

Resolving Staff Performance or Conduct Issues			
First Produced:	1/11/93 (Refer Notes)	Authorisation:	Te Kāhui Manukura
Current Version:	24/02/15	Officer Responsible:	Director, Corporate Services
Past Revisions:	29/5/95, 14/11/95, 27/2/96, 27/4/00, 10/01/01, 3/6/05, 28/7/06, 29/07/09		
Review Cycle:	3 years		
Applies From:	immediately		

Major changes/additions since the last version was approved are indicated by a vertical line in the left hand margin.

1 Introduction

1.1 Purpose

The purpose of this policy is to deal with resolving complaints of poor or inadequate conduct, or poor performance, made against Ara staff.

1.2 Scope and Application

- a This policy applies to all Ara staff members excluding the Chief Executive.
- b This policy applies to all complaints of poor or inadequate conduct or poor performance (collectively called complaints in this policy). The exceptions are:
 - i complaints dealt with under the Harassment Prevention policy; and
 - ii complaints dealt with as Academic matters.
- c The Ara Council as employer of the Chief Executive, will deal with all employment matters including performance and complaints relating to the Chief Executive.

1.3 Formal Delegations

- a Under section 2 of the State Sector Act 1998 the Chief Executive is the employer of all staff at Ara. The Chief Executive, as the employer, has the authority to take all and any disciplinary action against a staff member including to suspend and to dismiss.
- b The Chief Executive has the authority to delegate all of his/her powers under this policy to the Director, Corporate Services or any other Ara staff member provided that delegation is to a person employed at 200, 300 and 400 level or is an HRAdvisor.
- c Where the Chief Executive has delegated his/her authority to a Manager (200, 300 and 400 level managers) that delegate has the authority to issue all warnings up to a second written warning but does not have power to issue a final written warning, to suspend, or to dismiss a staff member the authority for which remains with the Chief Executive.

1.4 Definitions

Note that, except where an extended definition is stated, or the context demands otherwise, all words and phrases used in this policy shall be given their ordinary meaning.

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- a **Academic Issue:** A concern that focuses primarily on academic decisions (usually raised by a student or a group of students) rather than on a staff member's performance or conduct. This includes, but is not limited to, matters such as assessment, aegrotat decisions, special admission, and significant deviation from stated programme content or outcomes.
- b **Conduct or Behaviour issue:** Any action, or non-action, which is a breach of a staff member's employment agreement or the Ara Code of Professional Practice, which may be found in CPP 2.11 on the Infoweb.
- c **Fairness:** In this policy the concept of fairness ensures that any performance/disciplinary matter is handled in a manner that is fair to everyone involved. This concept has in the past been called 'natural justice.' Fairness asserts that:
 - i Staff have the right to be informed of issues regarding their job performance or behaviour that may lead to disciplinary action.
 - ii Staff have the right to be informed who has identified the issue/s.
 - iii Staff have a right to an opportunity to respond to allegations about their performance or behaviour before any decision regarding action on those allegations is made.
 - iv Staff involved in the processes covered by this policy have the right to be listened to, and to seek and be given advice, support and representation of their choice throughout the process.
- d **Manager:** A person who has the authority to handle a performance or conduct issue, which includes the Chair of Ara Council, the Chief Executive, Directors and other line managers with written delegations to handle performance/conduct issues from any of these. It does not include, in the context of this policy, Team Leaders, Programme Leaders, Course Supervisors or the equivalent.
- e **Performance Issue:** A situation that gives rise to a view that a staff member is not performing the tasks and/or responsibilities of their job description to the required standard.
- f **Staff member:** In the context of this policy, it refers to an Ara employee, including a manager, for whom a performance or conduct issue has been alleged, with the exceptions noted in Introduction 1.2.
- g **Written warning:** A formal communication from an authorised manager to the staff member that includes the following:
 - i Details of the behaviour or performance resulting in the warning.
 - ii Changes that are required in the staff member's behaviour and/or performance.
 - iii If relevant, observable and measurable standards by which the change/s will be evaluated.
 - iv A statement of the consequences of failure to make the required improvements/changes.
 - v The period of time allowed for the changes to be made and/or the period of time for which the consequences of the warning, which is held on the staff member's personal file in HR, are valid.

