



# DISCIPLINARY POLICY AND PROCEDURE

Policy reference – HR14

SUMMARY	To provide a process and framework to manage employee issues of misconduct at the workplace in a fair and consistent manner in line with employment law and good HR practice.
AUTHOR	Human Resources
VERSION	Version 3 – FINAL
EFFECTIVE DATE	17 <sup>th</sup> July 2017
APPLIES TO	Single shared management policy revised, amended and applicable to all NHS Airedale, Wharfedale and Craven, Bradford City and Districts CCGs employees
APPROVAL BODY	Senior Management Team the CCG
RELATED DOCUMENTS	Equal Opportunities Policy Managing Sickness Absence Policy Alcohol and Substance Misuse Policy Managing Concerns with Performance Policy Complaints and Counter Fraud Policies Social Media Policy
REVIEW DATE	July 2020

## CCGs working together

Airedale, Wharfedale and Craven CCG  
Bradford City CCG  
Bradford Districts CCG

# THIS POLICY HAS BEEN SUBJECT TO A INITIAL EQUALITY IMPACT ASSESSMENT

## VERSION CONTROL SHEET

Version	Date	Author	Status	Comment
Draft	16.07.2014	Alison Ewart	HR Lead	Consultation with Trade Unions via the Collaborative Social Partnership Forum (SPF)
Final	13.08.2014	Alison Ewart	HR Lead	Updated with comments from the SPF and Ratified
Final	Sept 2014	Alison Ewart	HR Lead	SMT
Final	Dec 2014	Alison Ewart	HR Lead	Governing Body
Revised	September 2015	Tazeem Hanif	HR Lead	Amendments made to the policy and taken to the West Yorkshire HR Policy Sub Group on 29.09.2015 to consult on changes.
Final	02.12.2015	Tazeem Hanif	HR Lead	Ratified at the Social Partnership Forum
Draft	28.06.2017	Tazeem Hanif	HR Lead	AWC CCG and Bradford City and Districts policies merged to reflect single shared management arrangements.  Change in logo, front sheet, 5.1 and Appendix 6.  Amended policy consulted with Trade Unions at the HR Policy Workshop and comments incorporated.
Final	17.07.2017	Tazeem Hanif	HR Lead	Ratified at SMT

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## **1. PURPOSE**

- 1.1 This policy aims to help and encourage all employees to achieve and maintain satisfactory standards of conduct to ensure consistent and fair treatment for all.
- 1.2 This policy should be used after consideration of or in conjunction with the organisation's policies and procedures governing sickness absence, bullying and harassment, grievance, performance, complaints and counter fraud.
- 1.3 The advice of a Human Resources Representative must be sought in any case likely to involve an exclusion from work, formal warning or dismissal and is advised in any cases of a disciplinary nature. The level of Human Resources involvement will depend upon the severity of the alleged breach of discipline. In all cases Human Resources will act in an advisory capacity. Appendix 2 should be referred to for standards of conduct, with specific examples of misconduct and gross misconduct in appendices 3 and 4.
- 1.4 This policy:
  - Sets out the responsibilities of Managers, Employees, Staff Side and Human Resources.
  - Ensures a robust, consistent and effective procedure for managing breaches of discipline.
  - Defines the scheme of delegation associated with disciplinary hearings and appeal hearings.
  - Satisfies legislative requirements.
- 1.5 The ACAS Code of Conduct has been taken into consideration in the development of this procedural document

## **2. SCOPE**

- 2.1 This policy applies to those employees that are directly employed by the organisation and for whom the organisation has a legal responsibility. For individuals covered by a letter of authority / honorary contract or work experience this policy is also applicable whilst undertaking duties on behalf of the organisation or working on premises and forms part of their arrangements with the organisation. As part of good employment practice, agency workers are also required to abide by the organisation's policies and procedures, as appropriate, to ensure their health, safety and welfare whilst undertaking work for the organisation.

## **3. EQUALITY STATEMENT**

- 3.1 In applying this policy, the organisation will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation. An Equality Impact Assessment is used for all policies and procedures.

## **4. ACCOUNTABILITY**

- 4.1 The Chief Officer is accountable for this policy.

## **5. IMPLEMENTATION AND MONITORING**

- 5.1 NHS Airedale, Wharfedale and Craven, NHS Bradford City and Bradford Districts CCG Governing Body is responsible for formal approval and monitoring compliance with this policy. Following ratification the policy will be disseminated to staff via the intranet.
- 5.2 The policy and procedure will be reviewed periodically by the Senior Management Team in conjunction with Human Resource and Trade Union representatives where applicable. Where review is necessary due to legislative change, this will happen immediately.

