



University of Fort Hare  
*Together in Excellence*

## EMPLOYEE RELATIONS POLICY AND PROCEDURES

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## 1. PREAMBLE

The purpose of this policy is to pro-actively optimise the effectiveness of the interactive relationship between the University of Fort Hare and its employees.

It may be defined as a policy and practice which is concerned with the management and regulation of relationships between the University of Fort Hare, the individual staff member, and groups/organised staff within the university's working environment. The university's employee relations policy is based on:

- a. effective mechanisms for communication and participation;
- b. a safe and effective work environment; and
- c. commitment and motivation of all staff.

Accordingly, the University's policies and practice are aimed at:

- a. promoting channels of communication at all levels;
- b. identifying and expanding common areas of interest between all staff;
- c. anticipating and defusing conflict wherever possible;
- d. encouraging staff to articulate concerns and conflict and seek resolution of underlying issues; and
- e. providing channels for conflict resolution and development of mutual trust between the university and its employees.

## 2. STATEMENT OF POLICY

**2.1** Employees must be treated with dignity and respect, taking due cognisance of the diversity of our workforce;

**2.2** All employees are entitled to fair and consistent application of policy, processes and procedures;

**2.3** The University of Fort Hare, together with its employees, must create an environment in which people have a meaningful say in decisions that affect them, and thus contribute to institutional peace;

**2.4** The University of Fort Hare must keep itself abreast of all relevant legislation and ensure that employees have access to it; and

**2.5** All employees are subject to the university's disciplinary and grievance procedures. Disciplinary measures that are taken need to be corrective rather than punitive.

### **3. EMPLOYEE RELATIONS ELEMENTS**

#### **3.1 Maintenance of Sound Labour Relations**

Every decision or action must be measured against criteria of rights, duties and values to endeavour to maintain sound employee relations.

#### **3.2 Compliance with Legislation**

Human Resources must:

- 3.2.1 develop, empower and ensure that line management has access to labour legislation;
- 3.2.2 provide active consultancy service and advice to line management; and
- 3.2.3 champion workplace relations and dispute resolution.

#### **3.3 Negotiation of Employer/ Employee Agreements**

- 3.3.1 Human Resources will negotiate (within a clear institutional mandate) agreements in consultation with management;
- 3.3.2 Human Resources will train management and supervisors in the application and implementation of all agreements; and
- 3.3.3 After obtaining proper mandates (Approval by relevant official), line managers may negotiate limited departmental/faculty agreements in consultation with Human Resources.

#### **3.4 Implementation and Adherence to Agreements**

Human Resources must:

- 3.4.1 Communicate agreements to all staff
- 3.4.2 Train line management and ensure that they have access to agreements; and
- 3.4.3 In collaboration with line management, monitor and ensure adherence to such agreements.

#### **3.5 Employee Participation and representation**

- 3.5.1 The University of Fort Hare subscribes to the principle of employee participation and employee involvement in decision making through the establishment of appropriate forums;

- 3.5.2 Human resources shall train line management and employees in skills to ensure effective interaction;
- 3.5.3 The University of Fort Hare recognises the principle of freedom of association;
- 3.5.4 Where staff members choose to have a trade union represent them, the University of Fort Hare will make arrangements for recognition, collective bargaining and dispute resolution subject to adherence to Labour Relations Act;
- 3.5.5 All staff members have the right to join the representative body of their choice, but this does not mean that the University of Fort Hare will recognise all such bodies for collective bargaining or other purposes.; and
- 3.5.6 Staff members have the right not to belong to a representative body. The University of Fort Hare will not therefore agree to membership of a representative body becoming a condition of service or appointment.

#### 4. DEFINITIONS

For purposes of this policy, the following definitions will apply:

**Employee:** Means all employees paid through the University of Fort Hare payroll or any employee who has a verbal or written contract of employment with the university.

**Grievance:** A grievance refers to any situation experienced by such employee arising from the employer/employee relationship and giving rise to a feeling of injustice, dissatisfaction and concern.

NB. Any dissatisfaction relating to disciplinary action arising from the Disciplinary Procedure should not be dealt with through the Grievance Procedure. Recourse in this instance should be through the Appeal Procedure.

**Management:** Means any person or persons placed in positions of authority requiring employee/s to report to them.

**Working Day:** Means any day on which the operations of the University are normally performed, other than a Saturday, Sunday and Public Holiday or any other day agreed upon by both parties.

**Employer:** The University of Fort Hare or management delegated to represent the Council of the University of Fort Hare.

**Head of Department:** Means an employee designated as the Head of a Department, Unit or Division, or a designated alternate.

**Initiator:** Means the charging officer. This is normally the charged employee's immediate superior / HOD / Line Manager. This is the person who investigates the alleged misconduct and presents the employer's case in the disciplinary hearing.

**Chairperson:** This is an internal or external person (where management deems necessary to have an external person based on the nature of the case or where the case is known by most officials who are in

position to chair disciplinary hearing and where disciplinary hearings are against members of management). This person is a neutral and objective person who does not necessarily have training in Law but had a brief training in conducting disciplinary hearings.

**Workplace:** Any place where employees are expected to work as required by University of Fort Hare either in or outside South Africa. This includes but is not limited to University property, Hostels, vehicles, Institutes, etc.

**Informal DC Hearing:** This is an informal meeting between the initiator, the employee who is alleged to have committed misconduct, his/her representative and an HR representative. This meeting is part of the investigation stage and anything said in this meeting may be used in the hearing should there be a formal disciplinary hearing after this meeting. In the event that the parties in this meeting agree, the employee in question may be issued with a warning, from verbal to a final written warning but not a dismissal. The employer will write to the employee stating the charges and giving the employee an opportunity to be represented. Informal DC hearings will not apply where an alleged offence is of serious nature. Should the employee object to the informal hearing, the formal hearing will then be held.

