

Disciplinary Policy

Supplementary Guidance for Managers and Employees

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These documents can be accessed via

<http://sfhnet.nnotts.nhs.uk/admin/webpages/preview/default.aspx?RecID=2926>

Introduction

This guidance document sets out the process in relation to when an employee's conduct is below the expected standards as outlined by the Trust CARE values and behaviours.

The Trust expects all employees to meet high standards of conduct and behaviour. It is important employees understand their obligations and rights regarding this aspect of employment.

The aim of this guidance is to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct and behaviour.

This guidance provides managers and employees with a process and overview of how conduct issues are managed taking a person centered approach incorporating a Just Culture principles; a culture that promotes learning, and managing behavioural choices. .

Minor cases of misconduct and most cases of poor performance may initially be dealt with through informal advice and guidance, coaching, counselling or an improvement notice rather than through the formal procedure.

Below is a list of examples of Misconduct, and Gross Misconduct to help understand where an issue of concern may be considered;

. Please note this is not an exhaustive list and if unsure a Manager or Investigating Officer should discuss the issue of concern with the Operational HR team.

- Failure to comply with a reasonable request.
- Abusive, objectionable or insulting behaviour.
- Foul or abusive language.
- Repeated failure to maintain registration with appropriate professional body.
- Communication of any unauthorised written material.
- Failure to maintain the required standard of dress as outlined in the Uniform Policy.
- Minor breaches of the employment contract.
- Failure to comply with the Trusts values and behaviours.
- Accessing inappropriate materials on the internet during work hours.
- Breach of the Trust's Smoke Free Policy
- Unauthorised absence

Gross Misconduct - The following are examples of what may be considered as gross misconduct.

Please note this is not an exhaustive list.

- Theft/misappropriation – any instance of unauthorised removal of property from the Trust, or from a service user, carer or member of staff.
- Fraud - any deliberate attempt to defraud the Trust this can include making false claims for payment or a member of the public, patient, visitor or contractor in the course of official duties
- Physical assault – physical assault upon a service user, carer, member of staff or member of the public.
- Threatening/menacing behaviour towards a service user, carer, member of staff or member of the public.
- Reckless/negligence in work – any action, or failure to act, which threatens the health and safety of service user, carer, member of staff or member of the public.
- Serious damage – to health service property, property of the service users'/carers, or member of staff.
- Breach of fraud, bribery and corruption policy.
- Breach of the Conflicts of Interests Policy.
- Confidentiality – loss of confidential information, unauthorised access to confidential information, disclosure or breach of confidence in relation to information regarding a service user/carers or member of staff except where such a breach constitutes a protected disclosure for the purposes of the Raising Concerns at Work Policy.
- Discrimination, harassment and/or victimisation.
- The concealment or destruction of evidence.
- Inappropriate or unprofessional relationship with any service user.
- Deliberately accessing or downloading material from any site that is of a pornographic, discriminatory or of offensive nature.
- Sleeping whilst on duty.
- Being under the influence of alcohol or substances (which may or may not be illicit).
- Communicating any material which breaches the Trust Equality and Diversity Policy.
- Commits a serious act which is deemed to be prejudicial to the interests of the Trust or its employees.
- Multiple breach of the Trust's Smoke Free Policy.

- Knowingly taking carers/paternity/parental/adoption leave for the purposes other than support child/dependent.
- Serious refusal to carry out reasonable instructions of a Director, Manager as referred to in the employee's Contract of Employment.
- Making or sending malicious or vexatious allegations against the Trust, managers, members of staff or service users.
- Victimising an employee which has raised a concern under the Raising Concerns at Work, Dignity at Work, Grievance and Disciplinary Policy.
- Breach of the Trust's Standing Financial Instructions, Standing Orders, and/or Scheme of Reservation and Delegation.
- Misrepresentation at any time, including at the time of appointment or when applying for any post in the Trust e.g. previous positions held, qualifications held, date of birth, declaration of health, or failure to disclose a criminal offense or pending criminal action, subject to the provisions of Rehabilitation of Offenders Act 1974.
- Deception – giving false information including qualifications, health, immigration status, and failure to disclose a criminal conviction or caution on order to gain employment or other benefits.