## **6. RESPONSIBILITIES**

- 6.1 Good working relations are vital for the organisation to operate successfully and provide services. There is a joint responsibility for management, trade unions and employees to accept the responsibility of working together on issues in good faith and with the shared intention of facilitating good working relations.

### **6.2 Employees**

- 6.2.1 It is the responsibility of employees to ensure that they:
- read, understand and comply with the policy.
  - attend investigation meetings as required.
  - submit statements when requested in a timely way.

### **6.3 Line Managers**

- 6.3.1 It is the responsibility of line managers to ensure that they:
- Make employees are aware of the Disciplinary Policy and Procedure and inform employees of the disciplinary rules and issues relating to misconduct and gross misconduct which will result in disciplinary action.
  - make clear the rules, regulations and standards of conduct which employees are expected to observe / achieve.
  - use the informal stage wherever possible prior to any formal action being taken.
  - deal appropriately with employees whose conduct falls short of that required by the organisation.
  - involve the appropriate HR representative where potential misconduct has been identified.
  - consult a senior HR representative prior to taking a decision to suspend an employee.
  - keep appropriate written documentation relating to incidents of alleged misconduct.
  - treat all employees fairly by applying the policy consistently and ensuring that any personal information is kept in confidence.

### **6.4 Human Resources Team**

- 6.4.1 The Human Resource representative will provide advice and support on all aspects of this policy to ensure application and support.

## **7. GENERAL PRINCIPLES**

- 7.1 Before any action is taken it is necessary to establish all the facts. Where it is deemed that a potential disciplinary issue has arisen the necessary investigations should be made to gather the facts promptly and these should be recorded in writing.
- 7.2 Following establishment of the facts, it should be decided whether any further action is required and whether this should be informal or formal. Where an investigatory meeting is convened to solely establish the facts of a case, it should be made clear to the employee(s) involved that the meeting is not a disciplinary meeting.
- 7.3 Cases of minor misconduct should be dealt with informally in the first instance.
- 7.4 Where fraud is suspected advice should be sought from the Chief Finance Officer and the Local Counter Fraud Specialist.
- 7.5 Dismissals from employment on the grounds of ill health should be undertaken in conjunction with the Managing Sickness Absence Policy and must ensure that the principals of this procedure are adhered to.
- 7.6 When dealing with absences from work, the reasons for the absence should be ascertained prior to deciding what action to take.
- 7.7 The employee must be informed in writing regarding any alleged misconduct.
- 7.8 If an employee is invited to a meeting as part of the disciplinary procedure they should be advised of their right to be accompanied by a Trade Union Representative or represented by a work colleague. They must inform the Chair of the panel of their chosen representation at least 2 working days in advance of the meeting.
- 7.9 If a disciplinary hearing results in action short of dismissal, the employee should be informed of why and how they need to improve, the consequences of failing to improve and that they have a right to appeal.
- 7.10 If an employee is dismissed they must be informed why, when their contract of employment will cease and of their right to appeal.
- 7.11 If an employee wishes to appeal they should be invited to a hearing and informed of their right to be accompanied by a Trade Union Representative or represented by a work colleague.
- 7.12 The employee may not insist on being accompanied by a colleague whose presence would prejudice the meeting or who might have a conflict of interest. It would be preferable to ask to be accompanied by a colleague from the current location and in exceptional circumstances; this may not be possible and in this case, speak to a HR representative for clarity. Should there be any dispute regarding the chosen companion that cannot be resolved, the matter will be escalated to the Head of HR.
- 7.13 An appeal must be dealt with by a more senior manager not previously involved in the earlier decision.
- 7.14 The employee should be informed in writing of the outcome of the appeal and the reasons for the decision made.

- 7.15 Written records should be maintained during all stages of the investigation, disciplinary and appeal.
- 7.16 The organisation will consider referral to the appropriate professional/registration body where matters raised during a disciplinary investigation/hearing or appeal warrant this action.
- 7.17 In some circumstances, conduct or allegations outside of work may be misconduct and may be dealt with within this procedure e.g. use of social networking sites where the information published can be detrimental to the organisation or in breach of confidentiality legislation.

## **8. RIGHT TO REPRESENTATION**

- 8.1 At every stage of the procedure, the employee will have the right to be accompanied by a work colleague (not involved in the investigation) or to be represented by a trade union representative not acting in a legal capacity.

## **9. ALLEGED BREACHES OF DISCIPLINE RELATING TO EMPLOYEES WHO ARE ACCREDITED TRADE UNION REPRESENTATIVES**

- 9.1 Normal disciplinary standards apply to all accredited trade union representatives in their role however no disciplinary proceedings should commence until the circumstances of the case have been discussed with a full-time official of the union concerned.

