

Disciplinary Policy

W7

Additionally refer to:

- Employee Investigations Policy
- Handling Concerns about Doctors and Dentists Policy
- Verification of Professional Registration Policy
- Reimbursement of Travel, Accommodation and Subsistence Expenses Policy
- Employee Wellbeing and Attendance Management Policy
- Resolving Bullying and Harassment Policy
- Employee Performance Management Policy & Procedure
- Appraisals and Pay Progression
- CG07 Concerns and Complaints
- CG26 Managing Allegations against staff who work with Children and Young People

Version:	V15.6
V1 issued:	March 2008
V15 approved by:	JNCC
V15 date approved:	May 2023
V15 Ratified by:	Operational People Group
V15 Date ratified:	June 2023
Document Lead:	People Governance & Projects Manager
Lead Director:	Director of People and OD
Date issued:	July 2023
Review date:	July 2026
Target audience:	All Trust Employees

Version Control Sheet

Document Lead/Contact:	People Governance & Projects Manager nick.dowd@nhs.net
Document ID	W7 (Previously HR36)
Version	15.6
Status	Final
Date Equality Impact Assessment completed	May 2023
Issue Date	Sept 2023
Review Date	July 2026
Distribution	Please refer to the intranet version for the latest version of this policy. Any printed copies may not necessarily be the most up to date
Key Words	Disciplinary, Misconduct, Standards of Behaviour, suspension, restriction of duties, safeguarding.
Dissemination	Global Email, Information Bulletin, Workforce Flashcard, Managers Resources email list.

Version history

Version	Date	Author	Status	Comment
3.1	March 2014	Anna Martin	Final	Full redraft of original Trust Policy issued June 2014.
4.1 – 4.5	June 2017	Nick Dowd	Draft	Policy discussed at JNCC Policy meeting between June 2017 and July 2018. Some parts removed and added to new Employee Investigations Policy. Appendix 4 added.
5.1	May 2021	Nick Dowd / Chris Goulding	Draft	Addition of sections 9, 13 and 15
6-13	June to July 2021	Nick Dowd / Chris Goulding	Draft	Amendments following feedback during consultation. DMG process added.
14	September 2022	Nick Dowd/Erica Cobbold	Final	Minor amendments following feedback from Staff Side and Managers. Discussed at WPPG.
15 to 15.4	Jan to April 2023	Nick Dowd / Chris Goulding	Draft	Amendments to wording throughout. Changes to fast-track process. Changes to attendance at DMG.
15.5	Sept 23	Diana Martin	Draft	Staff Psychological Service information added
15.6	June 24	Nick Dowd	Final	Added breach of visa rules as an example of gross misconduct.

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1 Policy on a Page

- Shrewsbury & Telford Hospital NHS Trust (SaTH) is committed to ensuring that employees are managed in a supportive, consistent, fair, and effective manner and encourages employees to achieve and maintain high standards of conduct.
- This Disciplinary Policy is designed to ensure a fair and systematic approach is taken when an employee's behaviour or action is in breach of workplace rules or falls short of the expected standards of behaviour.
- The fair treatment of staff supports a culture of fairness, openness and learning whilst safeguarding the interests of the Trust, patients and employees.
- The policy complies with the ACAS guide on Discipline and Grievance at Work. The Trust has also followed this guidance as well as previous recommendations issued by NHSi/e to NHS Trusts which includes:
 - Rigorous assessment of cases requiring an objective and prompt examination of the issues and circumstances should be carried out to establish whether there are grounds for a formal investigation and/or for formal action.
 - Independence in the selection of commissioning manager, investigating officer and HR roles.
 - Ensuring those that are commissioning, investigating and advising are fully trained and competent
 - Safeguarding people's health and wellbeing.
 - Reflecting the principles and practices of the NHSi/e Just Culture guide in the treatment of staff

2 Document Statement

- 2.1 This policy sets out a framework and the arrangements to ensure the Trust applies fairness and consistency when dealing with disciplinary matters designed to encourage and facilitate acceptable standards of conduct and behaviour.