Difficult Conversations

Having a conversation with an employee about issues regarding their behaviour or conduct at work can be a difficult for Managers who may not have been faced with a situation like this before. It is important to remember that a quiet word may be all that is needed, but Managers ~~should~~ should prepare for such a conversation and arrange a discussion with the employee.

The discussion should be planned in advance and a suitable location found i.e. somewhere private so that other colleagues are not aware of the conversation that is taking place; the conversation needs to be in private to ensure confidentiality. This meeting is known as a fact finding meeting. During the meeting the facts should be established and the employee should be given the opportunity to explain the situation and provide details. Managers should familiarise themselves with the disciplinary policy to determine which category the behaviour or conduct concern falls within, for example potential misconduct or gross misconduct as this will determine your next steps. Following this discussion and establishment of the facts the Just Culture Guide should be used where applicable to support a decision regarding next steps.

In preparation for the difficult conversation you will need to consider the following:-

- What are the main points that need to be discussed
- What are the intentions for this conversation
- How to start the difficult conversation
- Creating a short opening statement
- State the issue and the reasons for the discussion
- Be clear that the intention is to find a way forward
- Give the individual the opportunity to respond
- Seek to resolve with a positive outcome
- Listen

The Trust has a e-learning course called Managing Difficult Conversation in the Workplace and can be accessed via <https://sherwood-eacademy.co.uk/login/index.php>.

Fact Finding

Prior to any decision to formally investigate or suspend/restrict an employee, it is essential an initial fact finding to review the incident/concerns.

In line with the Just Culture principles as soon as a manager is made aware of an incident or concern there should be the review of the whole event. This step of the process is to ensure initial facts are established to enable decision makers to decide upon the next steps, for example was it a system or process that led to the incident/concern rather than an individual's conduct and whether the matter requires progression to formal investigation or not.

This will require initial facts to be established such as dates, time, people involved or potential witnesses (all parties not just employees), where the incident took place and any other information. To gather the initial information it may be that managers need to ask people involved for their account of the incident; this will not be an official investigation meeting and will be informal.

The fact finding exercise should be completed as quickly as possible with management treating as a high priority. As a guideline this should not take any longer than 3 days, however this is not a strict timeframe as it will depend on the specific circumstances.

Just Culture

The fair treatment of staff supports a culture of fairness, openness and learning in the NHS by making staff feel confident to speak up when things go wrong, rather than fearing blame.

Supporting staff to be open about mistakes allows valuable lessons to be learnt so the same errors can be prevented from being repeated.

The Just Culture guide supports a conversation between Managers about whether a staff member involved in an incident, error or conduct issue requires specific individual support or intervention to work safely.

- The Just Culture Guide asks a series of questions that help clarify whether there truly is something specific about an individual that needs support or management versus whether the issue is wider, in which case singling out the individual is often unfair and counter-productive.
- The Just Culture Guide helps reduce the role of unconscious bias when making decisions and will help ensure all individuals are consistently treated equally and fairly no matter what their staff group, profession or background.

When there is a concern regarding an incident, error or conduct issues, prior to making a decision to conduct a process via the Disciplinary Policy, the Just Culture Guide should be used to aid the decision; it can also be used at any point of the investigation process.

Formal Investigation Process

Should an employee be subject to investigation there are a number of supportive measures put in place as it is recognised that this can be a stressful time for an employee; these measures include a referral to occupational health, access to the Trusts Vlvup support networks; regular updates from both the Case Manager and the Investigating Officer during any investigation.

An employee who is being subject to an investigation will receive a letter from the Case Manager providing a formal update regarding the investigation every 4 weeks. The letter aims to give an update as to where the investigation is in terms of progress and should explain any delays should this be the case, for example sickness or annual leave. This formal update is as well as, and does not supersede, the weekly updates the HR Support to the investigation will provide to the employee on behalf of the Investigating Officer. This formal update is not applicable to those who are suspended, as these individuals will be written to fortnightly, as per the suspension review process.

Improvement Notice

Where possible, managers should give notice of meetings when an improvement notice will be issued. This gives employees the opportunity to arrange Trade Union representation at the meeting, if required for their health and well-being. However, meetings will not be delayed due to Trade Union availability.

An improvement notice can be issued at a Managers discretion and remains live for a period of between 6 – 9 months.

