

EMPLOYMENT POLICY

DISCIPLINARY PROCEDURE

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Version Control Schedule

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1	October 2004	Martin Luff, Head of Corporate Human Resources	Archive	
2	January 2007	Martin Luff, Head of Corporate Human Resources	Archive	
3	July 2009	Martin Luff, Head of Corporate Human Resources	Archive	
4	April 2012	Martin Luff, Head of Corporate Human Resources	Archive	Process pragmatism updates
5	February 2013	Martin Luff, Head of Corporate Human Resources	Archive	Counter Fraud and Procedural Update
6	September 2013	Martin Luff, Head of Corporate Human Resources	Archive	Francis Report principles of openness, transparency and candour included
7	August 2014	Martin Luff, Head of Corporate Human Resources	Active	Nominated person to lodge appeal and timescale revised

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1. AIMS

It is necessary for the proper operation of its business and the health and safety of its employees that the Trust operates a disciplinary procedure. The following procedure will be applied fairly in all instances where disciplinary action is regarded as necessary by the Trust's management.

2. SCOPE

This procedure applies to all employees. Performance issues which relate to an individual's capability will be handled under the Trust's Delivering Performance Policy and Procedure. Professional conduct and competence issues for medical and dental staff are covered by a separate Trust policy and procedure titled Maintaining High Professional Standards in the Modern NHS.

3. PRINCIPLES OF OPENNESS, TRANSPARENCY AND CANDOUR

All employees must be honest, open and truthful in all their dealings with their colleagues, patients and the public. Organisational and personal interests must never be allowed to outweigh the duty to be honest, open and truthful.

4. DISCIPLINARY OFFENCES

4.1 GENERAL MISCONDUCT

The Trust reserves the right to implement the disciplinary procedure at any informal or formal stage taking into account the alleged misconduct of the employee. Matters that the Trust views as amounting to disciplinary offences include (but are not limited to):

- 4.1.1 persistent bad timekeeping;
- 4.1.2 unauthorised absence;
- 4.1.3 minor damage to the Trust's property;
- 4.1.4 failure to observe the Trust's procedures;
- 4.1.5 unreasonable refusal to follow an instruction issued by a manager or supervisor;
- 4.1.6 poor attendance;
- 4.1.7 failure to inform the Trust of secondary employment with another employer;
- 4.1.8 All Trust buildings, grounds and vehicles are smoke free. Staff are not permitted to smoke whilst on duty.

4.2 GROSS MISCONDUCT

Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the Trust. In the event that an employee commits an act of gross misconduct, the Trust will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice.

Matters that the organisation views as amounting to gross misconduct include (but are not limited to):

- 4.2.1 stealing from the Trust, members of staff or the public or other offences of dishonesty, including fraud and/or corruption;
- 4.2.2 falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee;
- 4.2.3 falsification of records, reports, accounts, expense claims or self-certification forms, whether or not for personal gain;
- 4.2.4 failure to report incidents which could cause harm to others, e.g. break down of equipment or errors in administration of patient treatment;
- 4.2.5 sexual misconduct at work;
- 4.2.6 fighting with or physical assault on members of staff or the public;
- 4.2.7 verbal assault, or menacing behaviour directed at a patient, member of the public, or fellow employee;
- 4.2.8 deliberate and serious damage to or misuse of the Trust's property;
- 4.2.9 drunkenness or being under the influence of illegal drugs while at work;
- 4.2.10 possession, custody or control of illegal drugs on the Trust's premises;
- 4.2.11 serious breach of the Trust's rules, including, but not restricted to, health and safety rules and rules on computer use;
- 4.2.12 conviction of a criminal offence that is relevant to the employee's employment;
- 4.2.13 failure to inform a manager if arrested on a charge or served with a summons on a criminal charge;
- 4.2.14 conduct that brings the Trust's name into disrepute;
- 4.2.15 discrimination, harassment or bullying of a fellow worker on the grounds of sex, sexual orientation, race, disability, age or religion or belief;
- 4.2.16 gross negligence, i.e. any action or failure to act which has or could have resulted in harm to a patient, the serious damage of property or equipment, or otherwise endanger health and safety, including a failure to give appropriate care and protection to patients in the Trust's care;
- 4.2.17 being asleep on duty, unless authorised;
- 4.2.18 use of a hand-held mobile phone whilst driving;

- 4.2.19 loss of legal authority to continue employment. This includes failure to retain registration where this is a condition of employment, and also where legal authority to carry out the duties for which the individual is employed, e.g. the loss of a driving licence in the case of a driver;
- 4.2.20 breach of confidentiality;
- 4.2.21 breach of data protection legislation;
- 4.2.22 non-disclosure of infection status;
- 4.2.23 inappropriate use of the Internet and e-mail;
- 4.2.24 inappropriate use of social networking internet sites. An employee who makes inappropriate comments about the Trust or any employee that works at the Trust on Facebook or any other social networking internet site and which are in the public domain, regardless of whether this occurs whilst at work or outside of work;
- 4.2.25 bribery offences under the Bribery Act 2010.