**Pre-hearing meeting:** *This is an informal hearing where parties will meet and exchange documents to be used in a formal hearing. The purpose of this hearing is to reduce time spent on the hearing.*

## 5. GRIEVANCES

### 5.1 PURPOSE

The purpose of this part of the policy is to provide policy and procedure:

- (a) For the handling of employees' grievances; and
- (b) To enable University of Fort Hare's employees, who raise a grievance, to have that grievance addressed in a fair and expeditious manner.

### 5.2 APPLICATION

This policy and procedure applies to all employees of the University of Fort Hare.

### 5.3 Statement of Policy

- 5.3.1 Where the policies, norms, values, standards and principles of the University of Fort Hare have been transgressed and employees' rights infringed, employees have the right of an opportunity for redress through the grievance procedure.
- 5.3.2 A grievance can be described as a feeling of injustice or dissatisfaction affecting an employee, which arises out of his/her work or employment situation.
- 5.3.3 The purpose of this Procedure is to provide for a process whereby the grievances of individual employees or small groups of employees arising out of their employment can be resolved.
- 5.3.4 Grievances raised by all the employees or large numbers of employees shall not be dealt with in terms of this Procedure, and may be raised through the negotiation and dispute

procedures agreed between the University and the Organised Labour. Dissatisfaction with disciplinary matters shall also not be dealt with in terms of this Procedure, and can be raised through the appeal procedures contained in the Disciplinary Procedure.

- 5.3.5 Grievances should be resolved as near to their point of origin as possible, and as fast as possible.
- 5.3.6 The lodging of a grievance shall not prejudice an employee's employment in any way.
- 5.3.7 An employee shall only be entitled to use this procedure within a reasonable period of the cause of the grievance having occurred.

#### 5.4 **PRINCIPLES**

The principles that follow shall apply in respect of all grievances lodged:

- 5.4.1 The steps set out in this policy and procedure must be followed at all times.
- 5.4.2 Management at the various levels must give careful consideration to every grievance lodged and make genuine attempts to resolve it.
- 5.4.3 Grievances must, whenever possible, be handled by line management at the lowest possible level and as quickly as possible. Other employees/colleagues, in an advisory capacity, may help in facilitating a resolution to the problem.
- 5.4.4 Any employee lodging a grievance has the right to be assisted or represented by a fellow employee or by a representative of a recognised union or staff association from the University of Fort Hare community.
- 5.4.5 No employee may be victimised or prejudiced for lodging or pursuing a grievance in terms of this procedure.

### 6. **GRIEVANCE PROCEDURE TO BE FOLLOWED BY INDIVIDUAL EMPLOYEES**

#### 6.1 **STAGES IN THE GRIEVANCE PROCESS**

##### 6.1.1 **Stage 1: (Handled by)Supervisor**

- (a) An employee shall raise the grievance by completing a form in duplicate (Annexure A) assisted if he/she so wishes by his/her Shop Steward or fellow employee and hand one copy to the supervisor or manager and the other to the Human Resources Office r. He/she may be accompanied if he/she so wishes, by his/her Shop Steward or a fellow employee of his/her choice. The supervisor must at this point attempt to resolve the grievance.
- (b) If the supervisor cannot resolve the grievance to the employee's satisfaction within 24 hours the employee or the supervisor may escalate the grievance to Stage 2 of this procedure.
- (c) **Where the employee is aggrieved by his/her immediate supervisor, the employee might start from stage 2 but provide the supervisor with a copy of the grievance.**

**Where they are still in talking terms they could meet and attempt to resolve the grievance.**

#### **6.1.2 Stage 2: Supervisor's Manager (or his/her equivalent)**

- (a) If the grievance is not resolved at Stage 1, the supervisor will forward the report to his/her Manager.** The manager shall meet the parties concerned and shall attempt to resolve the grievance.
- (b)** If the manager or his/her equivalent cannot resolve the grievance to the employee's satisfaction within three (3) working days, The employee or his/her representative if he/she so wishes shall advise the Manager to refer the matter to the manager's immediate supervisor (Executive Head)

#### **6.1.3 Stage 3: Executive Dean/Executive Head of Division**

- (a)** The Manager shall submit the report to the Executive Head/ Dean who shall meet the parties concerned and attempt to resolve the grievance within 5 working days.
- (b)** . The Executive Deans/Head's decision shall be recorded on the grievance form and a copy of this shall be returned to the employee. The original grievance form shall be sent to the human resources office to be filed.
- (c)** Should the employee still feel aggrieved; the matter shall be referred to the Vice Chancellor, through the office Executive Director Human Resources.

In the event of the aggrieved employees being dissatisfied with the decision of the Vice Chancellor, he/ she shall be entitled to refer the matter to the CCMA).

## **7. INTERDEPARTMENTAL GRIEVANCE PROCEDURE**

### **Step 1: Supervisor**

- a. The employee lodging a grievance against an employee from another department may first endeavour to resolve the problem with the fellow employee. Should this however not be resolved the employee lodging a grievance must do so by completing the Grievance Form (**Annexure C**) in triplicate and submit it to the immediate superior of the disputant, the head of the complainant and Human Resources Department). The employee lodging the grievance should provide written supporting information.
- b. The supervisor of the alleged aggriever must endeavour to solve the grievance within five (5) working days.
- c. The supervisor of the Alleged aggriever must keep a record regarding the handling of the grievance and a copy of the outcome and records to be provided to Human Resources Department for filing.

### **Step 2 : Manager**

- a. If the grievance remains unresolved, the employee may refer the matter to the next level of authority for resolution within five (5) working days.
- b. If the grievance remains unresolved, or five days have lapsed after the dispute was referred, the employee may refer the matter to the Executive Dean or Executive Head of Department within five (5) working days.

### **Step 3: Executive Dean/ Head**

Should the employee still feel aggrieved at this stage 2, the matter shall be dealt with in terms of the dispute resolution procedure.

Note: In the event of the aggrieved employees being dissatisfied with the decision of the Council, they shall be entitled to refer the matter to the CCMA).

