

<h1 style="margin: 0;">Disciplinary Policy</h1>

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Disciplinary Policy

1. POLICY STATEMENT

- 1.1 This policy is designed to help and encourage all employees to achieve and maintain required standards of conduct, attendance and job performance. The aim is to ensure consistent and fair treatment for all in the organisation.
- 1.2 The policy will help to ensure that managers and staff understand their respective rights and responsibilities when handling disciplinary situations and sets out the forms of conduct which may result in a breach of the organisation's disciplinary rules, and the consequences of such a breach of discipline.
- 1.3 This policy will be applied using the principles of the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice: Disciplinary and Grievance Procedures.

2 SCOPE OF THE POLICY

- 2.1 This policy applies to all staff employed under a contract of employment with the organisation. It does not apply to independent contractors and agency workers working for the organisation under a contract for services.
- 2.2 Guidance on hearings and disciplinary procedures regarding medical and dental staff was published in 2005 in 'Maintaining High Professional Standards in the Modern NHS'. That guidance states that misconduct matters for doctors and dentists are matters for local employers and must be resolved locally. In cases of alleged misconduct by medical and dental staff relating to matters of a professional nature or professional conduct, investigations and hearings must be conducted in accordance with that guidance.
- 2.3 Many employees are members of professional bodies which have professional standards of capability, conduct and competence. The organisation requires employees in those professions to abide by those standards.
- 2.4 This policy does not apply to matters of underperformance, for which the Capability Policy should be used or for matters of health related attendance, which will be dealt with under the Attendance Management Policy

3 GENERAL PRINCIPLES

- 3.1 Informal and/or formal counselling or other good management practice will be used to attempt to resolve matters before any formal disciplinary action is taken, where possible.

- 3.2 At every stage in the procedure, the employee will be advised of the nature of the complaint against them, and will be given the opportunity to state his or her case before any decision is made.
- 3.3 The employee will be given the right to be represented by a recognised trade union representative or workplace colleague at the formal stage of the disciplinary procedure. Representation does not extend to legal advisers at any stage of the disciplinary process.
- 3.4 Employees will not be dismissed for a first breach of discipline except in the case of gross misconduct as defined in this policy. (See Appendix 1)
- 3.5 Employees will have the right to appeal against any formal disciplinary sanction imposed.
- 3.6 Although normal disciplinary standards will apply to trade union representatives' conduct, no disciplinary action should be taken until the circumstances of the case have been discussed with a full time officer.

4. ROLES AND RESPONSIBILITIES

4.1 Role of the Line Manager

All managers should ensure that they are fully aware of their responsibilities under the disciplinary policy and procedure and that their staff are aware of this policy and its contents.

The line manager will be responsible, as appropriate for:

- undertaking an initial investigation or acting as the investigating officer; determining whether a matter should proceed to a disciplinary hearing
- instigating counselling or other informal action;
- suspending an employee (under the advisement of a HR representative;
- Conducting the disciplinary hearing and determining the outcome;
- Ensuring the outcomes of the disciplinary hearing are implemented
- presenting the reasons for their decision at any appeal hearing

4.2 Role of the Senior Manager

The senior manager will be responsible for:

- seeking assurance that the outcomes of the disciplinary hearing have been implemented
- hearing an appeal against a disciplinary sanction

4.3 Role of the Investigating Officer

The Investigating Officer will:

- conduct the investigation
- produce the investigation report;
- present the findings of the investigation at any disciplinary hearing

4.4 Role of Human Resources

The role of HR is to:

- ensure a fair and equitable process in line with the policy
- provide advice at disciplinary hearings and appeals, interpreting policy and advising on employment legislation

4.5 Role of the Representative

An accredited Trade Union/Professional organisation representative or full time officer may accompany an employee during the investigation, disciplinary or appeal hearing.

The role of the representative will include:-

- Conferring with the employee.
- Supporting and preparing the employee
- Responding on the employee's behalf to any view expressed at the disciplinary interview/hearing or appeal. They are not permitted to answer questions put directly to the employee neither do they have the authority to question the process.
- Putting the employee's case at a disciplinary interview/hearing or appeal.
- Summing up the employee's case at a disciplinary interview/hearing or appeal.
- In extreme circumstances, the representative may answer on the behalf of employees.

4.6 Role of the Work Colleague

A work colleague may accompany an employee during the investigation, disciplinary or appeal hearings. The work colleague may be professionally qualified but will not act in a legal capacity and is not permitted to answer questions on the employee's behalf, represent the employee or prevent the investigating officer from presenting the case. The work colleague's role is to provide emotional and moral support to the employee.