Other acts of misconduct may come within the general definition of gross misconduct.

4.3 PROFESSIONAL MISCONDUCT

Employees who are subject to discipline by professional bodies are reminded that the Trust has a duty to report any incidence of possible professional misconduct to the appropriate body who may investigate the case.

Any action taken by an employee's professional body does not preclude the Trust from investigating the circumstances of any incident of professional misconduct and taking appropriate action under the Trust's disciplinary policy and procedure. The Trust is entitled to proceed with any action relating to this procedure even if there are pending professional or regulatory body proceedings regarding an employee.

4.4 FRAUD ALLEGATIONS

Allegations of fraud should first be discussed with the Director of Finance, his designated representative, and/or the Local Counter Fraud Specialist for investigation.

The results of an investigation by the Local Counter Fraud Specialist may be passed onto the line manager if considered appropriate who would then need to make a decision on whether to use the findings of this investigation or to conduct their own separate investigation if the original investigation had not found evidence of fraud or corruption, but still constituted a disciplinary matter. This decision should be communicated to the employee if approved by the Local Counter Fraud Specialist.

4.5 CHILD ABUSE OR ADULT ABUSE ALLEGATIONS

The Local Authority Designated Officer (LADO) should be immediately informed where there is an allegation of child abuse or an alleged abuse of an adult by an employee, either at work or in relation to an incident outside of work. Child abuse allegations should be raised with the LADO through the Trust Named Nurse and Child Protection Team.

The Named Nurse or Team can provide contact details for the LADO.

4.6 FIT AND PROPER PERSON TEST

Where the contract of employment of an executive director is terminated in circumstances in which there are reasonable grounds for believing that he or she is not a fit and proper person to hold such a post, the Trust is obliged to report the matter to Monitor, the Care Quality Commission and the NHS Development Authority.

5. INVESTIGATION

An employee's supervisor or manager will promptly and thoroughly investigate any matter that is reasonably suspected or believed to contravene any of the Trust's policies or rules (subject to 3.4 above) or may otherwise be a disciplinary matter. The employee will be informed as soon as possible as to the fact of an investigation and when it has been concluded.

Depending on the circumstances of the case, the employee may be invited to attend an investigatory interview. If such an interview is held prior to a disciplinary hearing, the employee will be informed at the outset that the interview is an investigatory interview. There is no right for employees to be accompanied at a formal investigatory interview. The Trust reserves the right to dispense with an investigatory interview and to proceed directly to a formal disciplinary hearing.

For medical and dental staff, please also refer to the Trust Policy on Maintaining High Professional Standards in the Modern NHS.

6. SUSPENSION

There may be instances where suspension with pay is necessary while investigations are carried out. The Trust has the right to suspend with pay where there are reasonable grounds for concern that evidence may be tampered with or destroyed, or witnesses pressurised before the disciplinary hearing, or if there is a potential risk to the Trust or other employees or third parties in allowing the employee to remain at work.

If the matter involves suspected fraud or corruption, possible suspension should be discussed with the Local Counter Fraud Specialist

Where there are matters relating to child or adult abuse allegations against an employee, advice should be taken from the executive lead with responsibility for safeguarding, the Local Authority Designated Officer (LADO), the child protection team and human resources prior to making the decision to suspend.

7. REPRESENTATION

Employees have the right to be accompanied at a formal disciplinary hearing by a trade union representative or a workplace colleague of their choice.

There is no right for the employee to be accompanied at an investigatory meeting or at a meeting where an oral recorded warning is issued.

However, there may be occasions where a manager is accompanied at an investigatory meeting by a human resources representative. This will be particularly relevant for

investigations relating to gross misconduct matters or issues which involve input from the police or the local counter fraud service. Where a manager is accompanied at an investigatory meeting by a human resources representative, the employee may also be accompanied by a trade union representative or workplace colleague.

A request to adjourn an investigatory meeting to allow an employee to be accompanied should not be unreasonably refused. However, it should be stressed that a representative should make him/herself available within as short a timescale as possible and in any event no longer than five working days in order to enable the investigation to be completed within a reasonable time.