## **10. EXCLUSION FROM WORK (also referred to as suspension from duty)**

- 10.1 Careful consideration should be given to alternatives to exclusion, where circumstances permit. These may include allowing the employee to continue working on limited or alternative duties and/or working in a different location. Where alternative arrangements cannot be made, the decision to exclude from work can be taken as described below.
- 10.2 Exclusion from work should only be considered as an arrangement pending investigation of an allegation of a serious offence, including those where:
- The alleged offence is considered gross misconduct (see Appendix 3).
  - The employee's presence constitutes a serious risk to themselves, patients, employees or NHS property.
  - The employee is under charge or suspicion of a criminal offence which significantly affects their status, role or responsibilities within the organisation.
  - The employee's presence would hinder a full and proper investigation taking place.
- 10.3 The period of exclusion is not a disciplinary sanction or a presumption of guilt. The period of exclusion will be on full pay and should be kept to a minimum. The employee should be kept informed of the likely timescales of the exclusion and this should be reviewed regularly. All communication should be in writing and sent to the employee's home address.

- 10.4 Authority to exclude will normally rest with the Director in which the employee works. In certain circumstances delegated responsibility can be given to the most senior manager on duty at the time. In these circumstances the senior manager taking the decision to exclude must notify the Chief Officer as soon as possible who will be required to review the decision and, if deemed necessary, revoke the exclusion.
- 10.5 An exclusion interview will be arranged to advise an employee of their exclusion. Where there is no work colleague or trade union representative available, a further meeting should take place with the representative present if the employee requests this. If an employee is off duty and all reasonable attempts to contact them have been made, then they should be informed in writing not to commence duty but to contact a named manager as a matter of urgency.
- 10.6 Any decision to exclude an employee will be confirmed in writing within 24 hours of the exclusion interview. The correspondence must include the reasons for the exclusion and advise the employee that they are not authorised to enter the organisation's premises without prior permission. If the employee feels they have a legitimate reason to enter the organisation's premises they should contact the named manager at the earliest opportunity.
- 10.7 An employee must make themselves available during normal working hours throughout the exclusion period, unless this coincides with planned annual leave, in which case the employee should seek permission to take leave and this should not be unreasonably withheld. Should the employee fall ill during a period of exclusion they must report via the normal sickness absence reporting procedures and in addition should inform the Investigating Officers.
- 10.8 The excluded employee must not enter into any discussion with any other employee involved in the investigation other than their Trade Union representative and must not approach any witnesses until the investigation is concluded. It is the manager's responsibility to advise employees that the management side investigation has been concluded and that they are free to contact witnesses.
- 10.9 The excluded employee must notify their Line Manager of any change in personal circumstances, e.g. change of home address, contact telephone numbers, health status.
- 10.10 Whilst excluded from work an employee will receive the pay they would have received had they been at work. Where an employee does not have a regular working pattern, payment will be based on the average weekly/monthly earnings for the three months period prior to the date of exclusion.
- 10.11 During the exclusion period the employee should not work in any other posts they may hold within the organisation. Where the work they undertake for the organisation may be related to a post they hold with another employer the organisation may take the decision to inform the other employer of the exclusion. Under a duty of care, in certain exceptional circumstances, it could be necessary for the organisation to inform other agencies including professional and regulatory bodies where there may be an impact on patient/client care or health and safety. The employee is obligated to advise the organisation if they are employed in any other posts with other organisations.

## **11. DELEGATION OF AUTHORITY TO DEAL WITH DISCIPLINARY PROCEDURES**

- 11.1 Authority to deal with disciplinary matters including appeals is delegated in accordance with the schedule attached at Appendix 4 of this document.
- 11.2 Normally no manager may dismiss an employee who directly reports to them.
- 11.3 Managers must seek advice from Human Resources at all stages of the Disciplinary Procedure.
- 11.4 Advice may be sought from NHS England Area Team in relation to disciplinary issues involving the Clinical Chair, Chief Officer or Governing Body Members.