5. DISCIPLINARY PROCEDURE

5.1 Informal Discussion/Counselling

- 5.1.1 Depending on the seriousness of the allegations of misconduct, every effort will be made to resolve the matter by informal discussions with the member of staff before taking formal disciplinary action.
- 5.1.2 This will involve the line manager discussing the perceived shortfall in conduct with the member of staff concerned, and advising on what standards are expected. The discussion should also outline what needs to be done to improve and when a follow-up meeting will be held. Support or training should be offered where relevant and written notes taken by the line manager.
- 5.1.3 Informal action does not constitute disciplinary action, although a repetition of the conduct or a failure to improve may lead to formal action. There is no right to be accompanied or right of appeal at the informal stage.

5.2 Suspension from Duty

- 5.2.1 Suspension is not a disciplinary sanction and is available to protect both the employee and the organisation. Suspension of an employee from duty should be considered a last resort and should always be on full pay. Where it can be accommodated, alternatives to suspension must always be considered before suspending an employee; however it may become necessary in certain circumstances. These could include, but are not limited to, situations where:
- the action complained of requires the immediate removal of the
 - employee
 - from their place of work pending a decision of what action, if any, is to
 - be taken
 - the alleged action requires investigation and is of such a serious nature
 - (i.e. potentially dismissible) that it is undesirable for the employee
 - concerned to remain on duty.
 - it is necessary for the protection of a member of staff, a patient or the
 - public;
 - a full investigation is required and it is thought likely that an employee
 - is likely or possibly could impede, influence or affect the investigation
 - process
 - there is a need to protect the interests of the organisation.
- 5.2.2 A period of suspension of 2 weeks will apply to all contracts of employment held by the employee with the organisation and this includes 'bank' work. This may in certain circumstances be extended. The employee will be notified of the extension. The individual who has been suspended must not undertake paid work for another employer during their normal working hours with the organisation. This includes bank, locum and private work.

5.3 The Investigation

- 5.3.1 The Investigating Officer will be responsible for promptly ascertaining the full facts of the case, including obtaining statements from witnesses and for providing recommendations on future actions once all statements have been concluded. Other options may include an assessment that there is no case to answer, handling it informally or handling it through another policy.

5.4 The Formal Disciplinary Hearing

- 5.4.1 If, following an investigation, the alleged misconduct is considered to warrant disciplinary action, a hearing will be convened. The manager who has decided that there is a case for disciplinary action will normally make the arrangements and conduct the disciplinary hearing. If the manager has undertaken the role of investigating officer, then the hearing will be conducted by a manager of equal grade or higher.
- 5.4.2 The employee will be advised in writing of the nature of the alleged misconduct, provided with a copy of the investigation report and any supporting documentation and statements, invited to attend a disciplinary hearing and offered the right to be accompanied.

5.5 Disciplinary Action

- 5.5.1 When determining the disciplinary action to be taken, the Chair of the Disciplinary Hearing should bear in mind the need to satisfy the test of reasonableness in all circumstances. As far as possible, account must be taken of any mitigating factors.
- 5.5.2 The employee must be informed verbally of the outcome of the disciplinary hearing and this must be confirmed in writing, giving details of the level of sanction, reasons for the decision and right of appeal.
- 5.3.2 When potentially considering formal action for Medical and Dental Staff, 'Maintaining High Professional Standards in the Modern NHS' must be followed.

5.6 Disciplinary Sanctions

- 5.6.1 The formal sanctions available to a the Chair of the Disciplinary Hearing are as follows:

First Written Warning

This level of warning may be issued where there is a breach of the disciplinary rules or where counselling has failed to achieve the required

improvement. The warning will normally be retained on the employee's personal file for a period of 12 months.

Final Written Warning

A manager may issue a final warning in cases of serious misconduct, for example, where an offence may not warrant dismissal but is serious enough not to be tolerated a second time. This level of warning may also be issued where an employee has breached disciplinary rules, whilst subject to a previously issued first written warning. The warning will normally be retained on the employee's personal file for a period of 12 months.

In both written and final written warnings, if the manager is not satisfied that the employee's conduct has improved during the period of the sanction or if there are further incidents of misconduct, further disciplinary action may be taken in accordance with this procedure.

Once the warning time limit has passed, it will be disregarded in any further disciplinary proceedings.

Dismissal

Dismissal is the ultimate and final sanction which can be imposed. The dismissal will be effective from the date of the disciplinary hearing.

Dismissal will not take place for a first breach of discipline unless it is a case of gross misconduct, but may take place if an employee's conduct remains unsatisfactory following a final written warning.

The employee should be informed in writing of the reason for dismissal, the date on which his or her employment contract will terminate, and their right of appeal.

Action Short of Dismissal

In some cases of gross misconduct, alternatives to dismissal may be considered as follows:

- Downgrading (without pay protection)
- Redeployment
- Extension of the warning period

In such circumstances, these alternatives should be accompanied by a disciplinary sanction, i.e. a written or final written warning, and a development plan.

5.7 Appeal Hearing

Employees have the right of appeal against formal disciplinary sanctions. They should appeal in writing to the relevant senior manager, stating their grounds for appeal, within ten working days of receipt of the letter confirming the sanction.