8. THE DISCIPLINARY HEARING

Where time limits are referred to in the course of this procedure they may be varied by agreement between the employee and the Trust.

Where, upon completion of an investigation there are reasonable grounds to believe that an employee has committed an act of misconduct, the employee will be invited to attend a disciplinary hearing.

In the event of a disciplinary hearing taking place the Trust will:

- give the employee reasonable notice of the hearing;
- tell the employee the purpose of the hearing and that it will be held under the Trust's disciplinary procedure;
- explain the employee's right to be accompanied at the hearing by a trade union representative or workplace colleague;
- give the employee written details of the nature of his/her alleged misconduct; and
- in advance of the hearing, provide to the employee all relevant information (which should include statements taken from any fellow employees or other persons that the Trust intends to rely upon against the employee).

Where the employee is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the hearing will be adjourned to another day.

Unless there are special circumstances mitigating against it, if the employee is unable to attend the rearranged hearing, the rearranged hearing will take place in the employee's absence. The employee's companion may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.

Where the chosen companion is unavailable on the day scheduled for the hearing, it will be rescheduled, provided that the employee proposes an alternative time within five working days of the scheduled date.

A disciplinary hearing should be conducted by an independent manager (the hearing officer) who has not been involved in the investigation. This manager will normally work outside the employee's immediate department. In some cases there will need to be more than one hearing officer to review the evidence at the hearing as part of a disciplinary panel. A human resources adviser will advise the hearing officer/panel.

Any member of management responsible for the investigation of the disciplinary offence(s), i.e. the case manager or case investigator will not be the hearing officer or a member of the disciplinary panel, although such managers may present any supporting facts and material to the disciplinary hearing. The employee will be entitled to be given a full explanation of the case against him/her and be provided with any statements provided by witnesses.

The disciplinary hearing should follow the order described in Appendix 2.

As soon as possible after the conclusion of the disciplinary proceedings, the manager conducting the hearing will convey the decision to the employee. The decision will be confirmed in writing. If a formal disciplinary sanction is issued, the employee will be notified of his/her right of appeal.

9. DISCIPLINARY ACTION

In normal circumstances it would not be appropriate for managers to invoke the disciplinary procedure on the first occasion when there is a minor conduct issue that has caused concern. Managers are expected to see members of staff and counsel them as to where they are not attaining the expected standard of conduct.

9.1 INFORMAL ACTION

9.1.1 RECORDED ORAL WARNING

Where a minor offence or offences have been committed, a recorded oral warning may be given. The warning will ordinarily state that any further misconduct will render the employee liable to further, more severe disciplinary action.

A formal hearing is not required. A recorded oral warning may be issued by an employee's immediate manager and remains on an individual's personal file for a period of six months. There is no right of appeal against a recorded oral warning but the employee may place a note of mitigation on their personal file.

9.2 FORMAL ACTION

A formal disciplinary hearing is required. Possible outcomes following a formal hearing could be no disciplinary case to answer, a recorded oral warning or formal disciplinary action as described below. Upon completion of the disciplinary hearing, the senior manager conducting the hearing will convey his/her decision to the employee. The decision will be confirmed in writing within five working days

9.2.1 FIRST WRITTEN WARNING

Where either a more serious disciplinary offence has been committed that warrants formal action or further minor offences have been committed by an employee following a recorded oral warning that remains "live", the employee will receive a first written warning. A first written warning remains on an employee's personal file for a period of nine months. There is one level of appeal against a first written warning to the next level of management.

9.2.2 FINAL WRITTEN WARNING

Where a serious disciplinary offence amounting to gross misconduct has been

committed, thereby justifying summary dismissal, but the hearing officer/panel decides, after taking into account all appropriate circumstances, that a lesser penalty is appropriate, or, where an employee commits further disciplinary offences after a first written warning has been issued and remains "live", a final written warning may be given. A final written warning remains on an employee's personal file for a period of twelve months. There is one level of appeal against a final written warning to the next level of management.

The Trust reserves the right to extend the duration of a final written warning in certain circumstances should an employee's conduct justify it. This decision will be made by the Director of Human Resources or their nominated deputy following a written application by the employee's manager.

9.2.3 TRANSFER OR DOWNGRADING

Where a final written warning is given to an employee as an alternative to dismissal, the hearing officer/panel may also impose the transfer or the employee to other work with downgrading if necessary. There is no protection of pay.

This action should only be taken with the employee's consent. If the employee does not agree to the downgrading, then dismissal would be the alternative.

This form of action will only be taken where it is felt that the conduct or capability of the employee would be significantly improved in a lower banded or different role.