## **12. INVESTIGATORY PROCESS**

- 12.1 Where misconduct is alleged to have occurred, Investigating Officers will be appointed to gather all the facts of the case promptly. The Investigating Officers will normally be a nominated manager and a Human Resources Representative.
- 12.2 The employee will be informed in writing that the matter is to be investigated and the names of the Investigating Officers. The letter should confirm the likely timescale for the investigation and of the right for representation. Regular communication should take place with the employee to ensure they are kept up to date. Normally the employee will be advised of the nature of the allegations. Exceptions to this may include issues concerning fraud or patient safety where criminal investigations are to be considered.
- 12.3 The investigation may include:
  - Giving the employee an opportunity to provide evidence to the Investigating Officers or interviewing the employee against whom the allegation has been made accompanied by a work colleague or trade union representative not acting in a legal capacity if desired.
  - Interviewing any witnesses and taking written statements, making it clear that the statements may be used as evidence and they are obliged to attend a disciplinary hearing should this be required.
  - Gathering documentary evidence, including medical advice, records, electronic files, diaries, worksheets etc.
- 12.4 Notes of any meeting should be confirmed in writing, in summary, via a letter to the employee and file notes given to any witnesses to confirm accuracy and content.
- 12.5 Once the investigation is concluded, the Investigating Officers shall recommend via a written report to the next level of management whether or not to take further action. Further action may include informal disciplinary action such as coaching or to proceed to a formal disciplinary hearing. The employee will be informed of the recommendation in writing.
- 12.6 Should any employee be found to be deliberately attempting to interfere with an investigation, either through intimidation, harassment or bullying of any employee, they may be subjected to disciplinary proceedings, including disciplinary action being taken against them.

### **13. INFORMAL DISCIPLINARY ACTION**

- 13.1. There will be, in some cases, opportunities to resolve issues of a minor nature informally without the need to impose formal disciplinary action, for example where an employee did not realise the full importance of complying with particular parts of their terms and conditions of employment.
- 13.2. Informal disciplinary action should be regarded as corrective guidance rather than part of the disciplinary procedure and should take the form of supportive interviews between the employee and their line manager. The interviews should identify if the employee is facing particular problems either at work or at home which have a bearing on their situation, if there are any training needs or if a review of the working arrangements is required as a means to resolving the problem informally.
- 13.3. The employee does not need to be accompanied at informal interviews, however if they are dissatisfied with the conduct of the interview they can raise this with their Trade Union Representative or chosen work colleague.
- 13.4. Informal interviews should be recorded on the employee's personal file to act as a record of the action agreed. This should be followed up with written records of the formal action planning process. Copies should be provided to the employee.

### **14. FORMAL DISCIPLINARY ACTION**

- 14.1. Where it is established, following an investigation, that there are reasonable grounds to believe that the employee has committed the alleged act(s) of misconduct which are not suitable for formal non disciplinary action, the matter will proceed to a formal disciplinary hearing.
- 14.2. A hearing panel will be convened which will comprise of the appropriately skilled manager (Hearing Officer) and a senior Human Resources Representative. An additional person may be present to advise on professional matters or financial procedures where required. In most cases the Hearing Officer will be the next level of management from the Investigating Officer. Appendix 1 sets out the process of the hearing. The Hearing Officer will not previously been involved in the CCG and will be independent. The Hearing Officer will Chair the Disciplinary Hearing and the Investigation Officer will be appointed by the CCG/HR to undertake an investigation into the allegation (this will be an independent process).
- 14.3. The employee must be notified in writing that the disciplinary hearing has been scheduled, the purpose of the hearing, the date and time of the hearing and of their right to be accompanied/represented. The letter should contain sufficient information for the employee to understand what the allegations are and the reasons why the actions associated with the allegations are unacceptable.
- 14.4. The Investigating Officer will prepare a management case for the hearing. The management case will typically include the report, statements of witnesses or records of interviews (including those of the employee under investigation) and copies of any relevant documents and other information. This must be supplied to the Trade Union Rep and member 15 working days prior to the hearing. The member's statement of case should be reached by the CCG within 5 working days of the scheduled disciplinary meeting so that an exchange of information between parties is made.

- 14.5 A failure by either party to disclose written material in accordance with the above guidelines may result in a refusal to admit such information at the disciplinary meeting. The panel hearing the case will decide whether to admit information following discussion with the individuals present as to the reason(s) for the late disclosure and the possible significance of the information.
- 14.6. If the employee cannot attend the hearing they should inform the Hearing Officer in advance wherever possible. If they fail to attend through unforeseen circumstances outside their control another hearing should be arranged. The employee should be advised of the rearranged date and advised if the employee fails to attend the rearranged hearing without good reason, the hearing will be held in their absence.
- 14.7. If the employee's representative cannot attend the hearing the employee can suggest another date, providing it is reasonable and not more than 5 working days after the original hearing date.
- 14.8. If an employee informs the Hearing Officer that they are unable to attend the hearing due to sickness, the employee should be referred to Occupational Health to ascertain when they are likely to be fit to attend.
- 14.9. At the hearing the Investigating Officer will go through the allegation(s) and the evidence gathered. The employee will set out their case and answer any allegations that have been made. Questions may be posed by each party. Witnesses may be called by either party and they will be required to answer questions. The employees work colleague or representative is permitted to present the employees case and can be questioned also. Both parties will have an opportunity to summarise.
- 14.10 Detailed notes of the disciplinary hearing should be taken. This duty will normally be fulfilled by a Human Resources Representative. In exceptional circumstances, for example a lengthy hearing, administrative support may be sought.
- 14.11 After hearing all the evidence, and mitigating or extenuating circumstances, the employee should be informed that a decision will be made in private and the hearing will be adjourned. The panel should reconvene to communicate the outcome to the employee on the same day or in exceptional circumstances the next day. If the Hearing Officers consider it appropriate to request any further clarification on evidence heard the panel may reconvene at a later date however this must be within one calendar month. The decision should be communicated to all parties.
- 14.12 The following disciplinary stages may be adopted within the scope of this procedure:
- |          |  |
|----------|--|
| Stage 1: | Written Warning – to remain on disciplinary record for 12 months             |
| Stage 2: | Final Written Warning – to remain on disciplinary record for 12 to 24 months |
| Stage 3: | Dismissal  |
- 14.13 Once a decision has been made the employee should be notified in writing. The letter should detail the evidence taken into account, how the decision was arrived at and of the right to appeal against the decision.

