

Disciplinary Policy

Policy Control

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Version Control

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1.0	01/05/04	LN	Board	New policy
2.0	31/01/08	AM	Board	Redraft by Deputy HR Director.
3.0	05/07/11	KE	Healthcare Governance	review date 5th September 2012
4.0	10/05/12	KE	Quality & Healthcare Governance	Not recorded
4.1	28/05/13	TN	Not recorded	Administrative Amendments
4.2	12/07/13	TW	Agreed at GNG and ESEC	Further amendments to Appendices 6 and 7 and also delete requirement for appeal against verbal warning.
4.3	1/06/14	SJ	Not recorded	Administrative updates made to reflect Trust structures
5.0	20/02/15	JB/RK	Not recorded	Transferred into 2015 Trust policy template format
5.1	23/04/15		Not recorded	Comments received from Staff Side
6.0	19/04/16	JT	Quality and Governance	Not recorded
7.0	17/01/17	JT	Not recorded	Removal of the statutory two-step dismissal process
8.0	07/06/18	ES	Policy Working Group, GNG, Exec Committee	Full policy review of practice and brought in line with ACAS code & guidance, terminology change e.g informal warning



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1. What this policy covers

The Trust is committed to ensuring that employees are managed in a reasonable, supportive, consistent, fair and effective manner, to encourage an acceptable level of conduct, whilst safeguarding the Trusts interests, our service users and colleagues.

Employees are required to familiarise themselves with the [values and the expected conduct](#) by the Trust, their colleagues and our service users. The Trust follows the principles of the ACAS Code of practice for disciplinarys and investigations best practice, further information can be found:

- 🔗 [Ourspace](#)
- 🔗 www.acas.org.uk

This policy will:

- Guide managers in dealing with minor issues in an informal and supportive manner.
- Outline the decision making process and procedure to be followed on the occasions when formal alleged policy breaches have been identified.
- Make clear the responsibilities and roles of all involved in this policy.
- Detail disciplinary sanctions that can be applied and their duration.
- Inform employees of how they can appeal against a decision.

This policy applies to all employees [except Medical & Dental who have a separate procedure](#). Issues that arise with workers on the Trust Bank will be dealt with under their working agreement which is managed by the Bank Team.



2. Principles

“Where possible, if issues of minor misconduct are identified, they will initially be addressed informally during regular supervision between the employee and their manager”.

Formal action will only be considered if informal action has not led to improvement in the conduct area being addressed or where matters are more serious such as [gross misconduct](#).

- Issues of poor performance, capability or health related incidents should be addressed using the appropriate separate Trust policies.
- During a [probationary period](#), individuals should be dealt with under the separate process. There is freedom to initiate a parallel disciplinary process if required e.g. such as cases where there are clinical concerns that may need referral to a professional body.
- Cases should be dealt with early to reasonably resolve problems as quickly and fairly as possible.
- This policy should not be seen only as a mean of imposing a sanction and a tool for punishment.

3. Responsibilities

- **Executives/Senior Management** have overall responsibility for developing and maintaining a reasonable, open, fair and consistent culture throughout the Trust and ensuring that cases are dealt with fairly.
- **Line Managers** are responsible for ensuring that they foster a culture to support and encourage their team and



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ensure that their team members are aware of the standards of conduct required in their role and to each other.

- **Employee Relations (ER) Team** is responsible for providing professional HR advice and support and should be consulted on all formal cases.
- **All Trust Employees** are responsible for ensuring actions taken are reasonable, considered and fair.
- **Employees** are responsible for cooperating fully with this policy.
- **Employees** have the right to be accompanied to all formal meeting as described in the [separate policy](#).
- **Witnesses** are expected to participate fully and a supportive mechanism should be initiated by their Line Manager to facilitate this and expectations managed.
- We ask that **All Individuals** asked to participate notify management of any adjustments that may be required at the earliest opportunity for consideration.
- **All** involved should maintain confidentiality.

4. Policy in Practice

The policy has the following stages:

- **The Informal Stage** –Supervision or Disciplinary Options Meeting.
- **The Formal Stage** – includes investigations and possibly hearings.

4.1 The Informal Stage

When it is considered appropriate, minor issues of misconduct will be managed informally.

The aim of this stage is to discuss the issue(s) raised, learn from experience and to support and develop a relationship and environment of learning and accountability and not one of blame.

These informal meetings should be held in a timely manner, possibly during supervision and would not normally take place more than once.

External Considerations

If an allegation concerns abuse, neglect or is potentially criminal, advice must be sought from the [Trusts Head of Safeguarding](#) (or Deputy in their absence). A member of the Operational team, ER and Safeguarding will coordinate a joined up process of investigation and liaise with the relevant external parties as required. Professional referrals may also be considered at this stage.