9.2.4 DISMISSAL

Where the employee has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a final written warning, the employee may be dismissed with notice or with pay in lieu of notice.

Where the Trust establishes that an employee has committed an act of gross misconduct, the employee may be summarily dismissed.

10. APPEAL

An employee may appeal against any disciplinary sanction imposed against him/her, with the exception of an informal recorded oral warning. The employee must provide written notice of the appeal within fourteen days of being informed of the disciplinary sanction being imposed against him/her. All formal appeals should be directed to the Director of Human Resources. An employee will lose their right to appeal if they have not lodged their appeal within this timescale. When lodging an appeal, the employee should state:-

- the grounds of appeal; and
- whether he/she is appealing against the finding that he/she has committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.

The disciplinary appeal hearing should follow the order described in Appendix 2.

The appeal will be heard by a senior manager who has not been involved in the decision to impose the disciplinary sanction on the employee. Where an Executive Director has

taken a decision to dismiss, at least one Non-Executive Director will be a member of the appeal panel.

Upon completion of the appeal, the senior manager conducting the hearing will convey his/her decision to the employee. The decision will be confirmed in writing. The Trust's decision at the appeal is final.

11. MISCELLANEOUS

If an employee who is an accredited representative of a trade union recognised by the Trust for collective bargaining purposes is suspected of having committed a disciplinary offence, the Trust will take no action under this procedure (with the exception of suspending the employee in a case of suspected or known gross misconduct) until the Trust has had a chance to discuss the matter, with the prior agreement of the employee, with a full-time official of that trade union.

12. EQUALITY IMPACT ASSESSMENT

An Equality Impact Assessment is attached at Appendix 1. The application of this policy should not discriminate, areas of good practice and risk areas requiring attention should be highlighted.

13. MONITORING COMPLIANCE

Compliance with this policy will be monitored by Human Resources.

14. KEY STAKEHOLDERS, CONSULTATION, APPROVAL AND RATIFICATION PROCESS

This policy applies to all Trust staff. Staff will be consulted on its content through the Trust Staff Committee. The policy is approved and ratified through the Trust Strategic Management Group.

15. REVIEW AND REVISION ARRANGEMENTS

This policy will be reviewed as scheduled in three year's time unless legislative or other changes necessitate an earlier review.

16. DISSEMINATION AND IMPLEMENTATION

Once agreed by the appropriate Trust ratification group/committee, this policy will replace the old version on the Trust intranet. A Trust-wide e-mail will be sent to managers advising them of the updated version with instructions on how they can access it.

17. DOCUMENT CONTROL INCLUDING ARCHIVING ARRANGEMENTS

Copies of employment policies, and of archived out of date/superseded employment policies are held on the Human Resources shared computer drive. Copies will be sent to the Trust Information Governance Manager for them to be kept in a central up to date library with an associated document register including control details.

18. REFERENCES

Sources of reference material include:-

- ACAS Code of Practice on Disciplinary Procedures

19. ASSOCIATED DOCUMENTATION

The following Trust procedural and guidance documents are cross referenced:-

- Disciplinary Procedure – Managers Toolkit
- Maintaining High Professional Standards in the Modern NHS Policy
- Delivering Performance Policy
- Sickness Absence Policy
- Anti Fraud, Bribery and Corruption Policy

This Equality Analysis should be attached to any policy, strategy or business case for decision.	
<i>Name of the policy, strategy or business case:</i>	Disciplinary Procedure
Details of person completing the Analysis	
Name	Martin Luff, Head of Corporate Human Resources
Job Title	Head of Corporate Human Resources
Division/Directorate	Corporate Human Resources
Telephone Number	Ext. 723-6048
What are the main aims, purpose and outcomes of the policy, strategy or business case?	<p><u>Aim:</u> The Disciplinary Procedure applies to all employees and is designed for use in correcting inappropriate behaviour. It is designed to assist employees in understanding the Trust's expectations and helps to create recognised standards of conduct, performance and attendance.</p> <p><u>Objectives/ Outcomes:</u> This policy/procedure will apply to all staff</p>
Does it relate to our role as a service provider and/or an employer?	Both
<p>Information and research:</p> <ul style="list-style-type: none"> Outline the information and research that has informed the decision. Include sources and key findings. <p>Include information on how the decision will affect people with different protected characteristics.</p>	<p>This following documents have been sourced in the production of this policy</p> <ul style="list-style-type: none"> ACAS Code of Practice on Disciplinary Procedures
<p>Consultation:</p> <ul style="list-style-type: none"> Has there been specific consultation on this decision? What were the results of the consultation? Did the consultation 	This policy/procedure has been discussed by management and trade union representatives and endorsed by the Trust Staff Committee.