## **8. GRIEVANCE PROCEDURE STEPS IN ALL OTHER INSTANCES**

- 8.1 The employee's immediate supervisor must endeavour to solve the grievance within five (5) working days.
- 8.2 If the grievance concerns the employee's immediate superior, an employee may proceed directly to the next level of authority.
- 8.3 The person hearing the grievance must keep a record regarding the handling of the grievance and the outcome and records to be forwarded to Human Resources Department.
- 8.4 If the grievance remains unresolved, the employee may refer the matter to the next level of authority or Executive Dean/Head for resolution within five (5) working days.
- 8.5 Should the grievance be resolved at any stage the process ends
- 8.6 Any written agreement, as a means to resolve the grievance, must be filed in the aggriever's file..

## **9. GRIEVANCE PROCEDURE STEPS FOR GROUPS OF EMPLOYEES**

### **9.1. INTRODUCTION**

Where a group of employees is directly involved in a grievance of a general nature, instead of individually, they may follow the procedure given below:

#### **Step 1**

- a. Elect a representation not exceeding five (5) employees among themselves as well as a union official, if so desired. .
- b. This representation may be the Executive Committee of the shop stewards.

**Note:** The employees may, with the help of an HR representative, if they so wish, put their grievance in writing (filling the form Annexure C) to the Executive Director Human Resources stating the names of the members of the representatives and the matter/s which they wish to discuss.

- c. The Executive Director Human Resources must endeavour to meet the parties within three (3) working days;
- d. The length of time allowed to resolve the grievance at this level will be agreed upon between the two parties, taking into account the seriousness of the grievance, its complexity and the necessity of further investigation and consultation. Any adjournment must be agreed to in writing.

### Step 2

- a. If such a representation does not obtain satisfaction at the meeting with the Executive Director Human Resources, the grievance may be dealt with in terms of the university's dispute resolution mechanism, namely, bargaining team.
- b. Should the group grievance be against the Executive Director Human Resources the matter will be referred to his/her immediate supervisor
- c. Unless otherwise agreed upon between the parties (which agreement shall not be unreasonably withheld) the representation to the bargaining team shall consist of those who met with the Executive Director Human Resources. The matter for discussion shall be those which were previously discussed.

### Step 3

- a. If such representation does not obtain satisfaction from the bargaining team they may refer the matter to the Human Resources Committee of Council and
- b. in the event of the aggrieved employees being dissatisfied with the decision of the Council, they shall be entitled to refer the matter to the CCMA).

### Note:

- Hearings must be held within the periods stipulated if it's reasonably possible except with the written and mutual agreement of both parties these periods may be extended.
- A written record of grievance hearing must be made. At the request of the deputation, copies of records may be made available to them;
- Tape recordings may be made.

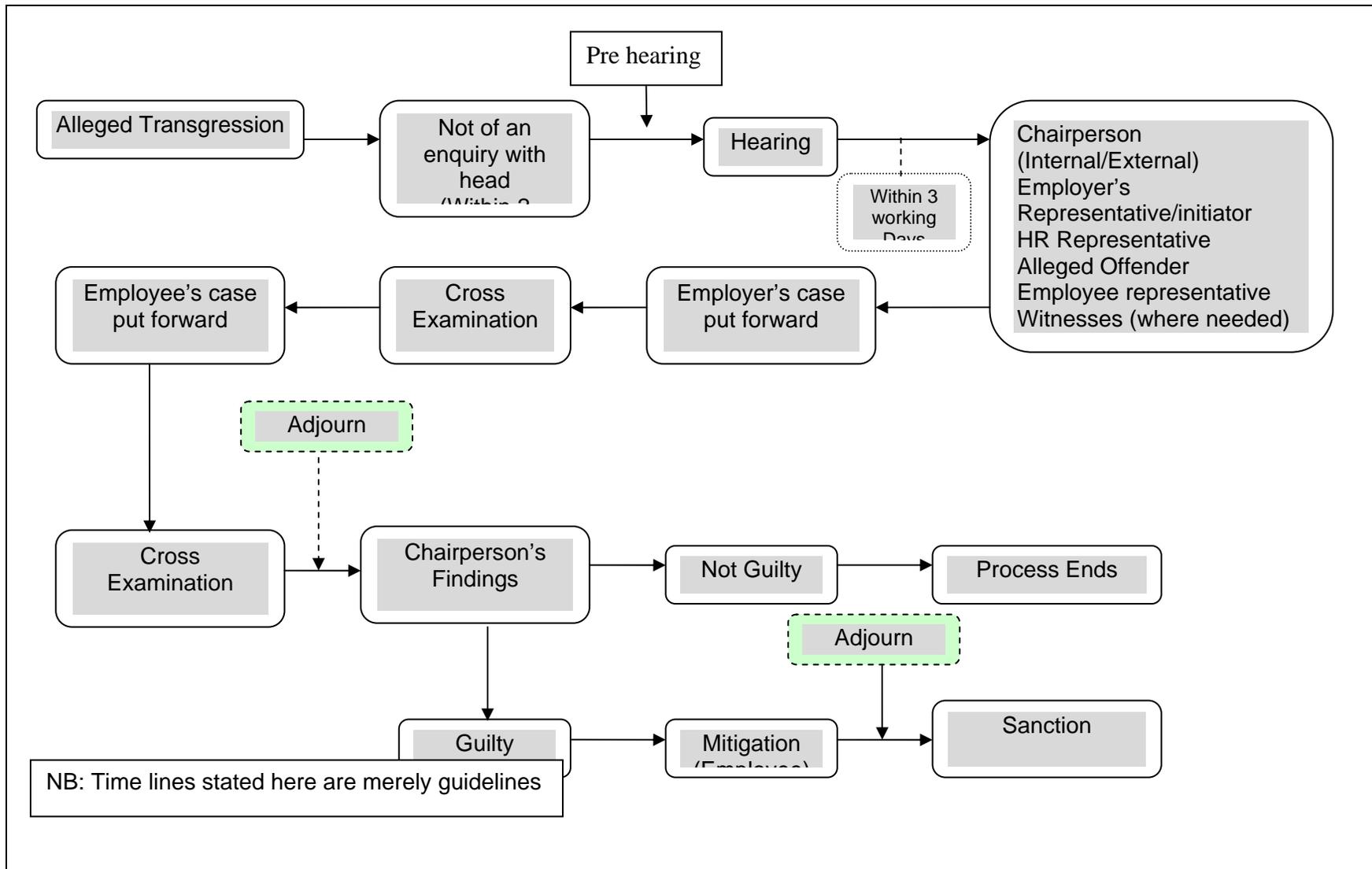
Annexure C is the Grievance Form to be completed by employee/s lodging a grievance.