Adult & Child Safeguarding

Due to the nature, until the coordinated response has taken place no action should be taken regarding informing the employee of the allegation.

Police

Should police involvement be required, they may occasionally request that any internal investigation is postponed until they have collated the criminal evidence. Each case will be considered on its own merit and where a delay is agreed periodic reviews established to determine if this is still in the best interest of the Trust and its service users.

Fraud Allegations

If an allegation concerns fraud, advice must be sought from the Trust's [Counter Fraud Specialist](#).

Alternative action(s) may also be considered at this stage for example performance management or management may decide that there is no case to answer. There is no legal right to be accompanied at these meetings, nor is there a right to appeal against informal outcomes. However, the [Trust's grievance policy](#) can be invoked should individuals believe they have been treated unreasonably.



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It is good practice for notes of discussions to be kept such as in supervision records. Should a line manager believe there has been no, or insufficient improvement, these documents may form part of any future process documentation.

On occasions when it is not clear if an issue should be dealt with informally, the line manager would carry out an initial fact-finding exercise to establish the basic facts of the case. This would include inviting the individual to a Disciplinary Options Meeting (DOM) to address the allegation(s).

4.2 Disciplinary Options Meetings (DOM)

Should the issue not be initially resolved or if it is considered appropriate an informal warning could be considered at a DOM. Chaired normally by the Line Manager, the aim of the meeting is to discuss the situation with an aim to as a minimum:

- Clarify the breach and advise the expected standards / behaviours required and why.
- Confirm that they fully understand the standards the Trust / Team expect.
- Help employees make the necessary changes by setting objectives / standards within an agreed reasonable timeframe.
- Agree how progress will be reviewed and if any support may be required to achieve this.

Following the DOM, the manager will then have reasonable time to review the case to determine if:

- It is informal in nature and can be best resolved via an informal warning as above.
- An alternative to a disciplinary sanction is more appropriate based on the facts.
- To progress to the Formal Stage and be investigated further.



4.3 Suspension and Restrictions

If it is believed reasonable and appropriate, a decision to suspend or restrict an individual from work pending further investigation or disciplinary action may be made.

Suspension/restrictions are a neutral act – it is not a disciplinary sanction. Any period will usually be on full pay. An appropriate manager will be allocated as that individual's key contact and support the individual during this period. They will also liaise with management to ensure that any suspension/restriction is kept as short as possible and reviewed regularly.

Examples of reason to suspend/restrict may include:

- Where the alleged action is of a serious nature, potentially constituting gross misconduct.
- Where it is necessary for protection of the individual accused or the protection of others.
- Where an internal or criminal investigation might be compromised if individuals were to remain at work.

Before any decision to suspend/restrict is made, the manager should seek advice from the ER Team or the on-call manager if out of hours. If a decision to suspend/restrict is made, this will be informed verbally and followed up in writing usually within 7 calendar days unless agreed differently.

While individuals are restricted they will be advised of the terms in writing.



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While individuals are suspended they should not attend work or discuss the case with any colleague other than their representative. [Terms of suspension](#) will be confirmed in writing.

Any breaches of suspension/restriction may result in additional disciplinary action up to, and including dismissal without notice.

4.4 The Formal Stage

The Investigation

Having determined that a formal process is necessary, an appropriate manager will commission an investigating officer. They should have had no previous involvement in respect to the alleged misconduct. Consideration as to whether an individual external to the department may be more appropriate with serious allegations and advice can be taken from the ER team when required.

The investigating officer will interview the employee and witnesses and gather evidence to allow them to compile and submit an investigation report. This should be completed within a reasonable and agreed timescale. Occasionally extensions may be required and negotiated with the employee with authorisation from the senior management team.

As part of the investigation, investigating officers will consider if they believe there is a case to answer and if so, inform the individual of the details of the disciplinary hearing. If they decide there is no case to answer, they will discuss their findings with the commissioning manager and then inform the individual and the process will end.

4.5 The Disciplinary Meeting

The meeting will be chaired by an appropriate manager, assisted by a member of the ER

Team. In cases of professional misconduct or technical issues, a senior professional manager from the appropriate discipline may additionally assist the Chair.

Written notice will usually be given to allow individuals to prepare their case, the length of notice will vary dependant on the case and number of documents that may need to be reviewed but as a standard 5 working days minimum and 10 maximum is suggested as reasonable. The invitation letter to the individual will confirm as a minimum:

- The nature of the complaint and confirmation of the alleged breach (including any amendments /additions).
- The details of the meeting and attendance.
- Confirmation that the meeting is of a disciplinary nature and may result in disciplinary action being taken against the individual(s).
- Copies of reports, statements and evidence should be included. In certain circumstances, for example to protect a witness, the Trust reserves the right to withhold/redact information.
- State that they have the right to be accompanied at the meeting in line with [Trust policy](#).
- Include names and Job titles of witnesses if being called as part of the investigation case (the Chair reserves the right to challenge the appropriateness of witnesses being called with the investigating officer based on reasonability and the protection of witnesses).

