*** - Embedding sustainability in the curriculum and in our practice.
- ***Working to become resilient*** - Encouraging staff development and aspiration, exploring and achieving new income streams.
- ***Working with partners*** - Developing relationships with employers, schools, communities, SIC and relevant national and international institutions.

1.2 The purpose of this policy and procedure is to provide a procedure within which the resolution of disciplinary issues can be undertaken in a way which is designed to promote fairness and consistency in relation to the treatment of all staff.

1.3 This policy identifies those staff responsible for contributing to the effective development and maintenance of discipline within Shetland UHI.

2 Scope

- 2.1 This policy applies to employees of Shetland UHI who joined the organisation from August 2021 and to employees who TUPE transferred from NAFC Marine Centre on 1st August 2021, thereby superseding the previous policy and procedure arrangements that were in place for those employees.
- 2.2 This policy, and the existing corresponding policy that applies to employees who TUPE transferred from the Shetland Island Council on 1st August 2021, will be superseded by any nationally bargained policy agreed and approved by the National Joint Negotiating Committee (NJNC), at a future date.

3 Procedure

- 3.1 **At every stage of both the formal and informal procedures, the following principles will be upheld:**
- Informal action will be considered, where appropriate, to allow employees the opportunity to improve or address conduct issues, and employees will be supported in that process.
 - Counselling or other mediation / support may be more appropriate, and should always be considered.
 - Issues concerning capability will not be managed under a disciplinary process.
 - No disciplinary action will be taken against an employee until the case has been fully investigated.
 - In the event of formal action being considered against an employee, the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made at a disciplinary hearing.
 - Employees will normally be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary meeting.
 - At all stages of the process, including the investigation, an employee has the right to be accompanied by a recognised trade union representative or work colleague.
 - All employees are expected to engage with an investigation process where called upon to provide a statement.
 - In instances where, an investigation is being undertaken; and/or, an investigation results in no action being taken; and/or a hearing determines that allegations are unsubstantiated, the member of staff will not be subject to any detriment in treatment or status.
 - The confidentiality of an investigation must be upheld, breaches of confidentiality by any employee involved in the investigation will be regarded as misconduct, and if proven, an employee may themselves be subject to disciplinary action.
 - Allegations made of a malicious nature will be considered as misconduct, and the employee who made such allegations may be subject to disciplinary action being taken against them.

- Where a grievance is raised by a member of staff in relation to disciplinary issues under investigation these may be considered through a parallel disciplinary process and grievance process. In these circumstances the discipline and grievance procedures to be followed will be those considered most appropriate within the circumstances to allow a full and open hearing of all relevant points.

3.2 Note of Concern

If conduct does not meet known and reasonable standards, but is of a minor nature, an employee may be issued with a note of concern. This will set out the problem, the improvement or change that is required, and the timescale in which this is expected to be achieved by. A record of the concern will normally be kept by HR for up to six months, or such time as considered appropriate at the time of issue, after which point it will be expunged. A failure to achieve the required improvement or change may result in a progression to the formal process.

3.3 Formal Process:

1. First written warning

Where conduct does not meet known and reasonable standards, a first written warning may be issued. This will be in writing and set out the nature of the misconduct and the change in behaviour required, the timeframe the sanction will be in place for, usually up to 6 months, and the right of appeal. The warning will also inform the employee that a final written warning may be considered if there is no sustained satisfactory improvement or change. A record of the warning will be kept for up to six months, and the length of time it is in place will be confirmed to the affected employee, after which point it will be expunged, subject to satisfactory conduct.

2. Second or Final written warning

If the offence is sufficiently serious, or if there is further misconduct or a failure to improve conduct during the currency of a prior warning, a final written warning may be given to the employee. This will give details of the complaint, the improvement required and the timeframe the sanction will be in place for, usually up to 12 months. It will also warn that failure to improve may lead to dismissal (or some other action short of dismissal) and will refer to the right of appeal. A record of the warning will be kept for up to twelve months, and the length of time it is in place will be confirmed to the affected employee, after which point it will be expunged, subject to achieving and sustaining satisfactory conduct or performance.