## **15. WRITTEN WARNING**

- 15.1. If the misconduct is serious enough that it cannot be resolved by taking formal non disciplinary action a formal written warning may be issued by the Hearing Officer.
- 15.2. The written warning letter must detail to the employee:
- The misconduct concerned.
  - The reasons for the action against the employee.
  - The improvements that are required of the employee including the timescale for the improvement.
  - How long the warning will remain extant.
  - What action will follow if there is no improvement (e.g. final written warning).
  - A named person will be responsible for overseeing the action plan.
- 15.3. The warning letter should be sent to the employee normally within 5 working days of the date of the hearing. It is recommended that the letter is sent by recorded delivery or a method that ensures delivery to the employee's home address. If applicable, a copy should be sent to the employee's representative.
- 15.4. The written warning will remain extant on the employee's personal file for 12 months from the date of the warning letter. This should be confirmed at the Disciplinary Hearing.

## **16. Final Written Warning**

- 16.1. The final warning letter must contain the same level of detail as set out in paragraph 15.2 with the exception of the action to follow if there is no improvement as in this case the further action will be dismissal.
- 16.2. The final warning letter should be sent in accordance with paragraph 15.3.
- 16.3. A final written warning will remain extant on the employee's personal file for 12 to 24 months from the date of the warning letter.

## **17. Dismissal**

- 17.1 Where misconduct is very serious, or where there has been no improvement in conduct, dismissal will normally result. Dismissal in these circumstances will be with full pay and notice.
- 17.2. The dismissal will be confirmed in writing by the Hearing Officer. The letter will state the full reason for the dismissal, a summary of the facts leading to the decision and the date the employment will end.
- 17.3. The dismissal letter should be sent in accordance with paragraph 15.3.
- 17.4. No employee will be dismissed without full involvement of Human Resources.
- 17.5. In the event of gross misconduct the employee will be dismissed with immediate effect and normally without prior notice. Examples of gross misconduct are contained in Appendix 3.

- 17.6. Dismissal covers three different situations:
- Termination of the contract by the employer.
  - Termination of the contract by the employee, where the employee is entitled to do so by the employer's breach of contract, i.e. constructive dismissal.
  - The expiry of a fixed term contract.
- 17.7. The employee should be advised that they must return all property belonging to the organisation i.e. keys; equipment, mobile phone, laptop etc. e-mail addresses and access to organisation premises will also be prohibited.
- 17.8. Dismissal can be a summary dismissal with no notice being payable, or dismissal with notice (as deemed appropriate by the Chair of the Disciplinary Panel – in certain circumstances).

## **18. APPEALS**

- 18.1. An employee has the right to appeal against disciplinary action taken at any stage of this procedure. For written and final written warnings the intention to appeal must be made to the next higher level of management not previously involved in the procedure. Appeals against dismissal will be to the Governing Body via a letter sent to the Chief Officer. If at appeal the employee is re-instated including their pay and benefits back to the original date of the decision.
- 18.2. Any appeal must be made in writing and within 10 working days of the date of the warning/dismissal letter.
- 18.3. The appeal will normally be heard within 15 working days of the receipt of the written notice of appeal and any extension to this timescale should be mutually agreed.
- 18.4. A letter confirming the time and date of the Appeal Hearing should be sent to the employee/ex-employee. The letter should confirm the grounds for the appeal, arrangements for the hearing and possible outcomes to the employee, giving 5 working days' notice of the hearing.
- 18.5. If the appeal is in respect of an alleged breach of procedure the employee/ex-employee must explain the nature of the breach and why it is said that it renders the decision of sanction unfair. The appeal panel may then consider if a rehearing is appropriate.
- 18.6. The appeal documentation will be exchanged between the Trade Unions/employee and management up to 10 working days before the appeal hearing date.
- 18.7. A failure by either party to disclose written material in accordance with the above guidelines may result in a refusal to admit such information at the disciplinary meeting. The panel hearing the case will decide whether to admit information following discussion with the individuals present as to the reason(s) for the late disclosure and the possible significance of the information
- 18.8. At the appeal, the manager hearing the appeal will consider representations made by the employee/ex-employee and/or their representative and information from the Investigating Officer/Hearing Officer who imposed the disciplinary sanction. Appendix 1 sets out the process for the appeal hearing.