## 10. DISCIPLINARY PROCEDURE

**10.1 Statement of policy**

Where the policies, norms, values, standards and principles of the University of Fort Hare have been violated the university has the right, through the disciplinary procedure, to apply appropriate corrective action in a fair manner.

**10.2 Disciplinary Processes**  
**Disciplinary enquiry process map**



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### **10.3 APPLICATION**

This code and procedure applies to all employees employed directly or indirectly by University of Fort Hare.

This procedure applies in all cases where employees are alleged to have breached a rule regulating conduct in the workplace (whether or not that rule is in writing).

N.B. Alleged transgressions conducted outside the University's premises or after working hours may be considered as misconduct.

### **10.4 GENERAL PRINCIPLES THAT INFORM THE CODE & PROCEDURE**

This code and procedure must be interpreted in accordance with the spirit and the principle provisions of the Labour Relations Act and with particular reference to Schedule 8 of the Code of Good Practice.

### **10.5 THE ROLE OF HUMAN RESOURCES**

The maintenance of discipline and the effective handling of grievances is a function of line management. The human resources officials are available to assist line management and employees at every stage on such matters. Human Resources officials should ensure that disciplinary actions and procedures are consistent in all departments and sections and are in conformity with the Disciplinary and Grievance Procedures.

During disciplinary and grievance proceedings the unit's role is, to ensure that correct procedures are followed, as well as providing assistance and advice to all parties involved in the disciplinary/grievance investigation.

The human resources department is responsible for ensuring that discipline is fairly and justly applied by:

- Checking that the complaint form properly identifies the offence and is otherwise correctly completed;
- Ensuring that the alleged offender is aware of the charges against him/ her and of his/ her rights in terms of the disciplinary code;
- Investigating the domestic circumstances of the employee when this is felt to be necessary;
- Checking that all facts collected are presented without bias.
- Advising line management on appropriate corrective action to be followed.
- Providing a personal file to chairperson when needed.
- Providing tape recording during the hearing. (N.B. Staff that need the records of the hearing will be liable for costs)

### **10.6 DISCIPLINARY PROCEDURE FOR MISCONDUCT**

#### **10.6.1 OBJECTIVES**

The objectives of this procedure are to ensure that:

- 10.6.1.1 Allegations of misconduct are dealt with in a consistent manner;
- 10.6.1.2 There is a fair procedure to determine what disciplinary action, if any, is appropriate;

- 10.6.1.3 Discipline in the workplace is applied in a corrective rather than a punitive manner; and
- 10.6.1.4 Where possible, the informal DC hearing takes place within the prescribed time of the alleged offence being reported.

The principles that inform the code and procedure and which must inform any decision to discipline an employee are:

- Discipline is a management function;
- A disciplinary code is necessary for the proper functioning of the University's efficient delivery of services and the fair treatment of its employees;
- No employee may be victimized as a result of participation in terms of this procedure;
- An employee has the right to appeal against action taken against him/her in terms of the Appeal Procedure;
- The employee has the right to be represented by a fellow employee during the disciplinary process. (No external representation is allowed)
- No industrial action of whatever nature may be taken regarding any matter/s of discipline; as such action would be deemed unprotected by the Labour Relations Act No. 66 of 1995, as amended.

Employee conduct which may warrant disciplinary action is listed in the appended Disciplinary Code. The list is not exhaustive. Management may discipline any employee in respect of any other conduct if the employee knew, or ought to have known, that the conduct constituted grounds for disciplinary action.

### **10.6.3 FORMS OF DISCIPLINE**

#### **10.6.3.1 Counselling and Disciplinary Action**

There is a distinction between disciplinary action and counselling. In general, counselling is appropriate where employees are not performing to standard, or are unaware of a rule regulating conduct and/or where the breach of the rules is relatively minor and can be condoned. Disciplinary action will be appropriate where a breach of the rules cannot be condoned, or where counselling has failed to achieve the desired effect.

#### **10.6.3.2 The Application of Discipline**

- It is the responsibility of management to decide when it is necessary to apply this procedure, and what form of disciplinary action is appropriate;
- This procedure applies to all employees;
- During the Informal Disciplinary hearing, management will explain the nature of the rule the employee concerned is alleged to have breached, and give the employee an opportunity to explain his/her conduct. If possible, mutually agreed remedy on how to address the misconduct should be arrived at. Such a meeting

does not constitute a formal hearing. Where there is no agreed remedy or the rule broken is of a serious nature, the manager will refer the matter for a formal disciplinary hearing.

- The different forms of disciplinary action, and the procedure relating to each, are described in the appended disciplinary code.

### 10.6.2.3 Forms of Disciplinary Sanctions

Disciplinary action may take any the following forms, depending on the seriousness of the matter:

- a. Verbal warning
- b. Written warning
- c. Final written warning
- d. Temporary suspension of employment with or without pay
- e. Dismissal/Summary Dismissal

N.B. Warnings do not follow this sequence. Sanction is dependant on the seriousness of the offence.

#### (a) Verbal Warning

- Verbal warnings are appropriate in the case of minor offences, or where an employee breaches a rule for the first time.
- The Supervisor/Manager may issue a verbal warning. The supervisor/manager who issues the verbal warning must make a note of when the warning was given and the nature of the verbal warning. The emphasis on this type of action is to correct the action of the employee through discussion.
- Verbal warnings remain valid for three [3] months.
- The manager issuing a verbal warning should communicate with the HR Department for filing of the warning.
- If during the currency of the verbal warning (during the 3 months) the employee is subject to further disciplinary action, the verbal warning may be taken into account in deciding upon the appropriate sanction.