These requirements apply to all written warnings (first, second or final) unless a variation is stated.

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<p>Related Ara Procedures <small>(Infoweb)</small></p> <ul style="list-style-type: none"> • CPP112b What Can We Learn from this Concern/ Complaint 	<p>Related Ara Policies</p> <ul style="list-style-type: none"> • All policies related to Human Resources, including CPP211 Code of Professional Practice • APP301 Student Rights and Responsibilities • APP704 Evaluation and Review • CPP102 Disclosures and Management of Conflict of Interest • CPP116 Protected Disclosures • CPP209 Harassment Prevention
<p>Related Legislation or Other Documentation</p> <ul style="list-style-type: none"> • NZQA Quality Assurance Framework • Ara Employment Agreements 	<p>Good Practice Guidelines</p>
<p>References</p>	
<p>Notes The version approved 06/05/05 (in principle) and 03/06/05 (final) replaced the policy 'Complaints Involving CPIT Staff,' first produced in 01/11/93 and subsequently revised on 29/09/95, 14/11/95, 27/02/98, 27/04/00 and 10/10/01. Although some aspects remained the same, there were significant changes. The policy was reviewed after one year; no changes were made and it reverted to a standard three-year cycle.</p>	

2 Principles

- 2.1 In discharging duties as employees of Ara all staff members are expected to maintain professional standards of conduct and performance consistent with employment by an academic institution and with the CPP211 Code of Professional Practice Policy.
- 2.2 This policy is intended to create a fair procedure that enables a complaint to be dealt with as soon as is possible after it is made, in a way which fully informs the staff member concerned of the complaint and matters to be investigated, provides a proper opportunity for investigation and consideration of the complaint, and decision-making which is fair.

3 Associated procedures for

Ara Corporate Policy on: Resolving Staff Performance or Conduct Issues

Contents:	3.1	Initiating a Complaint
	3.2	Processing Procedures
	3.3	Procedural Requirements
	3.4	Investigation Powers
	3.5	Investigator or Investigators
	3.6	Warnings

3.1 Initiating a Complaint

A complaint must be made in writing with sufficient information to enable Ara and the staff member complained about to understand it.

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3.2 Processing a Complaint

All complaints will be dealt with initially by the Director, Corporate Services or by his or her delegate, except in the case of a complaint against a level 200 manager which will be dealt with by the Chief Executive. A complaint can be made to any manager, Human Resources, the Director, Corporate Services or the Chief Executive.

3.3 Procedural requirements

On receipt of a complaint the staff member concerned:

- a will be provided with a copy of the complaint;
- b will be given a reasonable opportunity to consider the complaint and to respond to it;
- c will be informed of his or her right to be represented; and
- d no decision will be made about that complaint unless the staff member concerned has been provided with an opportunity to make representations to the decision-maker about the complaint.

3.4 Investigation Powers

- a The Director, Corporate Services, on authority of the Chief Executive, may obtain information for the purposes of investigating any complaint from any source he/she considers appropriate including, but not limited to, classroom observation.

- b Other powers during an investigation:

The Director, Corporate Services may, during an investigation into a complaint, and in consultation with and authority from the Chief Executive, where required, take some or all of the following action:

- i suspend the staff member concerned on pay.
 - ii suspend the staff member concerned without pay.
 - iii temporarily reassign the staff member concerned to other duties or to limit his or her duties.
 - iv delay a course or programme.
 - v limit the level of service offered,
 - vi provided that before any proposed action is taken the staff member concerned is provided with an opportunity to make representations about that proposed action.
- c Variations
 - i This policy must be flexible to allow Ara to adequately address each complaint. These procedures may be departed from in any case provided that:
 - ii The staff member concerned is advised of that departure; and
At all times the revised procedure is fair.