18.9 The appeal may result in one of four decisions:

- To uphold the decision of the Hearing Officer.
- To review the decision of the Hearing Officer.
- To uphold the employee's/ex employee's appeal and remove any action imposed.
- If new evidence is presented at the Appeal Hearing with potential serious consequences, the Appeal Hearing Officer may make the decision to reconvene the Disciplinary Hearing stage for further investigation.

18.10 The manager hearing the appeal must inform the employee/ex-employee about the appeal decision normally within 5 working days of the appeal and the correspondence should be sent via recorded delivery to the employee's/ex employee's home address. A copy should also be sent to the employee's/ex employee's representative if applicable.

18.11 Employees/ex employee's must be made aware that the decision of the appeal is final. Appeals against dismissal will be referred to the Governing Body Member and the Appeal Hearing panel will comprise of the Chief Officer or a nominated deputy, either the Clinical Chair or an Executive Governing Body Member and a senior Human Resources representative. External professional expert advice such as Financial or Technical should be sought where appropriate.

18.12 Timescales in the appeals procedure should normally only be extended where agreement has been reached by both parties. However in the cases of fraud, theft, pending criminal convictions or where large numbers of witnesses are involved, timescales may be extended and the employee should be notified accordingly.

## **19. CONSULTATION, APPROVAL AND RATIFICATION**

19.1 The HR Policy Workshop which is composed of management, staff side and HR representatives considers all draft HR policies and guidance. All members have the opportunity to make comments and suggestions on the document content which is debated within the group and amendments made and agreed.

19.2 The CCGs Senior Management Team and/or other relevant Committees ratify the final HR policies. The role of the Staff Partnership Forum is to discuss and minute the policies and procedures that are submitted to the HR Policy Workshop.

**FORMAT OF HEARING**

- The Chairperson of the panel will introduce the panel and all parties and the employee will be reminded of the purpose of the hearing and the stage at which the hearing is being held.
- The Management case will be presented and any witnesses will be called to provide evidence.
- The employee and/or the representative will be given an opportunity to question or clarify any points in the management case and to question any witnesses.
- The Panel and Chairperson will be given an opportunity to question or clarify any points in the management case and to question any witnesses.
- The employee and/or the representative will be given an opportunity to state their case, which may include bringing witnesses and/or presenting supporting statements.
- The management side will have the opportunity to question the employee, the employee's representative and any witnesses.
- The panel members may question the employee, employee representative and witnesses as appropriate.
- Management side will summarise their case based upon the evidence already presented.
- Staff side will summarise their case based upon the evidence already presented.
- The panel will adjourn to consider their decision and will advise the employee of when the decision will be communicated to them.
- The panel will reconvene the hearing to communicate the decision to the employee.

N.B. At any point during the hearing either party can request an adjournment via the Chair person.

## STANDARDS OF CONDUCT

### 1. Introduction

- 1.1. The spirit and the intention of producing written standards of conduct is to promote fairness and consistency in the treatment of individuals and in the conduct of the organisations industrial relations, and not merely to fulfil legal obligations. In addition to these standards of conduct, employees may also be governed by a code of professional conduct from their regulatory body.
- 1.2. These standards of conduct apply to those identified in scope of the organisations Disciplinary Policy and will be regarded as part of each employee's contract of employment.
- 1.3. It is impossible to cover all situations that may arise therefore the examples which follow are purely illustrative. These examples are included in order to clarify the forms of disciplinary breaches which are likely to give rise to formal disciplinary action. Appendix 3 gives examples of gross misconduct which will lead to dismissal unless there are mitigating circumstances accepted by Hearing Officers. In dealing with breaches of rules or gross misconduct there will be consideration of specific circumstances of individual cases.

### 2. General Standards of Conduct

- 2.1. In fulfilling their contract of employment, all employees are expected to attend for duty regularly and punctually, not to absent themselves from duty without permission and to conduct themselves and perform their duties in a manner which combines prompt and efficient service with a concern for the feelings of others, including colleagues, managers, patients and public. The following sets out some specific examples of standards expected of employees in their conduct at work but does not aim to be comprehensive:
  - All employees are required to maintain confidentiality of any information they may acquire in the course of, or arising from, their employment/association with the organisation, in accordance with the organisations policy on disclosure of information and in accordance with the IG Handbook and contracts of employment and contracts of service. Any unauthorised disclosure or misuse of information will be treated as a serious breach of discipline, possibly leading to dismissal. All employees are required to sign a confidentiality code of conduct.
  - Health and Safety policies and procedures must be observed at all times.
  - Security requirements must be observed at all times.
  - Conduct must be professional and acceptable to the organisation.
  - Reasonable duties and instructions given by line managers should be undertaken promptly and efficiently to the required standard. Duties should be commensurate with the level of knowledge and skills associated with the employees job outline.

