DISCIPLINARY PROCEDURE

1. PURPOSE

The purpose of this policy is to set out Aberness Recruitment Agency's position and procedures on workplace discipline. The Disciplinary Policy and Procedure has been written in accordance with the ACAS Code of Practice.

The purpose of the Disciplinary Policy and Procedure is to encourage employees to achieve and maintain high standards of conduct and behaviour in accordance with the requirements of Aberness Recruitment Agency and relevant professional codes of conduct that apply to specific professions within the agency. (Where provisions apply, the professional conduct and competence of medical staff may also be considered separately by the relevant body.)

The Disciplinary Policy and Procedure provides a mechanism for disciplinary matters to be dealt with promptly, fairly and consistently.

2. SCOPE

This procedure applies to all Aberness Recruitment Agency staff. It will only be used when necessary and as a last resort. Informal and/or formal counselling will be used to resolve matters prior to any disciplinary action being taken, where possible. The procedure is intended to be positive rather than punitive but takes cognisance of the fact that sanctions may have to be applied in some circumstances.

3. POLICY

Disciplinary situations include misconduct and /or poor performance. Where poor performance is due to lack of capability, as opposed to negligence, the matter will be dealt with under the Performance Management Policy.

Performance and attendance issues relating to sickness absence will be dealt with under the Attendance Management Policy.

Complaints made against an employee by another employee (under the grievance or bullying and harassment procedures) will be investigated and dealt with under the disciplinary procedure and the aggrieved employee will be informed of the outcome, where appropriate.

Complaints and/or concerns arising from the Whistle blowing policy and/or reporting of suspected fraud will be investigated and dealt with under the disciplinary procedure.

It is recognised that there may be matters than cannot be dealt with internally and Aberness Recruitment Agency reserves the right to make referrals to external authorities that may need to be involved (e.g. Police).

DISCIPLINARY PROCEDURE

4. CRIMINAL CHARGES OR CONVICTIONS

Criminal investigations, charges or convictions for some offences, such as dishonesty or violence committed outside working hours may result in disciplinary proceedings taken against the employee up to and including summary dismissal. Aberness Recruitment Agency will consider whether or not the employee's conduct or convictions merit action because of employment implications.

An external investigation, charge or conviction for any other type of offence may result in disciplinary proceedings being taken against the employee where, in the opinion of Aberness Recruitment Agency, it is such as to affect, or be likely to affect: the suitability of the employee for the position in which they are employed; or the business or reputation of Aberness Recruitment Agency; or where the existence of the charge or conviction could otherwise seriously undermine the trust and confidence that Aberness Recruitment Agency has in the employee.

5. GENERAL PRINCIPLES

Managers and employees should always try to resolve problems in the work place at the earliest possible opportunity and usually with the least possible formality. Ideally, matters should be addressed before they reach the stage of becoming a formal disciplinary issue.

Managers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.

Aberness Recruitment Agency recognises that a formal disciplinary procedure can be a stressful and upsetting experience for all parties involved. Everyone involved in the process is entitled to be treated calmly and with respect. We will not tolerate abusive or insulting behaviour from anyone taking part in or conducting disciplinary procedures and will treat any such behaviour as misconduct under this procedure.

An employee can discuss any part of this policy with their Union Representative or their line manager. They can help clarify an employee's rights as well as give guidance and support where it may be needed. Every individual has the right to representation at any point during the disciplinary process.

6. COUNCILLING

Counselling is an attempt to correct a situation and prevent it from getting worse without having to use the disciplinary procedure. Where improvement is required, the employee must be given clear guidelines as to:

- what is expected in terms of improving shortcomings in conduct or performance
- the time scales for improvement
- when this will be reviewed

- the employee must also be told, where appropriate, that failure to improve may result in formal disciplinary action.

A record of the counselling should be given to the employee and a copy retained in their personnel file. It is imperative that any counselling should be followed up and improvements recognised and recorded. Once the counselling objectives have been met, any record of the counselling will be removed from the employees file.

If during counselling it becomes clear that the matter is more serious, then the discussion should be adjourned, and pursued under the formal disciplinary procedure.

7. SUSPENSION

There may be instances where suspension with pay is necessary while investigations are carried out. Suspension is not disciplinary action. The purpose of suspension is manifold and can be used when it is necessary to remove a member of staff from the workplace pending an investigation for the flowing reasons:

- there are reasonable grounds for concern that evidence may be tampered with, destroyed or witnesses pressurised before the disciplinary hearing
- if there is a potential risk to the organisation or other employees or third parties in allowing the employee to remain at work
- to allow time for a 'cooling down period' for both parties for their own or others protection
- Pending a police investigation into an alleged criminal offence or any other serious incident.
- Where re-deployment is not a practical option
- Where the allegation is of gross misconduct.
- Where professional registration has lapsed or expired or been suspended and the employee can no longer operate in their work capacity
- Where the continued presence in the workplace of the employee presents a concern for patient safety and/or a hazard for other employees, or the employee themselves in terms of health and safety

Only the Directors of Aberness Recruitment Agency have the authority to suspend an individual. The nature of the allegations and the reason for the suspension must be stated.