3. Dismissal

If there is still further misconduct or failure to improve performance the final step in the procedure may be dismissal. Dismissal decisions can only be taken by a member of the senior management team, and the employee will be provided in writing with reasons for dismissal, the date on which the employment will terminate, and the right of appeal.

3.4 Gross Misconduct

The following list provides some examples of offences which are normally regarded as gross misconduct:

- Theft, fraud, unauthorised possession of SUHI property, deliberate falsification of records or any other form of dishonesty.
- Wilfully causing harm or injury to another employee or student, physical violence, bullying or grossly offensive behaviour.
- Deliberate and serious damage to SUHI property.
- Causing loss, damage or injury through gross carelessness or gross negligence.
- Deliberately accessing internet sites containing pornographic, offensive or obscene material.
- Serious acts of insubordination.
- Wilful refusal to obey a reasonable management instruction.
- Serious incapability at work brought on by the consumption or use of alcohol or illegal drugs.
- A serious breach of Health and Safety rules.
- Unlawful discrimination or harassment.
- Criminal conviction or unacceptable conduct which renders the employee unsuitable for the duties and responsibilities of the post, whether or not the conduct occurred whilst on duty.
- Unauthorised disclosure of information relating to SUHI or its customers.
- Bringing SUHI into serious disrepute.
- A serious breach of confidence.

The above is intended as a guide and is not an exhaustive list.

3.5 Action Short of Dismissal

In cases of gross misconduct or where the affected employee has been issued with a final written warning but has not achieved the improvements required, the outcome may be dismissal. However, there may be cases where there are mitigating circumstances that enable a panel to decide to stop short of dismissal and impose an alternative action to address the issue, whilst retaining the employee in employment.

By way of example, action short of dismissal may include, but is not limited to:

- an extension to the currency of an existing disciplinary sanction;
- the utilisation of mediation or other such remedial action;
- a temporary change to job role;
- an expectation upon the employee to engage with opportunities (mediation, counselling, external support services, for example) to overcome or address factors that contributed to the misconduct (e.g. mitigating factors).

In such cases, the expectations will be agreed with the employee, and set out in writing including any timescales for review or when the employee is expected to have made the change.

3.6 Suspension

If an employee is accused of an act of gross misconduct, or in order to ensure an objective and complete investigation can be undertaken, employees may be suspended from work on full pay, whilst the alleged offence is investigated.

Suspension should be considered a neutral act, which is required to allow a fair and objective investigation of the facts to take place. This should not be associated with any assumption of guilt or regarded as a form of disciplinary action.

3.7 Trade Union Officials

A disciplinary hearing involving an employee who is an accredited Trade Union representative shall not be convened until the circumstances have been discussed with a full-time official of the Trade Union concerned. Where the possibility of disciplinary action against a Trade Union representative arises, Human Resources must be consulted at the earliest opportunity.

Where gross misconduct is alleged of an accredited Trade Union representative, the employee may be suspended on full pay after consultation with Human Resources. A full-time official of the Trade Union concerned must be informed of this action as soon as possible, and written confirmation of the suspension must be sent to the Union within three working days. A copy of this letter must be forwarded to Human Resources.

3.8 The Disciplinary Hearing

Following an investigation, the manager who requested an investigation be undertaken will be required to assess whether or not the matter should progress to a formal disciplinary hearing.

Where the matter is progressed, the role of the Disciplinary Hearing Chair will be undertaken by an appropriate line manager who is not the line manager of the individual concerned, and the chair may choose to appoint an additional line manager, to support the process. In matters of gross misconduct or where the potential outcome may be dismissal, a hearing must be chaired by either the VP Operations, DP Tertiary, or Principal (though the relevant manager may be required to join the panel or attend as a witness).

The employee concerned will be given at least seven clear calendar days' notice in writing to attend the Disciplinary Hearing. The letter will set out the time, date and place of the hearing, the panel membership, and of their right to be accompanied by a recognised trade union representative, or colleague. The employee will be advised of the potential outcomes of the hearing.

The Investigating Officer will attend to present their findings. An HR representative will also be in attendance, and the hearing formally noted and approved by the Disciplinary Hearing Chair and the employee concerned.