3.5 Investigator or Investigators

- a The Director, Corporate Services, on the authority of the Chief Executive, may delegate the whole or part of his/her investigation of a complaint to an investigator or investigators. For the avoidance of doubt, this power to delegate includes authority to appoint as an investigator or investigators a person who is not an Ara staff member. The investigator will consider all information supplied to him/her and may:

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- where information has been requested but not supplied, identify that information;
 - list all of the persons who have been interviewed or from whom material has been sourced (whether or not relied on by the investigator);
 - list any systems appraisals that have been undertaken;
 - where appropriate, and where the terms of reference direct, provide a recommendation as to the outcome of the complaint;
 - report to the Director, Corporate Services in a timely manner.
- b A copy of the investigator's report will be provided to the staff member concerned. The terms of reference for an investigator or investigators will be provided in writing by the Director, Corporate Services at the time an appointment is made.
- c Where an investigator is appointed the following process applies:
- i The staff member concerned will be informed that an investigator has been appointed and will be given a copy of the terms of reference.
 - ii The investigator will consider all information supplied to him/her and may:
 - within the terms of reference interview any staff member (including the person complained about), seek information from any person, seek assistance from any person or organisation, and generally inquire;
 - iii where information has been requested but not supplied, identify that prior to any decision being made.
 - iv The Director, Corporate Services will invite the staff member to comment on the investigator's report prior to any decision being made.
- d Where the Director, Corporate Services appoints two or more investigators the process will be referred to as an investigating committee and the procedure in paragraphs 3.5 b and c inclusive apply with the following additions:
- i The makeup of the investigating committee, including the numbers of persons appointed to it, and the identification of the chair of the committee, is at the sole discretion of the Director, Corporate Services;
 - ii The terms of reference for the investigating committee will be provided to the chair of that committee in writing.
- e For the avoidance of doubt, where an investigator or investigating committee seeks a statement from the staff member concerned, Ara will make available sufficient resources to that staff member to enable a response to be prepared. For example, Ara may provide word processing services for the purposes of the staff member preparing a written statement. However, in no circumstances does an appointment of an investigator(s), or the powers of the investigator(s), extend to approving the appointment of legal counsel for the staff member, or agreeing to meet his or her legal counsel's fees, or out of pocket expenses associated with responding to the complaint.
- f The range of outcomes arising from a complaint include but are not limited to deciding to:
- i dismiss the complaint or to determine it has otherwise been resolved.
 - ii take no further action.
 - iii require the staff member to improve in stated aspects of his or her practice conduct or performance but imposing no penalty.
 - iv require the staff member concerned to undertake formal training and/or formal professional development but imposing no further penalty.
 - v take disciplinary action such as imposing a warning.

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- vi dismiss the staff member concerned.
 - vii in appropriate cases, and after considering all relevant issues about privacy, to inform the complainant of the outcome.
- g All formal communication regarding outcomes and decisions will be conveyed/confirmed to the staff member concerned in writing under appropriate delegated authority.

3.6 Warnings

- a This section is a guideline for the administration of a warning and is not intended to create a hierarchy of warnings or to require Ara to impose a warning before taking any other disciplinary action. The type of warning that might be imposed from the following list is a matter which will be solely judged by Ara in response to the seriousness of the action or conduct that necessitates the warning being imposed:
- i Oral warning
 - ii First written warning
 - iii Second written warning
 - iv Final written warning
- b The warning will specify the conduct that has led to it being issued and a copy of that warning will be placed on the staff member's record. For an oral warning a record that it has been issued will be made and retained on the staff member's personal file.
- c The staff member concerned will be advised that the warning is to be placed on his or her personnel file and may be taken into account in any subsequent disciplinary action.

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