#### (b) Written Warning

- Written warnings are appropriate where an employee shows disregard for verbal warning(s) given, or in the case of a more serious offence/s.
- The Supervisor/Manager may issue a written warning, after an informal Disciplinary hearing with the employee. concerned.
- A written warning should describe the nature of the breach giving rise to the warning. The employee should be given the right to have a colleague present and to state his/her case.
- The written warning must be filed in the employee's personal file. Written warnings shall remain valid for six (6) months.
- If during the currency of the warning (during the six (6) months) the employee is subject to further disciplinary action, the written warning may be taken into account in deciding upon the appropriate sanction.

#### (c) Final Written Warning

- Final written warnings are appropriate where an employee has received a written warning(s) for the same or a similar breach of rules, or where a written warning is considered inadequate because of the seriousness of the breach of the rules.
- The Departmental Manager/ Supervisor may issue a final written warning, after an informal disciplinary hearing with the employee concerned, or after a disciplinary hearing.
- A final written warning must briefly describe the nature of the breach-giving rise to the warning.
- Final Written Warnings shall remain valid for twelve (12) months.
- The Departmental Manager/Supervisor must inform the employee that a failure to heed a final written warning may result in dismissal.
- During the currency of the warning if the employee is found guilty of any other or same transgression, in deciding the appropriate sanction the chairperson will take into account the current warning. .

(d) Temporary Suspension without Pay

This type of sanction may only be authorized by a disciplinary hearing and then only as an alternative for dismissal. The period of suspension without pay will not exceed a period of one (1) month. This type of action will only be authorized in exceptional cases and will not be seen as the norm or practise

(e) Dismissal

Dismissal for misconduct is without notice. This action may only be taken by a chairperson of a Disciplinary Hearing.

## 11. DISCIPLINARY HEARING

### 11.1 A disciplinary hearing must be held when:

11.1.1 Action stronger than a written warning may be warranted, in the opinion of the Departmental Manager/ Supervisor after consultation with the Human Resources Unit.

11.1.2 An employee has received a final written warning and is alleged to have committed similar misconduct.

11.1.3 The misconduct is deemed to be very serious.

11.2 An employee may be suspended on full pay pending finalisation of an investigation /hearing where the presence of the employee at the workplace may jeopardise any investigation into the alleged misconduct, or poses any threat to the safety or well-being of any employee, including management. This is not a disciplinary sanction.

If the Initiator intends to propose the suspension of an employee prior to a disciplinary hearing, the employee must be allowed to make representations, in writing, about why he/she should not be suspended. The Executive Dean/Head must consider these representations and advise the employee, in writing of the decision.

11.2 The Employer Representative shall give the employee Three (3) working days notice in writing of:

- 11.2.1 the time, date and venue of the hearing;
- 11.2.2 details of the charge/s against her or him, which describe the alleged misconduct that the employee is alleged to have committed; and
- 11.2.3 the fact that the employee is entitled to be represented at the hearing (by a fellow employee or by a shop steward).
- 11.2.4 During pre-hearing meeting, the initiator and the alleged offender with his/her representative may exchange documentation in order to minimise time for the formal hearing.

**NB: If the employer intends to convene a disciplinary hearing against an employee who is an office bearer of a trade union, the employer must consult with the union before serving notice to attend the hearing of the employee.**

**11.3 The following persons should be present at a hearing:**

- 11.3.1 A Chairperson, being in a higher level than the charged employee or an external person where management deem it appropriate.
- 11.3.2 The Employer representative, who will present the evidence against the employee charged;
- 11.3.3 The employee charged;
- 11.3.4 The employee's representative (a fellow employee or a shop steward);
- 11.3.5 Any witnesses, which management or the employee charged wishes to call;
- 11.3.6 An interpreter, if the employee requires one; and
- 11.3.7 A representative from the Human Resources Department.

**11.4 At the commencement of a hearing the Chairperson should:**

- 11.4.1 read the charge/s against the employee;
- 11.4.2 advise the employee that he/she has the right to be represented by a fellow employee or a shop steward;
- 11.4.3 check whether the employee requires the assistance of an interpreter; and
- 11.4.4 explain how the hearing is to be conducted.

**11.5 During the hearing:**

- 11.5.1 the employer representative shall lead evidence on the conduct of the employee giving rise to the hearing, by calling a witnesses in support of the charge/s and by producing any documents or objects relevant to the charge, and the chairperson may ask the employer representative or any other witness/es questions for further clarification.
- 11.5.2 the employee charged and his/her representative shall have a full opportunity to present his/her case, to bring witness/es, to cross-examine any witness/es called in

support of the charge, and to have reasonable access to documents and objects relevant to the charge; and the Chairperson may ask any witness/es questions for clarification.

#### 11.6 Conclusion of the Hearing

11.6.1 At the conclusion of the hearing the Chairperson must make a finding of guilty or not guilty on the charge.

11.6.2 In the event of an employee being found guilty, the Chairperson must ask both the employee and her/his representative to make submissions on mitigating and the employer representative to make submissions on aggravating circumstances..

11.6.3 The Chairperson must then decide what disciplinary sanction to impose, and inform the employee accordingly.

11.6.4 The failure of the person charged and or his representative to attend the hearing shall not invalidate the proceedings. The Chairperson of the hearing may postpone a hearing, if good cause can be shown for not attending. This application must be done at least 1 (one) working day before the date of the hearing.

#### 11.6.5 After the Hearing

11.6.5.1 An employee or the employer representative (initiator) may lodge an appeal against a verdict/ sanction imposed by the chairperson of the hearing within five (5) working days. The Human Resources Representative will facilitate this process.

11.6.5.2 An employee who has been dismissed and appealed shall remain dismissed until the outcome of the appeal is heard.

## 12. APPEAL

The purpose of the following procedure is to enable the staff member or the employer representative (initiator) to appeal against any written disciplinary action taken against them in terms of the Disciplinary Procedure and Code. However, an employee will not be allowed to appeal against a verbal warning/reprimand.