At the hearing, the Disciplinary Hearing Chair will invite the Investigating Officer to present their findings and both the panel and employee concerned will have the opportunity to ask questions. The employee concerned, or their representative will also

have the opportunity to present their case, and answer questions of the Disciplinary Hearing panel members.

Either party – the panel or employee concerned – may call upon witnesses.

If the employee concerned intends to call upon witnesses, they must provide this information ahead of the Disciplinary Hearing.

Following this, the Disciplinary Hearing Chair will usually adjourn the hearing to consider their decision. The hearing will then be reconvened, and the Chair will advise of their decision verbally OR that they wish further time to consider their decision and will notify the employee of the outcome within seven calendar days of the hearing.

Where significant new evidence is presented by the employee concerned, the Disciplinary Hearing Chair may choose to adjourn the hearing and reconvene at a later date to allow sufficient time to investigate and consider the evidence.

All outcome decisions will be confirmed in writing to the employee.

3.9 Appeals Process

An employee who wishes to appeal against a disciplinary decision must do so within fourteen calendar days of the written confirmation of the decision. Appeals must be made in writing and state the grounds for appeal. The Disciplinary Hearing Chair must advise an employee to whom their appeal should be addressed to within the outcome letter.

Appeals must be heard by a more senior member of staff than the Disciplinary Hearing Chairperson. In cases where the Chair was the Principal, the appeal hearing will be conducted by the Human Resources and Remuneration Subcommittee.

The employee must be given at least seven calendar day's notice, in writing, of the appeal hearing and be advised of their right to be accompanied by a recognised trade union representative, or colleague.

The Appeal Hearing chairperson should:

- Introduce those present to the employee.
- Explain the purpose of the hearing, how it will be conducted and what powers the officer hearing the appeal has.
- Ask the employee why he or she is appealing against the disciplinary penalty.
- Pay particular attention to any new evidence that has been introduced and ensure the employee has the opportunity to comment on it.
- Thoroughly explore all the relevant issues and summarise the facts.
- Call an adjournment to consider what decision to come to.

The officer hearing the appeal must hear the case in its entirety, including hearing representations from the appellant and allowing questioning by the appellant. The officer hearing the appeal has the power to confirm, amend or withdraw the warning appealed against, but cannot substitute disciplinary action of a more serious form than that originally imposed.

The decision shall, if possible, be made known to the employee at the end of the appeal hearing and shall, in any case, be confirmed in writing within five calendar days of the hearing.

4 Conducting an Investigation

It is important that all relevant facts are gathered promptly and that the following principles are followed:

- 4.1 Where the incident is of a minor nature, following consultation with Human Resources, the manager can proceed to gather the facts relating to the situation. Otherwise, an Investigating Officer should be appointed by the Head of Section or Area, or their nominee, to carry out an investigation. Where an Investigating Officer is appointed, they will be given clear terms of reference in order to enable an investigation to be conducted. The officer who conducts the investigation must not conduct the disciplinary hearing.
- 4.2 The employee concerned will be advised that an investigation will be held, the reasons for it, and that they will be required to give a statement to the Investigating Officer and that when the investigation is concluded they will be contacted again.
- 4.3 The purpose of the investigation is to find out facts in an open, straightforward manner. This will involve conducting as many interviews as necessary to enable all the information to be drawn together, in order to reach a conclusion. The employee concerned and any witnesses should be seen by the Investigating Officer and asked to provide a detailed statement. Employees will be given the opportunity to have a recognised Trade Union member or colleague present when providing their statement. A draft copy of the statement should be produced for the employee/witness, who should be afforded the opportunity to amend it so that it fully accords with his/her memory of the incident(s) in question.
- 4.4 Employees and witnesses have a responsibility to co-operate with an investigation process. Unless there is a justifiable reason, the amended and signed statement must be returned to the Investigating Officer promptly. Each statement should include personal details of the witness, i.e. full name, occupation/post title and length of service (where appropriate). A final copy of the statement should then be processed, signed and dated by the employee, and retained as evidence to support the investigation.
- 4.5 The object of this exercise is to ensure that the manager who requested the investigation to be carried out, is clear as to precisely what the complaint is and of the evidence surrounding the incident / event.
- 4.6 Each witness should be advised that he/she might be required to appear at any subsequent disciplinary hearing.
- 4.7 If, during the course of the investigation, significant new information comes to light, that may alter the course of the investigation, the Investigating Officer should bring this to the attention of the manager who requested the investigation be carried out, in order to seek guidance on whether this new information also requires to be investigated.