Fast Track Process

The Fast Track process has been developed to take a person centered approach to resolving issues. The process takes into account individuals circumstances including any health and wellbeing aspects.

The Fast Track process is appropriate for cases of misconduct where a First Written Warning for a period up to 12 months or a Final Written Warning for up to 18 months would be deemed reasonable and where the employee accepts full responsibility for their conduct and has accepted the allegations against them.

The Fast Track process is not applicable in cases where an employee is already subject to a formal sanction or the allegations are denied. It is an important aspect of the fast track process that the employee has accepted full responsibility for their actions.

A disciplinary meeting must be held by the case manager and a HR representative to discuss the findings of the investigation, the employee will be given reasonable notice, but this can be waived. The employee has the right to be accompanied by a recognised Trade Union Representative or a workplace colleague not acting in a legal capacity.

Once all mitigation has been explored, providing no further issues are highlighted, the case manager will offer a disciplinary sanction up to and including a Final Written Warning.

If the employee accepts the sanction they must sign a statement to confirm this along with either their representative or a HR representative.

Following the meeting a First Written Warning/Final Written Warning letter will be issued to the employee and a copy will be placed on their personal file.

An important aspect of the fast track process is that there is no right of appeal to the sanction; if an employee does not accept the sanction issued then the case will proceed to a full disciplinary hearing.

Employees who are not a member of a Trade Union can obtain independent information (via checklist) from the Staff Side Chair or Staff Side Secretary. The advice given is not Trade Union advice thus the Staff Side Chair or Staff Side Secretary will not provide representation.

Suspension from Duty

Suspension occurs where an employee is still employed but does not work. In some circumstances an employee may need to be suspended from work – this will be for no longer than is necessary to investigate the allegations which will be confirmed in writing.

Suspension is not regarded as a disciplinary action and is a holding measure to enable investigation and does not imply that any decision has already been made about the allegations.

The decision to suspend an employee must be taken by a Senior Manager and at least one other authorising dismissing officer/designated deputy in conjunction with advice and support from the Deputy Director of HR or Head of Operational HR. If an incident has taken place out of hours then the suspending manager will need to contact the silver or gold on call.

Prior to suspension the authorising dismissing officer or designated deputy will need to consider if there is an alternative to suspension and these may be as follows:-

- Moving the member of staff onto another shift pattern or work location pending investigation
- Providing increased levels of supervision to the member of staff whilst at work pending investigation.
- Restricting the member of staff from undertaking aspects of their role pending investigation.

Exclusion of medical staff will need to be dealt with under the Trusts Disciplinary Policy for Medical Staff.

Should suspension be necessary, the employee will be contacted, advising they are requested to attend a meeting due to concerns which have been highlighted. The employee will be advised to contact a representative. If the member of staff is unable to arrange representation then the meeting will not be delayed. A representative from the HR department will also attend the meeting.

The Trust are not obliged to give notice of this meeting, however the employee should be given some time to arrange a representative.

During the meeting the suspending manager will disclose the allegation to the employee and will utilise the suspension script to assist in the conduct and format of the meeting and ensure the member of staff is clear on the terms of the suspension. The suspending manager must be clear on the reason for the suspension. The member of staff will be given a copy of the terms of their suspension to help them fully understand their restrictions during suspension.

If suspension occurs the member of staff will be supported to get home, this may involve making contact with family members, arranging a taxi for the staff member to get home. The employee will be requested to hand their ID Badge and any other equipment associated with their role to the suspending manager. The suspending manager will confirm the suspension in writing within 7 working days.

At the time of suspension the suspending manager will agree with the member of staff an appropriate point of contact who will act as mentor to the member of staff throughout the period of the suspension.

For the duration of the suspension, the employee will receive full pay (including an average of contractual enhancements) unless the individual is not willing or are unable to attend work (for example because they are ill). If an individual is absent due to ill health when suspended they will be paid in accordance with Section 14.2 of Agenda for Change terms and conditions.

Hours worked through the Trusts Bank and overtime/additional hours will not be protected.

During the suspension, the employee will not make direct contact with Trust colleagues to discuss details of the particular case other than their Trade Union Representative, the Investigating Officer or the HR support to the investigation. An employee on suspension must not enter the Trust premise, other than to obtain treatment for them, or their families, meet their Trade Union

representative, or attend staff support. Additionally, they must make themselves available during office working hours so they can be contacted by the Investigating Officer or HR Support where necessary.