<p>analysis reveal any difference in views across the protected characteristics? Can any conclusions be drawn from the analysis on how the decision will affect people with different protected characteristics?</p>		
<p>Is the policy, strategy or business case relevant to the aims of the equality duty? Guidance on the aims can be found in the EHRC's PSED Technical Guidance.</p>		
Aim	Yes/No	
Eliminate discrimination, harassment and victimisation	N	
Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	N	
Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	N	
<p>Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics. When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.</p>		
Protected characteristic	Relevance to decision High/Medium/Low/None	Impact of decision Positive/Neutral/Negative
Age	None	
Disability	None	
Gender reassignment	None	
Marriage and civil partnership	None	
Pregnancy and maternity	None	
Race	None	
Religion or belief	None	
Sex	None	
Sexual orientation	None	
<p>Mitigating negative impact: Where any negative impact has been identified, outline the measures taken to</p>	None	

mitigate against it.	
Conclusion:	
<ul style="list-style-type: none"> Consider how due regard has been had to the equality duty, from start to finish. There should be no unlawful discrimination arising from the decision (see PSED Technical Guidance). <p>Advise on the overall equality implications that should be taken into account in the final decision, considering relevance and impact.</p>	
Signature of person completing the Analysis	
Name	Click here to enter text.
Signed	Click here to enter text.
Date	Click here to enter text.
Approval and sign-off Head of Department/Director	
Name	Click here to enter text.
Signed	Click here to enter text.
Date	Click here to enter text.
Chair of decision making Board/Group/Committee approval and sign-off	
Name	Click here to enter text.
Signed	Click here to enter text.
Date	Click here to enter text.

PROCEDURE DURING FORMAL DISCIPLINARY HEARINGS AND APPEAL HEARINGS

The process set out below describes the process for formal disciplinary hearings.

In relation to appeal hearings, the Chairperson of the appeal panel may chose to take the same approach in terms of order of proceedings or, with the agreement of management and staff side, re-arrange the order.

The panel and the human resources adviser may ask questions at any time for the purposes of clarification and to ensure a full and thorough investigation of the case.

The following procedures should be observed at all formal hearings:-

1. The person leading the hearing (the chair) will introduce the hearing, and explain its purpose and how it will be conducted. The purpose of the hearing will normally be to establish the facts and determine, on conclusion of the hearing, whether the Trust has proper grounds to take disciplinary action against the employee and, if so, the level of such disciplinary action.
2. The parties present at the hearing will introduce themselves and confirm their respective roles in the hearing. The employee will be entitled to be accompanied, if he/she wishes, by a trade union representative or workplace colleague of his/her choice.
3. The chair will state that the hearing is being conducted as part of the Trust's disciplinary procedure, and confirm that a written record of the hearing will be made.
4. The chair will state whether any witnesses have been asked to give evidence at the hearing, and if so, who they are.
5. The management representative should state their case.
6. The employee (or their representative) will have the opportunity to question the management's representative
7. The panel and the human resources representative will have the opportunity to question the management's representative.
8. Any witnesses whom the Trust has decided to call will be called into the hearing and asked to state their evidence in front of the parties.
9. The employee (or their representative) should state their case.
10. The management representative will have the opportunity to question the employee and their representative.

11. The panel and the human resources representative will have the opportunity to question the employee and their representative.
12. Any witnesses whom the employee has decided to call will be called into the hearing and asked to state their evidence in front of the parties.
13. The management representative(s) shall have the opportunity to sum up, if they so wish.
14. The employee (or their representative) shall have the opportunity to sum up, if they so wish. The employee (or their representative) shall have the right to speak last.
15. In their summing up, neither management nor staff side may introduce any new matter.
16. The panel may at their discretion, adjourn the hearing in order that further evidence is acquired by either party or for any other reason.
17. When the panel is satisfied that management representative and the employee (and/or their representative) have completed their case, and that no further information is required, the panel will adjourn to consider their decision in private.
18. Parties will only be recalled to clear points of uncertainty. If one party is called then the other should also be present. Witnesses may also be recalled where further evidence is required.
19. Following an adjournment, a decision as to whether the allegations have been substantiated sufficiently will be made. If the allegation is substantiated, the panel will decide whether any disciplinary penalty is necessary and reasonable in all the circumstances. Where a disciplinary penalty is considered necessary, the panel will decide what type would be most appropriate having regard to the seriousness of the offence and the mitigation put forward.
20. When the decision has been reached, the hearing will normally be reconvened and the decision given verbally to the employee. This decision will then be confirmed in writing within five working days.