

# Disciplinary Policy

Owned & maintained by:	Human Resources
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## Introduction

1. The professionalism and integrity displayed by our employees means that we seldom need to refer to this discipline policy. You are expected to follow Audit Scotland's standards of conduct and performance at all times. If minor shortcomings occur in your conduct or performance then positive action such as counselling and/or an informal discussion with your senior manager will take place to improve the situation. Although an informal discussion does not form part of this policy, it will be recorded by your manager. Only if these problems persist or the misconduct is considered to be of a serious nature will Audit Scotland's discipline policy be used. This policy therefore applies to all employees of Audit Scotland.
2. See appendix 1 for a guide to performance management principles for managers and employees.
3. Our discipline policy has been formulated in consultation with the Staff Union (PCS) and takes account of the Code of Practice issued by the Advisory Conciliation and Arbitration Service (ACAS). The policy is not contractual and may be varied from time to time following consultation with the PCS.
4. The policy is not intended to intrude upon your private conduct except in circumstances where this may interfere with the discharge of your employment duties or the good reputation of Audit Scotland.

## Investigation and disciplinary interviews

5. When a disciplinary concern arises an investigation will normally be carried out by the relevant manager and/or the HR & OD Manager/HR Consultant. Having investigated all the facts, the manager will decide whether to drop the matter, arrange informal counselling or arrange for the matter to be dealt with under this policy.
6. Minor cases of misconduct and most cases of poor performance are best initially dealt with by informal advice and counselling rather than through this policy. Sometimes an informal warning may be issued by the manager detailing what needs to be done to improve, how performance or conduct will be reviewed and over what period. The aim of an informal warning is to encourage you to improve but you will also be made aware of what action will be taken if you do fail to improve your performance or conduct. An informal warning is not part of the discipline policy although a record may be retained by your manager.

7. In certain circumstances, Audit Scotland reserves the right to suspend you with pay (except where you are appealing against a dismissal in which case you may be reinstated if your appeal is successful) while an investigation is undertaken. The period of suspension will be as brief as possible and the decision to suspend you in this circumstance will in no way to be considered disciplinary action. Such action is undertaken only with the prior approval of Human Resources and you will receive a letter explaining the decision, the likely duration and the reason for the suspension.
8. Following the investigation and whenever disciplinary action may be considered necessary, a disciplinary interview will be held with you. This is to ensure that a full investigation has occurred and that all the facts have been established. The person who will hear and determine the outcome of the disciplinary hearing is shown below in sections 13 – 31. However, the person bringing forward the disciplinary action/presenting the case will not be the same person that determines the outcome.
9. Prior to the disciplinary interview you will be:
  - Given advance notice of the interview and an opportunity to agree a mutually convenient time;
  - Informed of the allegations/complaints against you; and
  - Given an opportunity to be accompanied by a companion. The companion could be a colleague or another individual specified within legislation in force at the time of the interview. Your companion will be able to address the hearing and confer with you but cannot act or answer questions on your behalf. Neither spouse/partners nor solicitors are normally considered suitable companions.
10. If the investigation and initial disciplinary interview stages indicate there is a basis for further action then the following steps will be taken. These steps normally occur sequentially but, where appropriate, Audit Scotland has discretion to advance the procedure. These procedures may also be amended in exceptional circumstances such as where you are absent through sickness or to accommodate any disabilities you may have.
11. For those with less than twelve months' service the steps are:
  - Final written warning; and
  - Dismissal.
12. For those with more than twelve months' service the steps are:
  - Formal oral warning (stage 1);
  - Written warning (stage 2);
  - Final written warning (stage 3); and
  - Suspension without pay or dismissal.

## Formal oral warning

13. In the case of minor infringements you will be given a formal oral warning (subject to paragraph 11). You will be informed of the reason for the warning, that it constitutes the first stage in the disciplinary process and that you have a right of appeal. A note of the oral warning will be retained on your personnel file but will be disregarded for disciplinary purposes after a period of six months.
14. You will also receive details of the action you should take to improve your performance or conduct, the targets to be met and the timescale for improvement. It will be made clear that any further misconduct or failure to meet these targets will result in further disciplinary action.
15. Your line manager's manager is normally authorised to deal with all matters including the issue of a formal oral warning.
16. As an indication only, the type of issues which would normally lead to you receiving a formal oral warning include, but are not limited to:
  - Poor work performance;
  - Poor timekeeping such as excessive flexitime debit;
  - Absence without satisfactory explanation;
  - Unsafe conduct, including fire hazards;
  - Discourtesy to colleagues or clients capable of causing serious damage or disruption to normal working relations.