- 4.8 The Investigating Officer should produce a report which presents information to the relevant manager(s) in order for them to decide what happens next. The report may contain an evaluation about the strength of evidence, however it should not make recommendations about the outcome of the case. All statements made to the Investigating Officer by the employee concerned and any witnesses should be attached to the report.
- 4.9 On receipt of the report, the relevant manager should examine its contents and discuss with HR. If the relevant manager feels that further information/clarification is required, the report should be discussed with the Investigating Officer. If necessary, the Investigating Officer will seek the further information/clarification from the employee concerned and/or any witnesses, which may require further statements to be sought.
- 4.10 If, following investigation, a disciplinary hearing is deemed to be unjustified, any written statements or copies of any documents relating to the investigation shall be destroyed. Any original documents collected for the investigation shall be returned to the person/department from which they were obtained.
- 4.11 An Investigating Officer, once appointed, should not be changed, unless in exceptional circumstances and then only following reference to the employee's Trade Union / colleague representative, or with the employee directly if no Trade Union / colleague representative has been engaged.

5 Responsibilities

- All staff - have a formal responsibility to adhere to the requirements and guidelines of Shetland UHI policies, procedures, standards of service quality and recognised professional and behavioural standards.
- The Senior Management Group - is responsible for approving and leading the implementation of this policy. This shall include the provision of relevant training and guidance to those investigating disciplinary allegations and to those conducting disciplinary hearings.
- The Senior Management Group – is responsible for ensuring the proper application of the terms of this policy and procedure.
- Senior Management Group – is responsible for organising the administration and co-ordination of disciplinary hearings and appeal hearings. They will also provide advice and support as appropriate during investigations and hearings.
- All Managers and Team Leaders - have a duty to ensure the development and maintenance of effective discipline in relation to all staffing matters within their area of responsibility.
- The Investigating Officer – (an appropriately trained manager conducting an investigation), is responsible for ensuring an adequate and timely investigation into the matter. The Investigating Officer shall not have any function at any future disciplinary hearing other than presenting the facts of the investigation to that hearing.
- Hearing Officers - Formal disciplinary hearings will be conducted by a senior manager. Disciplinary hearings which may result in the termination of employment will be conducted by a member of the Senior Management Team – specifically, the Principal, Vice Principal or Depute Principal. Disciplinary appeals will be heard by the Principal or appointed deputy in their absence.

- In cases where the Principal was appointed Disciplinary Hearing Chairperson, the appeal hearing will be chaired by a member of the Human Resources and Remuneration Committee.
- The member of staff, who is the subject of an investigation, has a responsibility to cooperate during the investigation and to comply with the terms of this policy and procedure.

6. Retention of Documentation

6.1 Any documentation relating to disciplinary sanctions up to and including final written warnings will be retained for the duration which they are active, and retained on file in line with data retention guidance and thereafter destroyed.

6.2 Documentation relating to disciplinary hearings where the outcome is dismissal will be held for a period of 12 months from the date of termination.

7. Linked Policies

- Equality, Diversity and Inclusion Policy
- Dignity at Work Policy
- Capability Policy and Procedure
- Probationary Policy and Procedure
- Code of Conduct
- University of the Highlands and Islands Partnership Retention and Disposal Policy

8. Relevant Legislation

- Employment Rights Act 1996 as amended
- Employment Rights Act 2004
- Employment Rights Dispute Resolution Act 1998
- Employment Relations Act 1999
- Data Protection Act 1998 as amended;
- Human Rights Act 1998
- Health and Safety at Work etc. Act 1974;
- Management of Health and Safety at Work Regulations 1999;
- Equality Act 2010

Reviewed	By	Approved
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September 2022	HR and OD Lead (new policy)	Yes
September 2022	SMT	Yes
September 2022	LNCC	Yes
October 2022	HR&R	