12.1 In the case of written warnings issued after a Pre-hearing meeting the employee may appeal to the Executive Head of Department where applicable.

12.1.1 All appeals will be lodged on the prescribed appeal form '**Annexure B**'

12.1.2 The appeal form in cases of an appeal against a sanction taken by the chairperson of an informal hearing must be handed in to the Human Resources Department within 5 (five) working days of the outcome of the hearing. An appeal will be denied if it is submitted outside the prescribed time period, unless a valid reason exists for such late submission. The Human Resources Department will record the appeal and forward it to the appropriate Executive Head within two (2) working days to the Executive Head shall examine the grounds of appeal and decide whether to grant or not.

12.1.3 The Executive Head shall apply his/her mind on the appeal and decide whether to grant/not grant the appeal. Should he decide not the grant the appeal, he will inform the appellant and copy the Human Resources Department. Should the Executive Head decide to grant the appellant, he/she shall; invite the Human Resources representative , the employee or

his/her representative to address the appellant on the reasons for appeal. The decision of the appeal hearing shall be known to the appellant within a maximum of five (5) working days after the appeal hearing.

12.1.4 The decision of the Executive Head of the Department shall be final and no further appeal within University of Fort Hare will be granted. An employee must be informed that he/she has the right to refer a dispute in terms of the Labour Relations Act of 1995 within 30 days of the date of the decision of the Head of Department.

12.2 In the case of actions taken by a disciplinary hearing meeting, the employee has the right to appeal against the action, to an Appeal Committee convened by the Vice Chancellor within five (5) working days after the disciplinary hearing via the Executive Director Human Resources.

The Appeal Committee shall comprise of the following persons:

- The Chief Human Resources Officer or his/her designate.
- The Vice-Chancellor or his/her designate.
- And or any other person as designated by the Vice-Chancellor because of his/her specific knowledge that would add value in taking a fair decision.

12.2.1 The committee may delegate the Executive Director to examine the grounds of appeal and allow him/her to decide whether to grant or not the appeal hearing.

12.2.1 The Committee shall determine if it is necessary to hear further evidence, or to allow further submissions to be made, and may confirm, vary or uphold any appeal.

12.3.4 The Committee may delegate its powers to listen to the appeal to a representative, who is one of the members of the committee.

12.3.5 In the event that the dismissal is confirmed, for the purpose of referring the matter to the dispute resolution body/bodies (CCMA), the date of dismissal shall be that date on which the employee is advised of the outcome of the appeal hearing. An employee who is dismissed must be informed that's/he has the right to refer a dispute in terms of the Labour Relations Act of 1995 within 30 days of the date on which the employee was dismissed.

ANNEXURE A

**UNIVERSITY OF FORT HARE DISCIPLINARY FORMS**

**(TO BE COMPLETED BY THE MANAGER CONDUCTING THE ENQUIRY)**

1. NAME OF EMPLOYEE.....EMPLOYEE NO.....
2. JOB TITLE.....DEPARTMENT.....
3. ALLEGED MISCONDUCT.....  
.....
4. DATE AND TIME EMPLOYEE ADVISED OF ENQUIRY TO BE HELD.....
5. DATE AND TIME OF DISCIPLINARY ENQUIRY.....



.....  
.....  
.....  
.....  
.....

**10. MANAGER'S COMMENTS AND FINDINGS CONCERNING THE EMPLOYEE'S ALLEGED MISCONDUCT:**

.....  
.....  
.....  
.....  
.....

**11. RECORD OF VALID PREVIOUS WARNINGS (TO BE RECORDED ONLY AFTER COMPLETION OF 10. ABOVE)**

.....  
.....

**12. OTHER FACTORS TAKEN INTO ACCOUNT IN DECIDING ON THE DISCIPLINARY ACTION:**

.....  
.....  
.....  
.....

**13. OUTCOME OF DISCIPLINARY ENQUIRY:.....**

.....  
.....  
.....  
.....

14. If the employee was disciplined he/she must be informed of his/her right to appeal and the appeal procedure must also be explained to the employee.

15. SIGNATURE OF EMPLOYEE..... DATE.....

16. SIGNATURE OF EMPLOYEE REPRESENTATIVE (IF PRESENT)  
.....DATE.....

17. MANAGER'S SIGNATURE.....DATE.....

ANNEXURE B

**UNIVERSITY OF FORT HARE APPEAL FORM**

(TO BE COMPLETED WITHIN THREE WORKING DAYS OF DISCIPLINARY ACTION HAVING BEEN TAKEN, BY AN EMPLOYEE WHO WISHES TO APPEAL)

I WISH TO APPEAL AGAINST THE DISCIPLINARY ACTION TAKEN, FOR THE FOLLOWING REASONS:

.....  
.....  
.....  
.....

IN TERMS OF THIS APPEAL, I ASK THAT THE FOLLOWING ACTION BE TAKEN:

.....  
.....  
.....

SIGNATURE OF EMPLOYEE.....DATE.....

RECEIVED BY MANAGER:

SIGNATURE.....DATE.....

(TO BE COMPLETED BY THE MANAGER HEARING THE APPEAL)

DATE RECEIVED.....

DATE OF APPEAL HEARING.....

MANAGER'S COMMENTS AND FINDINGS CONCERNING THE APPEAL.....

.....  
.....  
.....  
.....

OUTCOME OF APPEAL.....

.....  
.....

SIGNATURE OF EMPLOYEE REPRESENTATIVE (IF PRESENT).....DATE.....

SIGNATURE OF EMPLOYEE..... DATE.....

SIGNATURE OF MANAGER..... DATE.....

(TO BE COMPLETED WITHIN THREE DAYS OF RECEIVING A  
WARNING, BY AN EMPLOYEE WHO WISHES TO APPEAL)

I WISH TO APPEAL AGAINST THIS WRITTEN WARNING FOR THE FOLLOWING  
REASONS:

.....  
.....  
.....  
.....