## Written warning

17. If the infringement is of a more serious nature or you have not met the standards following a formal oral warning you will be given a written warning (subject to paragraph 11). You will be informed of the reason for the warning and that you have a right of appeal. A note of the written warning will be retained on your personnel file but will be disregarded for disciplinary purposes after a period of twelve months.
18. You will also receive details of the action you should take to improve your performance or conduct, the targets to be met and the timescale for improvement. It will be made clear that any further misconduct or failure to meet these targets will result in further disciplinary action.
19. Your line manager's manager is normally authorised to deal with all matters including the issue of a written warning. They will also inform the HR & OD Manager/HR Consultant in advance of any written warning being issued.
20. As an indication only, the type of issues which would normally lead to you receiving a written warning without prior use of earlier levels of warnings include, but are not limited to:
  - Falsification of Time Place and Travel principles; or
  - Failure to report unplanned absence.

## Final written warning

21. If the infringement is of a more serious nature or you have not met the standards following a written warning you will be given a final written warning (subject to paragraph 11). You will be informed of the reason for the warning and that you have a right of appeal. A note of the final written warning will be retained on your personnel file but will be disregarded for disciplinary purposes after a period of two years. Where misconduct has been very serious, it may be appropriate for the warning to continue for a longer specified period.
22. You will also receive details of the action you should take to improve your performance or conduct, the targets to be met and the timescale for improvement. It will be made clear that any further misconduct or failure to meet these targets will result in further disciplinary action.
23. Your Business Group Assistant Director or Director in partnership with and in the company of the HR & OD Manager/ HR Consultant is normally authorised to deal with all matters including the issue of a final written warning.
24. As an indication only, the type of issues which would normally lead to you receiving a final written warning without the prior use of earlier stages of warnings include, but are not limited to:
  - Falsification of Time Place and Travel principles, expenses or overtime claim;
  - Unauthorised use of an Audit Scotland vehicle;
  - Attendance at work while under the influence of alcohol (out with the alcohol policy) or drugs;
  - Breach of safety regulations or causing danger to persons or property;
  - Failure to comply with a reasonable instruction;
  - Sending material that contains language which is offensive to others;
  - Failure to follow Audit Scotland's policy and procedures relating to Information Security regarding use of unlicensed software; repeated loss of Audit Scotland data or equipment due to lack of care; wilful personal data breach;
  - Bringing Audit Scotland into disrepute; or
  - An act of professional incompetence.

## Dismissal after final written warning

25. Where you have failed to meet the required standard after a final written warning and following a further investigation and disciplinary interview you may be dismissed. You will receive written confirmation of dismissal containing details of the appropriate period of notice, reason for the dismissal and your right of appeal.
26. Where appropriate, Audit Scotland may consider alternatives to dismissal including:
  - Demotion to a more suitable available job; and
  - Transfer to another office or business group.

27. A member of Audit Scotland's Management Team (e.g. Chief Operating Officer, Director of Performance Audit and Best Value) in partnership with and in the company of the HR & OD Manager/HR Consultant is normally authorised to deal with all matters including the decision to dismiss you.

## Gross misconduct and summary dismissal

28. Certain acts of misconduct are considered sufficiently serious by Audit Scotland that such cases warrant summary dismissal without prior warning or notice. Such action will only take place following a full investigation and after having heard the employee's explanation, subject to paragraph 7 relating to suspension.
29. A member of Audit Scotland's Management Team (e.g. Chief Operating Officer, Director) in partnership with and in the company of the HR & OD Manager/HR Consultant is normally authorised to deal with all matters including the decision to summarily dismiss you.
30. In the event of summary dismissal you will, within seven days, receive from the HR & OD Manager a letter setting out details of the dismissal. This will include the effective date of dismissal, the reason for the decision to dismiss and details of your right to appeal.
31. As an indication only, the type of issues which would normally lead to you receiving summary dismissal include, but are not limited to:
- Conviction for an offence or criminal act which affects your ability or suitability for continued employment with Audit Scotland or your acceptability to other employees;
  - Gross misconduct such as stealing, embezzlement, corruption, physical violence, fighting, indecency or divulging of controlled/personal information;
  - Actions which may result in expulsion from a professional institute;
  - Actions that bring Audit Scotland into disrepute;
  - Acts of gross professional incompetence;
  - Serious breaches of safety regulations, causing danger to persons or property;
  - Unreasonable refusal to comply with a request or instruction during the course of a properly constituted investigation;
  - Acts of incitement or actual acts of discrimination, harassment/bullying or victimisation because of gender, sexual orientation, marital/civil partnership status, age, race, nationality, ethnic origin, religion or belief or disability;
  - Failure to follow Audit Scotland's procedures relating to information security as set out in the Information Security Management Policy, including:
    - Accessing, downloading, storing or forwarding inappropriate material from the Internet (e.g. chain letters, indecent material or pornography).