3 Scope

- 3.1 This policy applies to all employees of the Trust including those employed via the Temporary Staffing Department and should be read in conjunction with all appropriate codes of conduct/rules for professional bodies.
- 3.2 For cases where there are allegations against Medical and Dental staff, please also refer to the Trust's Handling Concerns about Doctors and Dentists Policy (W31).
- 3.3 The policy does not apply to issues of capability, poor performance or ill health, which should be dealt with under the appropriate policies listed on the front page.

4 Responsibilities

4.1 Trust Board

The Board has responsibility to oversee this policy and ensure that appropriate processes and actions are in place in order that employees are treated in a fair and consistent manner, upholding the principles of good practice.

4.2 Executive Directors and Other Senior Managers

Executive Directors/other Senior Managers will ensure that disciplinary matters are dealt with in a timely manner in accordance with this policy and are responsible for ensuring appropriate systems and processes are in place across their Divisions and managers are fully trained and competent to carry out the procedures in this policy; with an emphasis on rigorous assessment of the case and appropriate decision making which is evidenced based. Shared learning following the disciplinary process should be disseminated confidentially with relevant parties.

4.3 Line Managers

Line managers need to ensure they are sufficiently trained and competent in carrying out a disciplinary process and are familiar with this policy and procedure and the related Employee Investigations policy. Line Managers are responsible for ensuring employees are aware of this policy and its contents and understand the standards of conduct required. Managers must raise any concerns they may have about individual employees to their attention in a timely and sensitive manner.

4.4 Director of People & OD and the People & OD Directorate

The Director of People & OD has overall responsibility for this policy.

The People & OD Directorate team will provide support and guidance on the Policy and advise on procedures to ensure a fair and consistent process is followed and take part in the Decision-Making Group .

The role of HR during disciplinary investigations should be limited to advising on 1. **Procedure** 2. **Process** 3. **Law**. Involvement must be transparent and open and stay within these 3 bounds.

Decision makers must reach their own conclusions. For further guidance on the role of HR see Guidance and tool kits.

4.5 Employees

4.5.1 All employees must comply with this policy.

4.5.2 Where an informal or formal disciplinary investigation has been actioned, employees are required to actively participate. This will enable the facts to be fully established and the findings identified in a timely and constructive manner, whether this concerns them personally or a work colleague. Paid time off will be provided. It is important that all those being asked to contribute to the process do so in an honest and constructive manner. Any employee who is referred or self refers to their professional body (NMC, GMC, GDC, HCPC etc) must inform their line manager as soon as possible. Failure to do so may result in disciplinary action.

4.6 Trade Unions/Professional organisations & Trust Employed Work Colleague

The role of the Trade Union/Professional organisation representative (TUPO) and the work colleague is to act as a representative and advocate to provide the employee with advice and support on matters relating to staff discipline. They may also take part in relevant meetings/hearings, and with their permission, represent them speaking on their behalf.

Family members or partners who are also employed by the Trust are not normally allowed to accompany an individual unless they are required to assist with disabilities or language difficulties or any other extenuating circumstances.

4.7 Accountable Officer for Controlled Drugs

The Trust's Accountable Officer for Controlled Drugs (currently the Chief Pharmacist) must be notified of any disciplinary matters relating to medicines. They are then responsible for ensuring the legal requirements relating to the Health Act 2006 are complied with. This includes notifying the appropriate Regulatory bodies (e.g. the CQC, NHS England) and statutory bodies (e.g. the Police).

4.8 Staff Support

The Staff Psychology Service is available to support any member of staff who is experiencing emotional distress in relation to a work-related issue. Individuals wanting to access their support can refer themselves by emailing: sath.staffpsychology@nhs.net or a manager can refer on their behalf. Information about the service is also available on the intranet: [SaTH Intranet - Staff Psychology Service](#)

5 Employee representation

5.1 An employee has the right to be represented, if they wish, at any formal stage of the proceedings by either a representative from a recognised TUPO or a Trust employed work colleague. Although there is no right to be accompanied at informal meetings; to

support wellbeing and with the permission of the manager, employees may request to be accompanied at informal meetings provided this does not unreasonably delay the meeting.