The employee can choose to submit additional documentation to the panel to support their case. Should they wish to do this, it must be received at least 5 working days before the meeting unless agreed



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otherwise. This usually includes any additional information that they intend to rely on at the disciplinary meeting. They should also indicate to the Chair the names of any witnesses they wish to call (the Chair reserves the right to challenge this with the individual/Union based on reasonability and the protection of witnesses).

If the individual and/or the representative are unable to attend with good reason, the hearing will be rearranged once. At the second attempt, even if they cannot attend, the meeting may take place and a decision made in their absence. In such circumstances alternatives may be suggested such as representatives attend on their behalf to present a statement from the employee.

At the hearing the Chair will direct the meeting and hear both the investigation and employee case, hear witnesses and, in addition to panel members' questions, both the investigating officer and the employee will be able to ask questions of each other.

The meeting will then be adjourned so the panel can come to a decision. Firstly they will consider if disciplinary action is warranted, and then if disciplinary action should be taken, what level of sanction to give.

The parties will be recalled and the Chair will inform the parties of their decision which will be **confirmed in writing within 7 calendar days of the meeting**. Occasionally, the panel may need more time to reach a decision, in which case, communication of the decision may be negotiated differently.

4.6 Disciplinary Sanctions

The sanction level will be determined by the severity of the offence and may take into account previous sanctions. Warnings may run concurrently if they are for different

reasons. If the allegation is upheld, usually the Chair will select one of the following or may determine that the issue is informal in nature and issue an **informal warning**:

Alternatives or Additional Sanctions

If reasonable, the Chair may consider other options as an alternative to, or in conjunction with other sanctions. These may form options such as development plans, formal performance management, redeployment, down banding, change in location/team etc.

First Written Warning

Usually used as the first step of corrective action following unsatisfactory conduct/behaviour. The Chair will explain that the nature of the actions are unacceptable and confirm the standards required in future. It should be confirmed that failure to improve may result in further disciplinary action.

The warning will be live on file usually for a minimum of 12 months, after which time, if there have been no further breaches, it will be considered spent.

Final Written Warning

Usually issued by the Chair following a final written warning where no improvement has been made or it may be given after a more serious first offence.

It will advise of the necessary standards required and that further breach may result in dismissal.

The warning will be live on file usually for a minimum of 24 months, after which time, if there have been no further breaches, it will be considered spent.

Dismissal

Normally considered on cases where there has been failure to respond to previous



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disciplinary sanctions, or on cases where conduct is serious in nature. The Chair of the meeting must have authority/delegated authority to dismiss.

Dismissal occurs when employment is terminated with or without notice. Dismissal without notice is called 'summary dismissal' and will only be used in exceptional circumstances, for example in serious cases of [Misconduct/Gross Misconduct](#). Any such decision will be confirmed in writing.

4.7 Professional Bodies/DBS Referrals

The Trust reserves the right, if deemed appropriate to refer matters to the relevant professional body and/or DBS who may then take separate action (e.g. NMC, GMC, HCPC, DBS etc).

In cases where individuals are dismissed and/or convicted of a criminal offence, negligence or fraud that results in a loss to public funds, NHS Pensions may decide to withhold some, or all of the individual's retirement benefits.

4.8 Appeals

Following the disciplinary hearing, the individual may wish to appeal, perhaps because they feel the sanction or finding is unfair, or they believe that this Disciplinary Policy may not have been properly applied.

The right to appeal should be clearly documented in the outcome letter for any formal sanction. A reasonable timeframe should be agreed for receipt of an appeal

however this will be dependent on the exact nature of the case and will be negotiated with the parties involved.

“Appeals should be sent to: awp.HRBoardAppealsMailbox@nhs.net detailing the exact grounds of appeal”

An appeal hearing will be arranged, the process and timescales for which will mirror those outlined in the disciplinary meeting section above. The panel members and secretary will have had no prior direct involvement in any aspects of the current issue.

The decision of the appeal hearing will be final, however the appeal panel also reserves the right to increase sanctions where they deem necessary, for example in cases where additional information is provided. In such situation another opportunity for appeal against the new sanction will be provided.

5. Monitoring

The Trust will monitor the policy through data gathering and analysis relating to formal entry into disciplinary process, and will use frameworks such as Workforce Race Equality Standard to identify and where appropriate address disparities between different groups.

Please review [Ourspace](#) for template letters and best practice guidance.