Employees may be accompanied by a trade union or work colleague when being suspended. However, Aberness Recruitment Agency reserves the right to suspend in the absence of a representative or colleague if all reasonable attempts to locate them have failed.

DISCIPLINARY PROCEDURE

An employee suspended from duty will receive written confirmation within three days with:

- the reason for the suspension
- the date and time from which the suspension will operate.
- the timescale of the on-going investigation.
- the right of appeal to the immediate manager of the suspending manager should the suspension last more than 7 days

During suspension, the employee is expected to be available during normal working hours to attend meetings and/or to be contacted. Employees are bound by the implied obligation of good faith and their terms and conditions of employment.

8. EXAMPLES OF MISCONDUCT/GROSS MISCONDUCT

MISCONDUCT

Matters that Aberness Recruitment Agency views as amounting to misconduct and are subject to disciplinary action include, but are not limited to:

• Persistent bad timekeeping
• Unauthorised absence
• Minor damage to property
• Failure to observe Aberness Recruitment Agency or other company policies and procedures
• Abusive behaviour or language
• Dishonesty
• Unreasonable refusal to follow an instruction issued by a line manager
• Deliberate failure to reach required standards of performance
• Failure to maintain (or elapsed) professional registration
• Poor attendance
• Smoking in non-designated areas of any work premises

GROSS MISCONDUCT

Matters that Aberness Recruitment Agency views as amounting to gross misconduct include (but are not limited to):

• Stealing from Aberness Recruitment Agency, its employees/workers or the public
• Corrupt practices – receipt of money, goods or pecuniary advantage in respect of any services rendered
• Fraud – any deliberate attempt to defraud the company, its employees, clients or members of the public.
• Failure to comply with requirements to declare interests and any gifts or hospitality received.
• Falsification of records, reports, accounts, expense claims, time sheets or self-certification forms, whether or not for personal gain

• Falsification or loss of a qualification or professional registration that is a stated requirement of the employee's employment or results in financial gain to the employee
• Sexual misconduct at work
• Fighting with or physical assault on employees/workers or the public
• Deliberate damage to property or that of its employees/workers or members of the public whilst working for Aberness Recruitment Agency
• Drunkenness or being under the influence of illegal drugs while at work (including incapacity to perform normal duties)
• Possession, custody or control of illegal drugs on whilst at work
• Serious breach of Aberness Recruitment Agency policies, procedures and rules
• Abuse of Aberness Recruitment Agency computer system, including internet and email
• Breach of data protection, confidentiality or information security rules; including misuse of or failure to safeguard confidential information and/or patient data.
• Gross negligence (including any action or failure to act which seriously threatens the health and safety of an employee/worker or member of the public)
• Conviction, or management's reasonable belief, of a criminal (or other) offence that is relevant to the employee's employment
• Conduct that brings Aberness Recruitment Agency's name into disrepute
• Any form of bullying of employees/workers or the public
• Discrimination or harassment of a fellow employee/worker on the grounds of sex, sexual orientation, gender re-assignment, race, disability, age or religion or belief

PROCEDURE

FORMAL INVESTIGATION

Formal investigations should be carried out by the most appropriate manager who is not directly involved with the incident being investigated. This manager may involve others to assist with the investigation process. All the relevant facts should be gathered promptly as soon as is practicable after the incident. Statements should be taken from witnesses at the earliest opportunity. Any physical evidence should be preserved and/or photographed if reasonable to do so.

A report should be prepared which outlines the facts of the case. This should be submitted to the appropriate Director who will decide whether further action is required. Where appropriate, this report may be made available to the individual and their representative.

DISCIPLINARY PROCEDURE

In most circumstances where misconduct or serious misconduct is suspected, it will be appropriate to set up an investigatory hearing. This would be chaired by the appropriate Senior Manager / Director, who would be accompanied by another manager. The investigating manager would be asked to present his/her findings in the presence of the employee who has been investigated. Witnesses should be called at this stage, and the employee allowed to question these witnesses. The employee has a right of representation at this hearing.

Following the full presentation of the facts, and the opportunity afforded to the employee to state his side of the case, the hearing should be adjourned, and everyone would leave the room except the senior manager / Director hearing the case, and the other manager. They would discuss the case and decide which of the following option was appropriate:

1. take no further action against the employee
2. recommend counselling for the employee
3. proceed to a disciplinary hearing

All parties should be brought back, and informed as to which option has been chosen.

Should the decision be taken to proceed to a disciplinary hearing, then this may follow on immediately from the investigatory hearing if the following criteria have been met:

- the employee has been informed by letter that the investigation may turn into a disciplinary hearing, and that he has the right of representation
- they have been told in advance what the nature of the complaint is, and had time to consult with a representative
- all the facts have been produced at the investigatory hearing, and the manager / Director is in a position to decide on disciplinary action.
- the manager should inform the employee and their representative that the hearing would now become a formal disciplinary hearing, and invite them to say anything further in relation to the case.