- 5.2 It is strongly advised by the Trust and Staff Side that should this policy and procedure be actioned, the employee seeks the support of their TUPO where applicable. It is the employee's responsibility to liaise with their representative to arrange support. The Trust will facilitate time off for accredited TUPO's and workplace colleagues.
- 5.3 Employees who are suspended can meet with their representative on Trust premises (see section 7.1.5).

6.0 Criminal Actions / Convictions / Offences

- 6.1 Where events are the subject of a police investigation or legal process, then unless there are reasons why it should be deferred, the disciplinary process will be undertaken alongside the police investigation.
- 6.2 If a staff member is suspected of committing an act of NHS Fraud in the course of their duties, then advice should be sought from the line manager, Human Resources and Finance before a decision is taken to report this to the Local Counter Fraud Specialists (LCFS).
- 6.3 If an employee is given a police caution, reprimand, bind overs, warning, or under investigation, charged with or convicted of a criminal offence outside employment, they are required to notify their manager and HR without delay.
- 6.4 Employees who receive a caution from the police whether this is following a police investigation or in response to an offence should inform their line manager as soon as reasonably practical. The manager may seek advice from HR in terms of any action that needs to be undertaken.

7 Suspension and/or Temporary Redeployment/Adjustment to duties

7.1 Suspension

- 7.1.1 In certain cases it may be necessary to suspend the employee from duty. Suspension should only take place where there is a risk to patient safety, members of staff or to ensure the investigation can be completed unhindered and re-deployment is not a reasonable alternative. A risk assessment (available from the workforce department) must be completed by the line manager prior to any decision being taken. Any decision to suspend should be taken by an Executive Director in conjunction with the Director of People & OD or his/her nominated deputy.
- 7.1.2 The suspension should be as brief as possible and be reviewed every 10 working days with an update provided to the employee from the Commissioning/Suspending Manager.
- 7.1.3 Suspension is a neutral act and is not a disciplinary sanction. Suspension is on full pay which is the remuneration that the employee would have received had they been at work, it is calculated based on a reference period of the previous 12 weeks at work (this includes temporary bank staff).
- 7.1.4 The suspending manager will confirm in writing the terms of the suspension to the employee as soon as possible and within 5 working days of the actual date the employee was suspended.

- 7.1.5 If the employee needs to attend hospital sites for meetings or medical appointments, they must gain permission from the suspending manager, the investigating officer, or the commissioning manager in writing (letter/email/text message), prior to attending. In cases of medical emergencies for themselves or family members, employees are not required to get permission in advance but should notify one of the above managers as soon as possible afterwards.
- 7.1.6 The employee must remain available during their normal working hours for meetings that may be arranged as part of the investigation and disciplinary process. If they have flexible working arrangements in place this will be considered.
- 7.1.7 Suspended employees will be asked to notify the suspending manager of any other work (voluntary or paid) that they do, and this may only continue during the suspension with the written permission of the commissioning manager. In some circumstances the Trust may be required to notify other agencies of this work.
- 7.1.8 Normal annual leave procedures will continue to apply, including the process for requesting time off and carry over of leave between leave years.

7.2 Temporary Redeployment/Adjustment to duties

- 7.2.1 Where suspension is not deemed to be necessary, but it is considered inappropriate for the employee to remain in their current position and/or performing their current duties the employee may be temporarily redeployed. The employee's pay will not be affected during this temporary period. Consideration will be given to the individual's specific circumstance in each case. This will be reviewed on a monthly basis or sooner if it is deemed necessary.
- 7.2.2 Redeployment could involve - moving location; restricted or alternative duties; increased supervision or supervised access to patients; restricted contact with patients or colleagues
- 7.2.3 Where an employee is redeployed on a temporary basis to an alternative location travel expenses will be reimbursed in accordance with the Trust Reimbursement of Travel, Accommodation and Subsistence Expenses Policy (HR13). Travel time will not normally be given, however individual circumstances will be taken into consideration and discussed with the line manager.