During the period of suspension the Investigating Officer and HR support to the investigation must maintain regular contact with the suspended employee, in order to keep the employee informed of the progress of the investigation. The Investigating Officer and HR support to the investigation will agree with the employee what will be reasonable contact for the duration of the suspension.

It is essential that any suspension and that regular and frequent contact is maintained with the suspended employee by the line manager. The line manager or designated deputy will be required to contact the suspended member of staff **every 14 calendar days** or sooner if appropriate to update the individual about developments in the department and enquire about the individual's wellbeing and signpost to support if required. The line manager or designated deputy will document this contact using the Line Manager contact form – suspended employees.

Suspensions will be reviewed **every 14 calendar days**, by 2 individuals. The review will be undertaken by the Case Manager and another individual. For nursing staff, this will be the Deputy Chief Nurse or Head of Nursing, and for all other staff this will be another Senior Manager. The Case Manager will write to the employee to confirm whether the suspension is to be extended or not.

Annual Leave during suspension

The Trust will honour annual leave which has been pre-booked with the Trust prior to suspension. However, if the employee wishes to take additional annual leave during the suspension they can seek permission from the case manager.

Working whilst suspended

Employees who are suspended from duty must remember all aspects of their employment contract remain effective and therefore should ensure they remain available to attend any required meetings with managers at the Trust.

Employees who are suspended must discuss with the case manager regarding the type of work, what the role is and if the suspension would impact on the other workplace. If authorization is given for

the individual to work elsewhere, they must not work during their normal working hours with the Trust.

Representation

An employee may wish to bring a representative to the fact finding interviews, disciplinary hearing or appeal hearing. The representative may either be an accredited Trade Union Representative or a current place work colleague not connected to the investigation.

If the employees representative is unavailable at the time the meeting is scheduled and will not be available for more than 7 calendar days afterwards, the Trust may ask the employee to choose someone else to represent them.

Employee's resignation during an investigation

Where an employee leaves before the investigation is completed any reference provided for that employee will state they left whilst under investigation and there is an unresolved investigation into alleged misconduct.

In some cases, it may be necessary to conclude the investigation following resignation of the employee. If the case indicates that is serious enough to warrant a referral to the DBS or a professional body to the employee will be notified of this and the referral made.

Advice should be sought from the Head of Operational Human Resources.

Where a grievance is raised

Where a formal grievance is raised during a disciplinary process a disciplinary investigation/process, the appropriate action will be determined on a case by case basis.

Any concerns in relation to the disciplinary process must be addressed through the disciplinary process and not via the Trust Grievance Policy.

Deciding if there is a case to answer

Once the investigation is complete, the investigating officer, with HR support, will prepare a report for the case manager. Having received and reviewed the report, the case manager will decide

whether there is a case to answer. A case manager checklist (see Appendix 1 in Investigation Guidance) can be used to support the decision.

The Operational HR team can offer support/advice to the case manager.

The decision should be noted in writing to the individual within 7 calendar days of receipt of the report.

The Disciplinary Hearing Process

If it has been established that the matter should be referred to a formal disciplinary hearing, then arrangements for this should be made without delay.

The hearing chair will be identified in line with the levels of authority.

The investigating officer with support from HR will present the case.

The disciplinary hearing should be held as early as possible. In exceptional circumstances where a colleague requests the postponement of a disciplinary hearing, this will be considered on its own merit. If an employee does not attend a second meeting there is no obligation on the Trust to rearrange it again and the chair of the panel may decide to proceed with the hearing in the absence of the colleague. The letter confirming the rearranged meeting should inform the employee that the matter may be dealt with in their absence.

Formal disciplinary hearing

A letter containing details of the allegation(s) and setting out details of the date, time and location of the hearing, together with copies of all documentation that will be used or referred to during the hearing, should be sent to the individual at least 7 working days prior to the hearing, unless otherwise mutually agreed. However, best practice would be that where possible documents would be sent out as soon as possible.

If the employee is submitting a statement of case, this must be received at least 7 working days prior to the hearing to ensure it is shared with the chair, HR, investigating officer and HR support to the investigation.