It may be appropriate at this point to adjourn proceedings, whilst necessary arrangements are made for a representative to attend the hearing at the request of the employee.

Should anyone who is subject to disciplinary action resign during the course of it, the action will cease unless there are extenuating circumstances which require its continuance. The subject of the discipline may also request that the disciplinary action continue.

WARNINGS

DISCIPLINARY PROCEDURE

VERBAL
A Verbal Warning is appropriate when it is necessary for the manager in charge to take action against an employee for any minor failing or minor misconduct.

FIRST WRITTEN WARNING
A First Written Warning is appropriate when:

- a verbal warning has not been heeded and the misconduct is either repeated or performance has not improved as previously agreed.
- an offence is of a more serious nature for which a written warning is more appropriate.
- the recurrence or accumulation of an offence/offences, if left, will lead to more severe disciplinary action.

FINAL WRITTEN WARNING
A Final Written Warning is appropriate when:

- an employee's offence is of a serious nature falling just short of one justifying dismissal.
- an employee persists in the misconduct which previously warranted a lesser warning.

DEMOTING OR TRANSFER TO ANOTHER POST
This action is appropriate when:

- previous attempts, via the disciplinary procedure, to rectify a problem have failed and this is a final attempt to solve a problem without having to dismiss an employee.
- an employee is considered by the Manager of the department to be incompetent or otherwise unfit to fulfil the duties for which he is employed but where dismissal is not thought to be appropriate.

DISMISSAL
Dismissal is appropriate when:

- an employee's behaviour is considered to be Gross Misconduct.
- an employee’s misconduct has persisted, exhausting all other lines of disciplinary procedure.

TIMESCALES

Warnings issued to employees shall be deemed to have expired after the following periods of time:

- Verbal Warnings: 6 months
- First Written Warnings: 12 months
- Final Written Warnings: 18 months (or as agreed and recorded at the hearing)

DISCIPLINARY PROCEDURE

These time scales remain provided that during that period, no further warnings have been issued in respect of the employee's conduct.

LETTER OF WARNING

All Warnings must contain the following information:

- The letter must be issued within 7 days of the date of the disciplinary hearing.
- The nature of the offence and where appropriate, that if further misconduct occurs, more severe disciplinary action will be taken.
- The period of time given to the employee for improvement.
- The employee's right to appeal to the manager directly above that of the one issuing the warning.
- A copy of the warning and any supporting documentation must be attached to the individuals personnel file.
- The employee must also receive a copy of the warning which in the case of any written warning will be sent to their home address by recorded delivery if not handed to them in person.
- In the case of a final written warning, reference must be made to the fact that any further misconduct will lead to dismissal, and that the employee has the right of appeal, and to who they can make that appeal.

The letter confirming dismissal will contain the following information:

- The reason for dismissal and any administrative matter arising from the termination of their employment.
- The employees right of appeal and to whom they should make that appeal

APPEALS

Every employee has the right to appeal against the outcome of a disciplinary hearing. The basis of an appeal should normally relate to one of the following areas:

- that the Company's' Procedure had not been followed correctly.
- that the resulting disciplinary action was inappropriate.
- that the need for disciplinary action was not warranted.
- that new information regarding disciplinary action, has arisen

An appeal should be put in writing to the Managing Director. The letter of appeal may be constructed by the employee or their representative. The letter should contain the grounds for appeal and should be lodged within 10 days of receipt of the warning / dismissal letter.

An appeal will be arranged within 20 working days of receipt of the appeal letter.

APPEALS AGAINST VERBAL AND FIRST WRITTEN WARNINGS

DISCIPLINARY PROCEDURE

In the case of verbal and first warnings, the appeal will be heard by the manager next in line to the one who issued the warning.

APPEALS AGAINST DEMOTING, FINAL WARNINGS AND DISMISSAL

The hearing and determining of appeals against final warnings and dismissal will be heard by the appropriate Director. They may also involve another senior manager / Director not previously involved with the case.

When dealing with an appeal against a Final Warning or Dismissal written statements of case may be submitted no later than 2 days prior to the date of Appeal Hearing. No additional written evidence will be admitted by the Appeal Committee on the date of the Hearing.

Witnesses may be required by either party at an appeal hearing, dependent upon the circumstances and nature of the case. However, there is no specific obligation on either party to produce a witness. Either party must give 5 days prior notice that they intend to call specific persons involved or associated with the case under consideration.

It is the responsibility of the management representative and for the appellant to each arrange for the availability and attendance of any witness they wish to call.

RESPONSIBILITY

All those persons referred to within the scope of this policy are required to be familiar with the terms of this policy.

Maintenance, regular review and updating of this policy is conducted and agreed by the Director. Revision, amendments and alterations to the policy can only be implemented following consideration and approval by the Director of Aberness Recruitment Agency.