8. The Disciplinary procedure: Employment Relations Pathway

The purpose of the pathway is to provide a framework for managers and staff to actively follow when dealing with disciplinary matters at informal and formal stages. When an incident/ issue is raised the relevant manager should seek advice from HR.

Before deciding what next steps are appropriate, the manager should gather sufficient information to determine whether the matter can be resolved informally or whether more formal action should be considered. This should be done quickly and informally, normally through gathering written statements and other documentary evidence. This may include an informal meeting with the employee.

In certain cases it may be necessary to suspend the employee from duty (see section 7).

8.1 Stage 1: Informal procedure

Where informal action is appropriate the manager should aim to resolve the matter by meeting the employee, seeking support from HR (if necessary) and utilising the suggested Organisational Development (OD) and informal interventions (see Guidance and tool kits at the end of this policy). Employees may need support at this meeting (see section 5).

As part of informal action, managers may issue the employee an informal warning. Managers should seek advice from HR before issuing an informal warning. The warning must be confirmed in a letter. Informal warnings may be live for up to 6 months. The content of the informal warning must be factual and balanced, taking into account the employee's response. The employee must receive a copy and the warning removed from their file when the warning has expired.

If an employee feels an informal warning has been unreasonably issued they may request a review from an independent manager who, after speaking with the manager who issued the warning and the employee, will decide whether the informal warning is appropriate.

If informal resolution is unsuccessful or not appropriate a Decision-Making Group should be formed see below:

8.2 Stage 2: Decision Making Group (DMG)

A Decision-Making Group is comprised of a minimum of 3 to review the information available about a case and agree next steps. Membership includes:

- the line manager of the individual,
- the relevant clinical, medical or the Head of department for the area
- a member of the HR team.
- an independent manager outside the specialty/centre or a TUPO from a different union from the employee(s)

The purpose of the Decision-Making Group is to understand the initial evidence available, in order to make a decision on next steps. If a formal investigation is commissioned, the Commissioning Manager will normally be the person who led the DMG. DMG decisions should be consistent with the application of 'just culture' principles, which recognises that it is not always appropriate or necessary to invoke formal management action in response to a concern or incident. A comprehensive and consistent decision-making methodology should be applied that provides for full and careful consideration of context and prevailing factors when determining next steps.

Next steps may include but are not limited to.

- Seeking further information (if required) about the extenuating circumstances surrounding this case to assist in the decision-making process on next steps. This may be carried out:
 - informally through written statements, document review, CCTV/text/email/social media evidence etc if relevant.
 - through a "right to reply" meeting between a suitable manager and the employee. (The aim of right to reply meetings will be to listen to the employee's evidence and mitigation and to better understand the facts of the case. The employee will have the right to be accompanied, see section 5)

- Recommending that in the first instance, attempts should be made to resolve the disciplinary issue informally, either with the line manager, the wider management team or seeking support from an OD practitioner, as necessary. Interventions that are put in place and their impact in attempting to resolve the situation need to be closely monitored including agreed action plans and timelines. (See Guidance and tool kits for types of informal and OD interventions).
- Utilising the Fast-Track process (see section 8.3.1)
- Commission a formal investigation utilising the Employee Investigations Policy (W37)
- Considering any restrictions/ exclusions that may be appropriate (see section 14).

Once a decision has been made on next steps, the chair of the Decision Making Group must ensure the employee is notified of the next steps within 5 working days and the rationale behind their decision.

8.3 Stage 3 - Formal Procedure

The formal procedure should be followed where the informal approach has failed to secure the required improvements in conduct or behaviour or where the Decision-Making Group believes there is a case to answer in that a breach of conduct may have occurred that is too serious to be dealt with informally. Investigations will be carried out in accordance with the Trust's Employee Investigations Policy (W37).

