

## Ordinance 37

# Disciplinary Procedure during Probation

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# **ORDINANCE 37**

## **DISCIPLINARY PROCEDURE DURING PROBATION**

### **1. SCOPE**

This procedure applies to all new employees who have been employed by the university with a probationary clause included in their contract of employment and where an issue of capability or conduct arises during their probationary period.

If an issue of capability or conduct arises during the probationary period but only comes to light after probation has been confirmed, the university's Disciplinary Procedure will apply. See

<https://www.aber.ac.uk/en/media/departmental/humanresources/employmentinformation/disciplinary/07.04.14---Disciplinary---EN---FINAL.pdf>

### **2. INTRODUCTION**

If an issue relating to a probationer's conduct is identified at an early stage of the probationary period (i.e. within the first 3 months), the probationer should normally be given informal support and additional mentoring, with a view to establishing the cause of the issue and advice and action as to appropriate remedial action to be completed within a specified period of time.

If the line manager is of the view that this informal intervention has not resolved the issue, or if the issue is sufficiently serious to warrant formal action without the need for prior informal support, a formal interview should be arranged between the line manager and the probationer to consider the matter.

### **3. FORMAL MEETING**

#### **a) MISCONDUCT/CAPABILITY**

The probationer should be advised in writing at least 5 working days before the meeting of the concerns about capability or conduct. The probationer may be accompanied at the meeting by a trade union representative, or a work colleague.

At the meeting, the line manager will set out the issues and the probationer will have the opportunity to respond.

The line manager will adjourn the meeting to consider the information presented to determine if the matter should be:

- i) Closed or
- ii) A written warning issued. This will specify the improvements that must be made and the timescale for achieving these improvements.

The decision should be taken the same day and communicated verbally to the probationer but if, due to exceptional circumstances, for example, where further information is required, the decision must be communicated within a further 2 working days. The decision should be confirmed in writing to the probationer within a further 5 working days.

Where a warning is issued, the letter will state the necessary improvements required and the consequences if these improvements are not achieved within a specified period, i.e. the appointment may not be confirmed and the matter may be referred to a formal Probationary Hearing.

## **Review Meetings**

Following a formal warning, the line manager should regularly monitor the situation and before the end of the specified period assess if the improvements have been demonstrated. A formal meeting will take place at which the line manager will give their view of the probationer's progress. The probationer may be accompanied by a trade union representative or work colleague. The probationer will have the opportunity to respond. The line manager will adjourn the meeting to consider the information presented to determine if the matter should:-

- i) Be closed with no change to the duration of the probationary period ;
- ii) Recommend further training, guidance and support and an extension of the probationary period;
- iii) Be referred to the ID/HOPSD as the actions taken have not led to the required improvements.

The decision should be taken the same day and communicated verbally to the probationer but if, due to exceptional circumstances, for example further information is required the decision must be communicated within a further 2 working days. The decision will be communicated in writing within 5 working days from the date of the decision.

Where issues of capability or conduct remain (as per iii above) the line manager will draft a report and submit this to the Institute Director (ID) or Head of Professional Service Department (HOPSD) for consideration.

Once the report has been received, the ID or HOPSD may take one of the following three actions:

- Dismiss the matter with no change to the duration of the probationary period;
- Recommend further training / guidance and an extension of the probationary period;
- Accept that the actions taken have not led to the required improvements and refer the matter to a Formal Probationary Hearing.

## **b) SERIOUS MISCONDUCT**

In cases of alleged serious misconduct the probationer will be invited in writing to a meeting with the line manager and advised that the matter is considered as serious misconduct.

At the meeting, the line manager will set out the issues and the probationer may be accompanied by a trade union representative or a work colleague. The probationer will have the opportunity to state his or her case, before any decision is made concerning whether the matter should:-

- i) Be closed with no change to the duration of the probationary period;
- ii) Result in a written warning being issued. Consideration can also be given to including further training/guidance and an extension of the probationary period;
- iii) Be referred to the ID/HOPSD;

For points i) and ii), where the line manager believes that the matter should be closed or a warning issued, this should be verbally conveyed to the probationer during the course of the meeting. The decision should then be confirmed in writing to the probationer within a further 5 working days. Where a warning is issued, the letter should make clear that if the necessary improvement is not achieved within a specified period, the appointment may not be confirmed and the matter may be referred to a formal Probationary Hearing.

Where issues of capability or conduct remain (as per iii above) the line manager will draft a report and submit this to the Institute Director (ID) or Head of Professional Service Department (HOPSD) for consideration.

Once the report has been received, the ID or HOPSD may take one of the following actions:-

- Dismiss the matter with no change to the duration of the probationary period;
- Issue a written warning and/or;
- Recommend further training / guidance and an extension of the probationary period;
- Refer the matter to a Formal Probationary Hearing.

### **Review Meetings**

Following a formal warning the line manager should regularly monitor the situation both during and at the end of the specified period to ensure the requisite improvement has been demonstrated. This should culminate in another formal meeting at which the line manager will give their view of the probationer's progress. The probationer may be accompanied by a trade union representative or a work. The probationer will have the opportunity to state his or her case before any decision is made concerning whether the matter should be:-

- Closed or;
- A report is submitted to the ID/HOPSD.

Following an adjournment, if on the evidence available, the line manager believes that the matter should be closed, this should be verbally conveyed to the probationer during the course of the meeting. The decision should then be confirmed in writing to the probationer within a further 5 working days.

Where the matter is not closed on review, the line manager will draft a report and submit this to the Institute Director (ID) or Head of Professional Service Department (HOPSD) for consideration.