- Employees must comply with the Managing Sickness Absence Policy, specifically regarding reporting procedures and compliance with Statutory Sick Pay. Where sickness absence is a cause for concern this will be investigated and proven fraudulent abuse of sick pay provisions will lead to disciplinary action.
- Employees must not engage in other employment that may adversely affect their employment, nor in any way hinder or conflict with the interests of the organisation or the European Working Time Regulations.
- Conducting private business on the organisation's premises is forbidden unless official permission is obtained from the appropriate manager.
- Standards of business conduct including acceptance of gifts and hospitality must comply with the organisation's relevant policies.
- Employees must declare any financial interest in contracts which the organisation is or is likely to be involved with.

### **3. Gross Misconduct**

- 3.1. Offences that constitute gross misconduct will result in dismissal unless mitigating circumstances are accepted. Appendix 3 illustrates examples of offences which in managements view constitute gross misconduct. The examples given are not an exhaustive list.

### **4. Duty to inform Employer**

- 4.1. An employee who is charged or cautioned with a criminal (or other) offence which may affect their suitability to discharge the duties of their job must inform his/her Line Manager as soon as possible. Any action taken at this stage will be dependent upon the relationship of the alleged offence, to the type of work undertaken by the individual. The Line Manager will advise the employee to seek guidance from their representative irrespective of whether action is to be taken.
- 4.2. Employees for whom driving is an essential part of their duties must inform their head of department if formally charged with any driving offence or if they become ineligible to drive due to a new or pre-existing medical condition. The declaration made contains confidential information and should be kept confidential between the manager and employee unless the matters leads to a criminal action where the Fraud Officer/or other parties may need to be consulted.

### **5. Codes of Conduct**

- 5.1. All employees of the organisation are expected to comply with their relevant professional codes of conduct and notify the organisation if their regulatory body is considering taking/has taken any action against them. The above also includes managerial codes of conduct.

## **OFFENCES THAT MAY CONSTITUTE GROSS MISCONDUCT**

In accordance with ACAS guidance, examples of gross misconduct may include:

- Theft or fraud
- Physical violence, aggressive behaviour or bullying
- Deliberate and serious damage to property
- Serious misuse of an organisation's property or name
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious insubordination
- Unlawful discrimination or harassment
- Bringing the organisation into serious disrepute
- Serious incapability at work brought on by alcohol or illegal drugs
- Causing loss, damage or injury through serious negligence
- A serious breach of health and safety rules
- A serious breach of confidence
- Anything which calls into question an employee's honesty and integrity.
- Sharing commercially sensitive business data/intellectual property rights outside of the organisation.

### **Criminal convictions or charges outside of employment:**

The main consideration should be whether the offence is one that makes the worker unsuitable for the type of work contracted to undertake. In all cases, employers having considered the effects will need to consider whether the conduct is serious enough to warrant instigating disciplinary procedures. For example, employees should not be dismissed solely because a charge against them has been made, or because they are absent as a result of being remanded in custody.

**N.B. The list above provides examples of those offences which in managements view may constitute gross misconduct and is not intended as an exhaustive list.**

**OFFENCES THAT MAY CONSTITUTE MISCONDUCT**

Examples of misconduct are:

- Breach of any of the organisation's policies and procedures
- Unauthorised absence from work
- Failure to comply with a reasonable management instruction
- Failure to observe department rules, procedures or protocols
- Unprofessional or unreasonable behaviour
- Failure to wear a uniform or ID badges where required

**N.B. The list above provides examples of those offences which in management's view may constitute misconduct and is not intended as an exhaustive list.**

## **Conducting a Disciplinary Hearing**

A disciplinary hearing will normally be held by a panel consisting of a manager, who has not been previously involved in the matter, who will act as the Panel Chair. They will either be accompanied by another appropriate manager or an HR Representative, or in some cases both. Should the attendance of an HR Representative be required, their role will be to provide advice on Human Resources policies and employment legislation and to ask questions to obtain clarification on any issues that are discussed or new relevant information disclosed.