8.3.1 Fast Track Procedure

- The 'Fast Track' procedure is to help speed up the process of actioning the Disciplinary policy in those cases where the evidence is clear, and staff admit to the allegations.
- It provides the option for staff facing disciplinary allegations in cases of misconduct, avoiding the need for a Disciplinary hearing.
- It is regarded as a supportive measure in order to reduce anxiety and stress focussing on the health and well-being of staff to reach mutually agreed outcomes. The Fast-Track procedure will not be used for matters of **Gross Misconduct**.
- Key considerations when the Fast Track procedure can be actioned:
 - Allegations made against an employee are clear, as a result of inappropriate behaviour or conduct.
 - Fact finding and/or initial assessment takes place, which provides clear evidence to support the allegations of misconduct.
 - The Decision Making Group (DMG) will examine the evidence from the fact finding or initial assessment to confirm:
 - a) there is a case to answer,
 - b) that a further investigation is not required
 - c) the employee has admitted to the allegations
- If the DMG is satisfied that these criteria are met, the Fast Track procedure can be actioned continuing with the next stages of the process.

- At this point, the matter should be discussed with the Staff Side Chair where possible (although this should not delay progress) to provide staff-side with oversight of the how the fast-track process is being used.
- The outcome from the DMG is then shared with the member of staff along with a summary of the material evidence from the fact finding or initial assessment.. The employee will be given the option of pursuing by the Fast-Track procedure confirming their agreement, by completing the Fast-Track proforma (Appendix 2) and submitting it to HR. The proforma, provides the opportunity to briefly outline any mitigating circumstances that they would like to be considered at the Fast Track meeting. The employee has 10 working days to return the proforma, otherwise their case will be advanced to a full investigation and/or Disciplinary hearing.

Fast-Track meeting

- Details of the arrangements and the guidance that underpin the Fast-Track meeting are set out in Appendix 1. This is not a disciplinary hearing but a formal meeting under this Disciplinary policy.
- The meeting consists of an independent Chair, HR, the employee, the representative or work colleague (see section 5).
- Prior to the meeting, the anticipated sanction is shared with the employee by the Chair in order to be transparent in terms of the principles of openness and to manage their expectations.
- At the meeting, the Chair of the panel will cover a) the allegations against the employee, b) the evidence from the fact finding or initial assessment, c) the DMG's conclusions about the case which led to confirmation that the Fast Track procedure can be actioned, d) that the employee admitted to the allegations and submitted a Fast-Track proforma. The panel may ask further questions and the employee will be given the opportunity to make a statement based on the information provided in the written proforma. (If in the event that new evidence emerges during the Fast Track meeting which will have a significant impact on the outcome of the meeting, then proceedings should be stopped and the case referred back to the DMG for a re-assessment of the case).
- The meeting will adjourn to allow the chair to consider the appropriate outcome.
- The employee will be informed of the formal sanction at the meeting. This could include a sanction up to final Written Warning, as detailed in section 9, depending on the circumstances of the case (this cannot be dismissal). The outcome will be confirmed in writing within 7 working days of the meeting.
- If the member of staff disagrees with the sanction applied, they have the right of appeal. Depending on the circumstances, this may be handled through the appeal process (see section 8.3.3) or through a full disciplinary hearing.

8.3.2 Formal Action – Case to answer

- Where it is determined by the DMG there is a case to answer the case should be considered at a disciplinary hearing (see Guidance and tool kits).
- The authority to take formal disciplinary action is outlined in Guidance and tool kits.

- In accordance with the General Data Protection Regulations any evidence provided by employees during this process may be retained within their personal file and/or stored securely (electronically or hard copy) within the HR department.
- All witness statements relating to the allegations will be provided to the employee and any witnesses may be called to disciplinary hearings in accordance with Guidance and tool kits.