Once the report has been received, the Institute Director or Head of Professional Services Department may take one of the following three actions:

- i) Dismiss the matter;
- ii) Recommend further training / guidance;
- iii) Refer to a formal Probationary Hearing.

## **4. PROCEDURE FOR FORMAL PROBATIONARY HEARINGS**

### **4.1 Introduction**

The probationary panel will comprise of a Pro Vice Chancellor who will chair the panel and an Institute Director (ID) or Head of Professional Services Department (HOPSD) in the case of professional services staff. Panel members will not be from the same department as the probationer or have had any earlier involvement with this or any other case involving the probationer.

The chair of the probationary panel will:-

- a) Introduce those present to the employee and explain the purpose of the formal hearing; namely, to consider the employee's conduct during the probationary period;

- b) 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;
- c) Explain how the hearing will be conducted, and confirm that participants will be allowed to present their evidence without interruption;
- d) The hearing will 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.

#### **4.2 Management presentation of the case**

The chair of the panel will state the conduct issues outlined in the letter to the employee. The ID/HOPSD of the employee's department/institute will then be asked to present the evidence, summarise the history of the case, including the steps that have been taken to support the employee to achieve the required standard of conduct. Witnesses may be called if required by either party. 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 Chair of the panel.

#### **4.3 Employee's reply**

The employee or his/her representative will be given an opportunity to respond to the case put forward. 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 of the panel.

#### **4.4 Adjournments**

The Chair may adjourn the proceedings at any stage if this appears necessary or appropriate or is requested by any of the other parties. Adjournments may also be called by the Chair to receive a legal position from HR on any legal matters raised during the course of the hearing. If adjourning for the purpose of enabling further information to be obtained, the Chair will specify the nature of the information required. Any adjournment will normally be for a stated period.

#### **4.5 Summing up**

After general questioning and discussion, the Chair will ask the ID/HOPSD presenting the case 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 will be allowed to conclude the summing up. No new evidence will be introduced at this stage.

#### **4.6 Adjournment and decision**

The Chair will then close the hearing to enable the panel to consider the evidence and make a determination. The ID/HOPSD and the employee together with his/her representative will withdraw.

The options available to the panel when making a decision are as follows:-

- There is no case to answer;
- To issue a written warning;
- To provide the probationer with further training and development;
- To dismiss the employee with notice or pay in lieu of notice.
- Summary dismissal

The panel will confirm their decision and the reasons for it in writing to the employee within 5 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.

The employee will have the right of appeal against a written warning or their dismissal.

## **5. 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 and Chief Operating Officer (or in their absence another member of the University Executive) who may consider suspension or re-allocation of duties on full pay during the process.

- 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 process 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 and Chief Operating Officer or the member of the University Executive who made the decision to suspend as a precautionary measure. The outcome of each review will be confirmed in writing to the employee by HR.

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.

## **6. RIGHT OF APPEAL**

The probationer will have the right of appeal against a written warning issued under Sections 3 and 6 of this procedure. The request must be made in writing to the Director of Human Resources, with 5 working days of the date of the warning being issued and provide a brief outline of the reason(s) for the appeal.

The Director of Human Resources or depute will arrange for an Appeals Panel to be convened.

## **7. PROCEDURE FOR THE HEARING OF APPEALS**

The following arrangements will apply:

### 7.1 Appeals against written warnings

Appeals against a written warning will be heard by the Pro VC/COO or depute Pro Vice Chancellor who will chair the panel and an Institute Director (ID) or Head of Professional Services Department (HOPSD) in the case of professional services staff. A HR Manager will attend the hearing in an advisory capacity.

### 7.2 Appeals against dismissal

Appeals against dismissal will be heard by three persons drawn from a panel appointed by the Director of Human Resources in conjunction with the University Secretary from the list below:-

- i) Pro Vice-Chancellor
- ii) Institute Director or Head of Professional Services Department
- iii) Lay Member of Council

The Deputy or Director of Human Resources will attend the hearing in an advisory capacity.

7.3 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.

7.4 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 previous hearing.

7.5 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.

7.6 The employee will be invited to the appeal meeting in writing. The letter will include the nature of the reasons for appeal that are to be considered, any documentation relevant to the issue 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. The employee will normally be given 5 working days advance notice of the date of the appeal hearing which should allow sufficient time to arrange representation at the hearing and to consult that person before the appeal hearing is held.

7.7 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 hearing. The only additional material that can be introduced is 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 Chair of the appeal panel will agree to consider additional information only if evidence has been provided that this additional 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.

7.8 The employee will be given the opportunity in the appeal hearing to outline their reasons for appeal in full and to provide their evidence. The Chair of the probationary hearing (or

their depute) will be invited to present the rationale for their decision to issue a written warning or to dismiss the employee.

7.9 Once both cases have been presented, the Chair of the appeal hearing will adjourn the meeting to enable the panel to make a determination.

7.10 The options available to the panel when making a decision are as follows:-

- To uphold the appeal;
- To uphold the appeal in part;
- To dismiss the appeal.

N.B. When upholding an appeal in full or in part, the appeal panel should also consider whether a lesser sanction should be imposed e.g. commuting a dismissal to a written warning.

7.11 The panel will confirm their decision and the reasons for it in writing to the employee within 5 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.

## **8. Policy Review**

The Director of Human Resources will co-ordinate a review of the University's Disciplinary Procedure during Probation every 3 years to maintain compliance with legislation and good practice.

The review will be undertaken in conjunction with the recognised trade unions and any proposed amendments will be submitted to Professional Development, Staffing and Equalities Committee for approval.

## **9. Equality Impact Assessment**

The University is committed to embedding the Equality Scheme into its policies, procedures and practices. This policy has been equality impact assessed in accordance with this scheme.

## **10. 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.