The investigating officer must inform the chair of any witnesses they intend to call to the hearing at least 7 working days prior to the hearing. The employee must inform the chair of any witnesses they intend to call at least 5 working days before the hearing.

The chair of the panel reserves the right to deem the appropriateness of the witnesses, for example if a large number of witnesses are being called to provide the same evidence, the chair can request to reduce the number of witness testimonies.

Character witnesses should not be called as a witness to a disciplinary hearing. Written character references can be as part of the employee's statement of case.

If the disciplinary hearing could result in dismissal, the individual must be advised of this in the letter.

Structure of Hearing

The chair will welcome all and do introductions and talk through the housekeeping of the venue to include location of toilets, drink facilities, alarm testing and fire exits.

The chair will ask for any declarations of interest.

The chair will check time restrictions to determine if anyone has to leave at a particular time so that adjournments can be planned in.

The chair will check that all parties present have received information relating to the case, i.e. disciplinary packs and any additional documentation.

All information to be considered should have been included in the report or submitted 7 working days prior to the hearing taking place. However, the chair has the right to accept or reject and adjourn to consider any new information that any parties want to present at the hearing that has not been included in the disciplinary pack.

The investigating officer will present their case from the disciplinary pack, calling any witnesses. Both the employee / staff side and the panel will have the opportunity to cross examine the witnesses and the investigation officer on their report.

The employee / staff side will then present their case and the investigating officer/HR support and the panel will have the opportunity to cross examine the witnesses and the employee on their statement of case.

If either party have called witnesses they will be asked to enter into the hearing at the appropriate times.

Both the management side and union colleagues will then be given the opportunity to sum up their case and conclude, if they so wish before the panel adjourns to consider the outcome. At this point no further questioning would be allowed.

Decision Making

To ensure a consistent approach, the Human Resources Representative on the panel may use the following questions to facilitate the panel's decision-making within a disciplinary hearing:

1. Has there been as much investigation as is reasonable in the circumstances?
2. Have the requirements of the disciplinary procedure been properly complied with up to this point, including advance notice to the employee of the matter(s) to be considered at this hearing?
3. Has sufficient regard been paid to any explanation put by, or on behalf of, the employee?
4. Are there reasonable grounds on which to support the belief on the balance of probabilities that they allegations are founded.

If the panel is able to answer "yes" to all of the above questions, there will be a finding that the employee has committed misconduct/gross misconduct. The panel must then consider what action to take – and the following questions may be used to facilitate this:

1. Is the misconduct sufficiently serious to justify the disciplinary decision being contemplated?
2. Consideration given to any mitigating circumstances put forward by, or on behalf of, the employee (and any response to these by management's side – if any)?

3. Is the decision within the band of reasonable responses of a reasonable employer in the circumstances?

The Chair with the Human Resources Representative can also use the Chair's Checklist (see appendix 5 in the Investigation Guidance) to support decision making.

Training will be provided for Case Managers and Panellists to ensure consistency and reasonableness in decision making.

Outcome

The hearing will be re-convened after a period of time for the panel to deliver their decision.

The decision should then be communicated to the employee in writing within 7 working days following the hearing and should contain the following information

- Reason for sanction / dismissal
- Effective date of sanction / termination of employment
- Outstanding or accrued annual leave entitlement (if dismissed)
- Details of the right of appeal

In some cases, it is not always possible for a decision to be reached due to the panel requiring further information. Should this be the case, the panel may re-convene for a decision to be reached and inform the employee in writing within 7 working days.

Disciplinary Sanctions

No sanction should be imposed without a hearing unless the fact track process has been followed. The Trust aims to treat employees fairly and consistently, and each case will be treated on its own merit taking a person centered approach.

An employee will not normally be dismissed for a first act of misconduct unless it is decided that it amounts to gross misconduct.

The following disciplinary sanctions which may be used following a disciplinary hearing are as follows;

a) First Written Warning

A first written warning may be given in the following circumstances:

- In cases more serious than would warrant informal action, but not serious enough to require another sanction.
- In cases of repetition by the colleague of minor acts of misconduct which have been subject to an improvement notice or informal counselling.
- Fast track process

A first written warning will remain live for up to a period of 12 months.