.....  
.....

SIGNATURE OF EMPLOYEE..... DATE.....

RECEIVED BY SUPERVISOR:

SIGNATURE.....DATE.....

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(TO BE COMPLETED BY THE MANAGER CONSIDERING THE APPEAL)

DATE RECEIVED.....

OUTCOME OF APPEAL.....

.....  
.....  
.....  
.....  
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.....  
.....

SIGNATURE OF EMPLOYEE REPRESENTATIVE (IF PRESENT)

.....DATE.....

SIGNATURE OF EMPLOYEE.....DATE.....

ANNEXURE C

**GRIEVANCE FORM**

**(TO BE COMPLETED BY THE EMPLOYEE(S) LODGING THE GRIEVANCE)**

Name of Employee..... Employee No.: .....

Job Title.....

Department.....

Name of Representative.....

Cause of the Grievance:.....

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Solution Requested.....

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Signature of Employee..... Date.....

**(TO BE COMPLETED BY THE MANAGER)**

Date Received.....

Date of Enquiry.....

Names of all persons present at Enquiry.....

.....

.....

.....

Brief Summary of Enquiry (use additional paper is required):-

.....  
.....  
.....  
.....  
.....  
.....

Outcome of Enquiry:.....  
.....  
.....  
.....

Signature of Employee..... Date.....

Signature of Representative..... Date.....

Signature of Manager..... Date.....

I confirm that I now request this grievance to be referred to the Executive Dean/Head in line with Stage 4 of the Grievance Procedure.

Employee's signature..... Date.....

(TO BE COMPLETED BY HEAD OF DEPARTMENT)

Date Received.....

If enquiry re-convened:-

Date of enquiry.....

Names of all persons present at Enquiry.....

.....  
.....  
.....

Executive Dean/Head's Comments.....

.....  
.....  
.....  
.....

Executive Dean/Head's Decision.....

.....  
.....  
.....

Employee's Signature.....Date.....

Representative's Signature..... Date.....

Executive Dean/Head's Signature..... Date.....

### 13. DISCIPLINARY CODE

When policies, norms, values, standards and principles of The University of Fort Hare have been violated the university has the right, through the disciplinary procedure to apply appropriate action in a fair and consistent manner. Corrective action will vary depending on the extent and seriousness of the offence. Employees of the university should see disciplinary measures taken, as a corrective rather than punitive.

#### 13.1 Disciplinary Action

CATEGORY	NATURE OF OFFENCE	First Offence	Second Offence	Third Offence	Fourth Offence
<b>TIME-KEEPING</b>	Late coming	<ul style="list-style-type: none"> <li>• Verbal warning</li> </ul>	<ul style="list-style-type: none"> <li>• Written warning</li> </ul>	<ul style="list-style-type: none"> <li>• Final written warning</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Dismissal</b></li> </ul>
	Leaving work early without permission	<ul style="list-style-type: none"> <li>• Verbal warning</li> </ul>	<ul style="list-style-type: none"> <li>• Written warning</li> </ul>	<ul style="list-style-type: none"> <li>• Final written warning</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Dismissal</b></li> </ul>
	Absent from work without valid reason or notifying superior, or without permission	<ul style="list-style-type: none"> <li>• Verbal warning</li> </ul>	<ul style="list-style-type: none"> <li>• Written warning</li> </ul>	<ul style="list-style-type: none"> <li>• Final written warning</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Dismissal</b></li> </ul>
	Desertion or staying away from work for five (5) days or more without permission or without valid reason	<ul style="list-style-type: none"> <li>• <b>Dismissal</b></li> </ul>			
<b>PRODUCTIVITY OFFENCES (Incapacity)</b>	Poor performance	<ul style="list-style-type: none"> <li>• Verbal Warning</li> </ul>	<ul style="list-style-type: none"> <li>• Written Warning</li> </ul>	<ul style="list-style-type: none"> <li>• Final Written warning</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Dismissal</b></li> </ul>
	Unsatisfactory attitude towards performance				
	Sleeping on duty	<ul style="list-style-type: none"> <li>• Final Written warning</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Dismissal</b></li> </ul>		
	Refusal/failure to obey	<ul style="list-style-type: none"> <li>• Final written</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Dismissal</b></li> </ul>		

CATEGORY	NATURE OF OFFENCE	First Offence	Second Offence	Third Offence	Fourth Offence
	lawful and reasonable instruction related to work	warning			
<b>QUALITY OF WORK OFFENCES</b>	Poor quality of work or not working to standards	• Written Warning	• Final written warning	• <b>Dismissal</b>	
	Poor maintenance of vehicle or machinery for which employee is responsible and trained to operate / maintain	• Final written warning	• <b>Dismissal</b>		
	Wastage	• Final written warning	• <b>Dismissal</b>		
	Irresponsible damage to the University's property or equipment / material	• <b>Dismissal</b>			
	Injury to fellow employees due to negligence	• <b>Dismissal</b>			
<b>ALCOHOL &amp; DRUG RELATED OFFENCES</b>	Being drunk or under the influence of drugs during working hours	• Final written warning	• <b>Dismissal</b>		
	Unauthorized possession of alcohol during work hours	• Final written warning	• <b>Dismissal</b>		
	Unauthorised possession of non-medical drugs e.g. dagga, cocaine,	• <b>Dismissal</b>			