The purpose of the appeal hearing shall be to review the decision of the disciplining manager, not to re-hear the original disciplinary hearing. The appeal panel shall have the authority to apply a lesser sanction or uphold the original management decision. Appeals will be heard by a manager of greater seniority than the manager who conducted the disciplinary hearing, advised by a HR representative.

In cases involving allegations of professional misconduct, a senior professional from the appropriate discipline should be an additional member of the appeal panel.

5.8 Professional Misconduct

Contravention of professional codes, standards, practice, laws or rules by health professionals may lead to disciplinary action, including dismissal. The professional bodies may take action in addition to action taken by the organisation, and the organisation has a duty to report incidents of professional misconduct to certain statutory bodies e.g. General Medical Council (GMC), Nursing and Midwifery Council (NMC), Health Professions Council (HPC).

If the employee is also employed by another organisation, the organisation may be required to notify that organisation of the disciplinary action taken.

5.9 Alleged or Actual Criminal Offences

As the burden of proof is different in disciplinary hearings compared to criminal proceedings, the organisation does not need to wait for the outcome of police enquiries or court hearing before commencing investigations and bringing the matter to a conclusion. However, liaison with the Police may be advisable, depending on the situation. The organisation will consider the circumstances of the case and, following advice, decide whether to proceed or not with the internal organisation investigation into the allegation against the employee, or delay it.

Criminal offences or alleged criminal offences committed outside the place of employment are not necessarily matters for disciplinary action. The organisation will consider whether disciplinary action is necessary, where a member of staff is cautioned, charged with, or convicted of a criminal offence(s) related or unrelated to their employment.

The decision whether to take disciplinary action or not, will take into account whether the caution, charge or conviction is one that is relevant to the employee's employment, or makes them unsuitable for the type of work undertaken.

6 REVIEW OF POLICY

This policy will be reviewed every 3 years from the date of ratification.

The policy may be reviewed at an earlier date if necessary, for example, to update it in line with changes in employment law or good practice.

Disciplinary Rules

The following list of disciplinary rules are examples only and are not exhaustive.

Gross Misconduct

Gross misconduct is seen as misconduct serious enough to destroy the contract of employment by breaking the fundamental bond of trust and confidence between the organisation and the employee.

Listed below are examples of misconduct which may be considered to be gross misconduct and may warrant dismissal or action short of dismissal. This list is not exhaustive:

- Theft, including unauthorised possession of property belonging to the organisation or to any member of staff or any patient.
- deliberate, malicious or negligent damage to the organisation premises, property or records
- Ill treatment or wilful neglect of patients
- Deliberate falsification of any official organisation documentation
- False declaration of qualifications or professional registration or information used in support of an application.
- Breaches of confidentiality, prejudicial to the interest of the organisation
- Being unfit for duty because of the misuse/consumption of drugs or alcohol.
- Refusal to carry out a management instruction which is within the individual's capabilities including a serious act or acts of insubordination.
- Violent, dangerous, intimidating conduct; exceptionally offensive behaviour; exceptionally inappropriate behaviour; or assault.
- Any action or failure to act that threatens the health and safety of a patient, carer or another member of staff or a member of the public.
- Failure to observe organisation rules, regulations or procedures.
- Bullying or harassment in breach of the organisation's Dignity at Work policy
- Deliberate act of discrimination, victimisation or harassment against another member of staff, a patient or a third party relating to race, ethnic origin, sex, sexual orientation, marital status, religion, age or disability
- Gross negligence, incompetence or failure to apply sound professional judgement.

- Bribing or attempting to bribe another individual, or personally taking or knowingly allowing another person to take a bribe, including receipt of goods, money or excessive hospitality.
- Fraud – any deliberate attempt to defraud the organisation or a member of the public in the course of their normal duties, including dishonest claims for expenses and timesheets
- A criminal offence, which may (whether it is committed during or outside an employee's hours of work for the organisation adversely affect the organisation's reputation, the employee's suitability for the type of work he or she is employed by the organisation to perform or his or her acceptability to other members of staff or to patients.
- Unauthorised use or access of computer or other IT systems or breach of the Internet and/or e-mail Policy, including downloading or transmission of material which is defamatory, offensive, obscene, malicious, sexist or racist.

General Misconduct

Listed below are examples of offences, which amount to misconduct falling short of gross misconduct:

- Persistent lateness and poor time-keeping.
- Absence from work, including going absent during work, without valid reason, notification or authorisation.
- Smoking in prohibited areas.
- Failure to work in accordance with prescribed procedures.
- Failure to carry out reasonable instructions or non-co-operation with reasonable management activities.
- Using foul or abusive language towards patients, carers, members of the public or other employees
- Incompetence or unsatisfactory work performance.
- Unreasonable standards of dress or personal hygiene.
- Minor contravention of Health and Safety procedures
- Failure to observe the organisation's policies and procedures.