## General principles and guidelines relating to all stages of the disciplinary procedure

32. Managers involved in the disciplinary process will ensure that:
- Matters are dealt with as quickly as possible;
  - All facts are carefully investigated;
  - You receive details of the complaint against you and copies of all relevant evidence before any disciplinary interview;
  - The HR & OD Manager/HR Consultant is informed of any action more serious than a formal oral warning before it is issued;
  - When deciding upon what type of disciplinary action should be taken, your general record, length of service and special circumstances are considered;
  - There is no discrimination on the grounds of, gender, sexual orientation, marital status, age, race, nationality, ethnic origin, religion or belief and disability;
  - You have the opportunity to fully state your case before decisions are reached;
  - You are informed of your rights, particularly those relating to appeal or your right to be accompanied;
  - You receive an explanation for any disciplinary action and confirmation in writing, and
  - The discipline policy is used to encourage you to improve your conduct or performance to meet the acceptable standard.

## The appeal process

33. If you are not satisfied with a disciplinary decision which results in a warning or dismissal, you may appeal. Your written request for an appeal must be received by the person who undertook the disciplinary process or the HR & OD Manager within fourteen days.
34. The appeal must include details of the basis upon which you are making the appeal.
35. Arrangements will be made to hear your appeal as soon as practically possible, normally within seven days. You have the right to be accompanied by a companion who should be a colleague or any other person specified in legislation current at the time of the appeal. Your companion will be able to address the hearing and confer with you but not answer or act on your behalf. Spouses/partners or solicitors are not normally suitable as companions.
36. In some circumstances it may be appropriate to suspend you with pay pending an appeal unless the appeal is against a decision to dismiss. If you have been dismissed, your employment will be terminated whether or not you appeal. In the event that your appeal is successful you will be reinstated with no break in your continuity of employment.
37. Following the conclusion of an appeal hearing, no further right of appeal is possible within Audit Scotland.
38. Any appeal will normally be held by a senior member of Audit Scotland who has not been previously involved with your disciplinary procedure except in the case of an appeal against

dismissal which will be heard by a member of Audit Scotland's Management Team in the presence of those involved in the disciplinary process. Appeals against dismissal will follow the format shown in appendix 2.

39. A member of Human Resources will normally be present at appeal hearings to advise upon procedural issues.
40. Appeals will result in either:
  - The original decision being upheld with disciplinary action being confirmed.
  - The original decision being overruled and any disciplinary action being withdrawn.
  - Confirmation of the original decision to a large extent but with a less severe sanction replacing that originally imposed.
41. You will normally receive written confirmation of your appeal within seven days other than in exceptional circumstances.

## **Your right to be accompanied**

42. You have a statutory right to be accompanied by a fellow worker or trade union official to certain disciplinary hearings. Details are contained within the ACAS Code of Practice on Discipline and Grievance which can be found on the ACAS web site. Alternatively, a copy can be provided to you by the HR team upon request.

## Appendix 1

### Guideline principles on performance management for staff and managers

1. Generally speaking, having informally discussed performance issues with a member of staff, you would expect a Performance Improvement Letter (PIL) covering past and future performance to be in place prior to the discipline policy being invoked. The PIL should be thorough and include details of where improvement is required and the agreed monitoring period. At the expiry of this period, you would normally expect another conversation to be carried out.
2. For a reminder of the PIL process see ishare: <http://ishare/HR/SitePages/3D.aspx>

## Appendix 2

The following sets out the principles and process for the conduct of the Audit Scotland Management Team Member during a hearing of an appeal against dismissal.

The Management Team representative hearing the appeal will determine whether any witness statements should be obtained, whether these should be read out at the meeting or whether witnesses will be asked to attend. The Management Team representative will also determine the sequence/order in which witnesses are asked to attend the meeting to ensure that witnesses are less likely to be influenced by what they might otherwise hear during the earlier proceedings of the appeal hearing.

The senior manager will state the case against the dismissed employee setting out the basis upon which the dismissal has taken place.

1. The employee and their representative will have the opportunity to question the Manager or the managerial witness(es) about the case;
2. The member of the Management Team will have the same opportunity;
3. The employee or their representative will state the case against the decision to dismiss;
4. The Manager and the managerial witness(es) will be permitted to question the employee about the case;
5. The member of the Management Team will be permitted to also question the employee about the case;
6. The Manager will sum up the case for Audit Scotland for the decision to dismiss being upheld;
7. The employee and their representatives will have the opportunity to sum up the case for the decision to dismiss being overturned;
8. Both parties will retire to allow the member of the Management Team to consider their decision;
9. The member of the Management Team will convey their decision either in the presence of both parties or, if more time is required, in writing in accordance with the discipline policy.