Significant mitigating factors can be taken into account when deciding the period of time of the sanction.

b) Final Written Warning

A final written warning may be given in the following circumstances:

- Misconduct where there is already an active written warning on the employees record.
- Misconduct which is considered sufficiently serious to warrant a final written warning even though there are no other warnings on the employee's record.
- Fast track process

A Final written warning will remain live for up to a period of 18 months.

Significant mitigating factors can be taken into account when deciding the period of time of the sanction.

c) Dismissal

Dismissal will usually be appropriate for:

- Further misconduct where there is a final written warning on the employee's record. The employment contract would be brought to an end on persistent misconduct and in this circumstance the employee would receive notice pay.

- Any gross misconduct, unless there are substantial mitigating circumstances which justify the application of a lesser penalty in the judgment of the person conducting the disciplinary hearing, regardless of whether there are any active warnings on the employee's record. Dismissal will be with immediate effect (summary dismissal) and the employee will receive no notice pay.

All Sanctions must be put in writing within 7 working day and include the following points:-

- Details of findings
- Level and duration of sanction
- Improvement plan and timescales for correction of behaviour
- Support offered
- Consequences of failure to adhere to what has been agreed
- Right of appeal (N/A for Improvement Notice)

Other Action Short of Dismissal

In certain circumstances the Trust may consider alternatives to dismissal such as transfer to another department, post, shift or demotion. Other action may also be taken to assist in ensuring that there is no recurrence of the problem. This may include a period of training, for example.

Minor cases of misconduct and most cases of poor performance may best be initially dealt with through informal advice and guidance, coaching or counselling rather than through the disciplinary procedure. Managers should ensure that problems are discussed and the member of staff is given the opportunity to give his or her side of an issue.

The Appeals Process

If an employee wishes to appeal against any disciplinary action, they should submit this in writing setting out their grounds of appeal to the Deputy Director of Human Resources within 2 weeks of the date of the written confirmation of the disciplinary hearing outcome. The employee will then be invited to attend an appeal hearing.

Refer to the Trust's Appeal Policy for the appeal process.

Aftercare

For those who have been through a Fast Track process, the HR support to the investigation will contact the individual's line manager and ask them to make regular contact with the staff member for a 2-3 week period to conduct a wellbeing check and determine whether any additional support is needed.

For individuals who have been subject to a Disciplinary Hearing (not dismissal), the HR support to the investigation will make contact with the employee the following day to inform them of the support available (EAP/OH). The line manager should make regular contact with the staff member for 3-4 weeks after the hearing, to conduct a wellbeing check and determine whether any additional support is needed.

Where an individual has been dismissed, the Specialist HR Advisor or Head of Operational HR will make contact with the individual the following day to inform them of the support available (EAP/OH). In addition a manager should make contact with the individual for a minimum of 2 weeks following dismissal, to conduct a wellbeing check and inform the individual of the support available to them. If the individual appeals the dismissal, the manager and Specialist HR Advisor/Head of Operational HR will maintain weekly until the appeal has concluded.

Witnesses at hearing will also be contacted the day after the hearing, by the HR support to the investigation, to conduct a wellbeing check and inform them of the support available.

All contact will be documented on the individual's investigation timeline so that it is auditable.

Counter Fraud Concerns

Where there is suspected counter fraud allegations, the Trusts Counter Fraud, Bribery and Corruption Policy will be referred to.

Safe Guarding Concerns

Where there is suspected safe guarding concerns, The Trusts Safeguarding of Individuals Policy will be referred to.

Registered Professionals Concerns

Where there are concerns of conduct with regards to registered professionals, this may be referred to the relevant professional body, i.e NMC, GMC or HCPC for further guidance.

This guidance is not exhaustive. If there are any aspects which are not covered by this guidance, direction will be obtained from ACAS or CIPD.

Levels of Authority

The following staff groups have the authority to implement the various stages of the disciplinary policy and issue sanctions up to and including dismissal:-

Dismissal	Gross Misconduct	Misconduct
Chairman of the Trust	Director & Deputy Directors	Head of Department
Chief Executive	Head of Department	Divisional General Manager
Executive Directors	Divisional General Manager	Head of Nursing
Director & Deputy Directors	Head of Nursing	Matron or equivalent level
Head of Department	Deputy Divisional General Manager	Deputy Divisional General Manager
Divisional General Manager		
Head of Nursing		