CATEGORY	NATURE OF OFFENCE	First Offence	Second Offence	Third Offence	Fourth Offence
	ecstasy, etc. on work premises				
	Possession of dangerous weapons at work without permission, e.g. guns, knives, etc.	<ul style="list-style-type: none"> <li>• <b>Dismissal</b></li> </ul>			
	Assault (physical), threat of assault, intimidation or instigation to violence	<ul style="list-style-type: none"> <li>• <b>Dismissal</b></li> </ul>			
<b>ATTITUDE &amp; BEHAVIOUR OFFENCES</b>	Breach of University's Code of Conduct	<ul style="list-style-type: none"> <li>• Final written warning</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Dismissal</b></li> </ul>		
	Not wearing personal protective clothing or equipment where supplied	<ul style="list-style-type: none"> <li>• Final written warning</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Dismissal</b></li> </ul>		
	Refusal to carry out reasonable and lawful instruction	<ul style="list-style-type: none"> <li>• Final written warning</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Dismissal</b></li> </ul>		
	Not observing security and the University's regulations	<ul style="list-style-type: none"> <li>• Final written warning</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Dismissal</b></li> </ul>		
	Smoking on University's premises (where not permitted)	<ul style="list-style-type: none"> <li>• Final written warning</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Dismissal</b></li> </ul>		
	Being in a "no entry" area without permission or good reason	<ul style="list-style-type: none"> <li>• Final written warning</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Dismissal</b></li> </ul>		
	Use of abusive and/or	<ul style="list-style-type: none"> <li>• Final written</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Dismissal</b></li> </ul>		

CATEGORY	NATURE OF OFFENCE	First Offence	Second Offence	Third Offence	Fourth Offence
	derogatory and/or offensive language or signs	warning			
	Gross insubordination, serious disrespect, impudence or insolence	• <b>Dismissal</b>			
	Gross negligence (irresponsible behaviour)	• <b>Dismissal</b>			
	Gross incompetence	• <b>Dismissal</b>			
<b>OTHER OFFENCES</b>	Damage to the University's materials, equipment, possession or property	• <b>Dismissal</b>			
	Removing / or being unlawfully in possession of the University's or customers' property	• <b>Dismissal</b>			
	Sabotage / espionage	• <b>Dismissal</b>			
	Driving the University's vehicle under the influence of alcohol or drugs	• Final written warning	• <b>Dismissal</b>		
	Dishonesty (stealing) during the course of employment	• <b>Dismissal</b>			
	Leaking of confidential University information	• <b>Dismissal</b>			
	Deliberately supplying incorrect or falsified	• <b>Dismissal</b>			

CATEGORY	NATURE OF OFFENCE	First Offence	Second Offence	Third Offence	Fourth Offence
	information				
	Any other reason in law as being sufficient ground for instant dismissal	<ul style="list-style-type: none"> <li>• <b>Dismissal</b></li> </ul>			

\* Any misconduct not specifically covered in the code will be dealt with according to the seriousness of the offence. The above are merely guidelines should under no circumstances be taken as given.

**1. Introduction**

An employee is required to perform his/her work to certain standards of performance (including attendance at work) and with a required level of skill. If he has shown in the course of time that he is not capable of doing this, management may be entitled to consider his/her dismissal, notwithstanding that he has not committed any particular act of misconduct.

**2. Fairness**

In order for a dismissal for incapacity to be fair, management would have to follow a different process to that required in cases of misconduct, although in both cases, the process culminates in the employee being given a fair hearing in accordance with the procedural guidelines set out earlier in this policy.

For a dismissal for misconduct to be fair, the employee basically must have done something which on its own was sufficiently serious to justify his/her dismissal, or he must have been subjected to prior warning which he failed to heed. In other words, he was dismissed because he would not work as required.

**4. Circumstances that may lead to incapacity**

Under 'incapacity', the question of an employee who cannot work as required is considered. This may be due to his/her poor state of health, a lack of ability to perform the tasks required, the fact that the nature of the employee's job is expanding due to changing circumstances within the organisation or to some other reasons.

In all these cases, it will greatly assist management to be able to refer to some objective criteria as a means of determining the employee's incapacity (e.g. the number of days he has been off sick, an independent medical report and a measurable fall-off in his/her production etc).

**6. Procedure to be followed by Management**

- 6.1 Having identified the problem, management should consult the employee about the identified problem and attempt to clarify any misunderstandings about what is required of him and in what respects he is failing to measure up to the required standards.
- 6.2 Periodic review dates and appropriate targets should be set in conjunction with the employee, and at all stages in the process, developments and details should be recorded in writing. It may also be necessary to agree on a required training programme to enable the employee to gain the skills necessary to perform his/her job satisfactorily.
- 6.3 Over the course of time his/her performance should be monitored and he/she should be given a reasonable opportunity to improve.
- 6.4 If however, he fails to do so, and there are no reasonable prospects of improvement within the foreseeable future, it would then be appropriate to

consider whether there is a suitable alternative position within the organisation in which he could be deployed. This may involve a demotion and possibly a reduction, in pay, and it would be up to the employee to elect whether to accept this new position or not. If he chooses not to, it would strengthen management's position if the decision was ultimately taken to dismiss him.

- 6.5 If the employee's incapacity stems from his/her poor state of health, it will be necessary for management to consider the extent to which his/her work performance is being affected thereby and what prospects there are of a meaningful improvement in the future.

## **7. Points to note**

- 7.1 In these cases, it is important to distinguish between continued absence from work due to genuine illness and absence due to malingering. Although the distinction may be difficult to prove, the former must be treated as a case of incapacity whereas the latter is clearly a case of misconduct. It is confirmed however, that both categories could ultimately constitute valid grounds for dismissal.
- 7.2 In all cases of incapacity, if having considered the factors set out above, management is contemplating dismissing the employee concerned, it will then be necessary to convene a proper hearing in accordance with the procedural guidelines set out earlier in this policy.
- 7.3 At the hearing, management should consider the following essentials:
- was the employee told what the problem was, and what was expected of him/her?
  - was he/she given a reasonable opportunity to improve, and was he/she given the required assistance and training during this period?
  - was he/she aware of what the consequences would be, if he/she failed to improve?
  - is there another more suitable position available for him/her within the organisation?
  - was the Incapacity sufficiently serious to justify his/her dismissal?

## **8. Conclusion**

Having considered these factors and all other relevant aspects of the case, management will be in a strong position to take appropriate action. Incapacity is however, not an easy problem to deal with, particularly where there may be inadequate means of objectively assessing an employee's work performance or where the employee concerned has had long service with the University of Fort Hare. Every effort should be made to place employees in more suitable positions, in the event of them being incapable of adequately performing their existing functions.