The Disciplinary hearing follow the following stages:

1. Opening the meeting by Panel Chair
2. Management side present their case (summary of allegation by the investigating officer), including calling of any witnesses
3. Employee side, then the Disciplinary Panel, will have the opportunity to ask questions
4. Employee side to present their case, including calling of any witnesses
5. Management side, then the Disciplinary Panel, will have the opportunity to ask questions
6. Summing up by management side, then by employee side
7. Adjournment
8. Action to be taken (if any)
9. Establishment of a review date (if appropriate)

## CLINICAL COMMISSIONING GROUP SCHEME OF DELEGATION AND AUTHORITY

The following scheme of delegation has been developed pertaining to the management of disciplinary issues and settling grievances. The following table details the lowest grade of officer who will normally have delegated authority to take the specified action/disciplinary action. This will be subject to change in the event of revised managerial arrangements. Exceptionally there may be circumstances where a deputy is given delegated authority to act in place of the designated officer. The designated officer shall consult with Human Resources and may arrange to be accompanied by another senior manager or representative.

<b>CATEGORY OF STAFF</b>	<b>WRITTEN WARNING</b>	<b>FINAL WRITTEN WARNING</b>	<b>DISMISSAL</b>	<b>EXCLUSION FROM DUTY</b>
Chief Officer	Clinical Chair in consultation with NHS England	Clinical Chair in consultation with NHS England	Governing Body	Clinical Chair in consultation with NHS England and Human Resources
Governing Body/Board Member	Chief Officer	Chief Officer	Sub Committee of Governing Body	Chief Officer in consultation with NHS England and Human Resources
Directors	Chief Officer	Chief Officer	Sub Committee of Governing Body	Chief Officer in consultation with Human Resources
Employees who directly report to a Director	Director	Director	Chief Officer	Director in consultation with Human Resources
All other employees	Line Manager (band 4 and above)	Line Manager (band 4 and above)	Director	Director in consultation with Human Resources

## Equality Impact Assessment

<b>Title of policy</b>	Disciplinary Policy and Procedure	
<b>Names and roles of people completing the assessment</b>	Alison Ewart, HR Business Partner Nadeem Murtuja, Senior Associate E&D	
<b>Date assessment started/completed</b>	10/01/14	Review date July 2020

**1. Outline**

<b>Give a brief summary of the policy</b>	To provide a process and framework to manage employee issues of misconduct at the workplace in a fair and consistent manner in line with employment law and good HR practice.
<b>What outcomes do you want to achieve</b>	Set standards of conduct. To manage issues in a timely equitable manner.

**2. Evidence, data or research**

<b>Give details of evidence, data or research used to inform the analysis of impact</b>	The impact assessment is informed and supported by a holistic performance framework for equality and diversity across the suite of HR policies.
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**3. Consultation, engagement**

<b>Give details of all consultation and engagement activities used to inform the analysis of impact</b>	Consultation has taken place with management sub groups of the CCGs and staff.
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**4. Analysis of impact**

This is the core of the assessment, using the information above detail the actual or likely impact on protected groups, with consideration of the general duty to;
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eliminate unlawful discrimination; advance equality of opportunity; foster good relations

	<b>Are there any likely impacts?</b>  <b>Are any groups going to be affected differently?</b>  <b>Please describe.</b>	<b>Are these negative or positive?</b>	<b>What action will be taken to address any negative impacts or enhance positive ones?</b>
<b>Age</b>	No		
<b>Carers</b>	No		
<b>Disability</b>	No		
<b>Sex</b>	No		
<b>Race</b>	Yes there is evidence to suggest particular races are more likely to be involved in disciplinary investigations.	Negative	Ensure managers are trained in E&D awareness and do not discriminate against the group by treating them any differently.
<b>Religion or belief</b>	No		
<b>Sexual orientation</b>	No		
<b>Gender reassignment</b>	No		
<b>Pregnancy and maternity</b>	No		
<b>Marriage and civil partnership</b>	No		
<b>Other relevant group</b>	No		
<b>If any negative/positive impacts were identified are they valid, legal and/or justifiable?</b>  <b>Please detail.</b>		The policy is applicable to all employees and adheres to the NHS Litigation Authority Standards, statutory requirements and best practice. Makes all reasonable provision to ensure equity of access to all employees.	

5. Monitoring, Review and Publication			
<b>How will you review/monitor the impact and effectiveness of your actions</b>	Monitoring of disciplinary cases and action taken in the workplace on the caseload analysis by protected characteristic will be undertaken as necessary.		
<b>Lead Officer</b>	Tazeem Hanif	<b>Review date:</b>	July 2020

6. Equality and Diversity Sign off			
Equality Lead Officer	Nadeem Murtuja		
		Date approved:	April 2014

7. Sign off			
<b>Lead Officer</b>	Fiona Stephens		
<b>Director</b>	Associate Director of Corporate Affairs	<b>Date approved:</b>	September 2015