8.3.3 Appeals

- An employee/appellant has the right to appeal against the decision of the chair of the disciplinary hearing under this procedure. The appeal should be made in writing to the next level of management (named within the hearing outcome letter) within 14 calendar days of receipt of written confirmation of the decision.
- Appellants who are appealing their dismissal will need to inform the workforce representative from the disciplinary panel of any meeting with their TUPO representative that occurs on Trust premises.
- Appeal hearings are convened to review the decision and the outcome of the original disciplinary hearing.
- An employee must set out clearly the grounds upon which the previous decision is being contested and the outcome they are seeking, as this will form the basis of the appeal hearing.
- Grounds of appeal:
 - they disagree with the finding that they committed the alleged act(s) of misconduct
 - they feel that Trust procedures were not correctly and fairly implemented
 - discrimination and/or sanction inconsistent with how others have been treated
 - new evidence not previously available at the original hearing.
- If the reason for the appeal is unclear, the employee may be asked to clarify their grounds before the appeal hearing takes place.
- Where new evidence is presented the chair of the appeal meeting may choose to refer the matter back to the original disciplinary panel for them to consider the evidence and decide whether this changes their outcome. Following this if the employee remains dissatisfied they retain the right of appeal.
- The appeal hearing will be heard by the next level of management and will be supported by a workforce representative. In cases of professional misconduct the panel chair may be accompanied by a professional lead.
- The appeal is not a re-hearing of the original disciplinary hearing, nor is it a re-investigation but a consideration of the specific areas with which the employee is dissatisfied in relation to the original disciplinary hearing decision. The panel will be required to satisfy itself on the following points:
 - Whether the investigation was adequately investigated and substantiated
 - Whether the Trust's procedures were correctly and fairly implemented
 - Whether the disciplinary action taken was reasonable, in all circumstances
- The disciplinary sanction and decision of the original disciplinary hearing may be upheld, reduced or removed as a result of any appeal lodged. If the sanction is removed then this will also be removed from the individual's personal file

- In the event of an appeal hearing decision that an employee should be reinstated; the employee will receive payment from the date of termination to the date of re-employment..
- There will be no further right of appeal following this stage of the procedure.

9 Disciplinary Sanctions

9.1 First Written Warning

- 9.1.1 In the case of minor offences, the employee may be given a first written warning, setting out the nature of the offence and the likely consequences of any further offences. The employee should be told that their conduct is not acceptable and more serious disciplinary action will be taken in the event of continued breaches of conduct.
- 9.1.2 The written warning will be confirmed in writing within 7 calendar days of the date of the decision by the chair of the panel. The warning will be live for up to 9 months (and could be less depending on the case) from the date of issue after which it will become spent but will remain on the personal file.
- 9.1.3 Receipt of a formal disciplinary warning may affect pay progression. See section 7.5 of the Annual Appraisal and Pay Progression Policy (W12) for more information.

9.2 Final Written Warning

- 9.2.1 In the case of further offences of a similar nature or a first instance of more serious misconduct (that would warrant dismissal if it were repeated), the employee may be given a final written warning. The employee should be clearly warned that further misconduct may result in dismissal.
- 9.2.2 The final written warning will be confirmed in writing within 7 calendar days of the date of the decision by the chair of the panel together with the right of appeal against the decision and the outcome letter will be kept on file; the warning will be live for up to 18 months (and could be less depending on the case) from the date of issue after which it will become spent but will remain on the personal file.
- 9.2.3 Receipt of a formal disciplinary warning may affect pay progression. See section 7.5 of the Annual Appraisal and Pay Progression Policy (W12) for more information.

9.3 Dismissal and Summary Dismissal

- 9.3.1 Dismissal or summary dismissal may take place where:
- a final written warning remains live, and the misconduct or related behaviour has been repeated or continues; or
 - the employee is considered to have committed an act of gross misconduct or
 - the employee is charged with or convicted of a criminal offence which is sufficiently serious as to justify dismissal; or
 - a Statutory Bar is imposed on the employee which prevents them from carrying out some or all their duties; or
 - the employee no longer meets the standards set down for their profession by the relevant Authority; or
 - the employee loses their professional registration (see also HR04 Verification of Professional Registration).

- 9.3.2 The Trust reserves the right to make a payment in lieu of notice. In all cases, any outstanding payments in respect of annual leave, agreed time owing, overtime worked, unsocial hours payments etc., due on the date of termination will be paid, normally on the next available pay date.
- 9.3.3 In cases of gross misconduct the employee may be summarily dismissed without notice or payment in lieu of notice. Any decision to dismiss will only be taken as the outcome of a full disciplinary hearing in accordance with this procedure.
- 9.3.4 Any decision to dismiss an employee will be confirmed in writing by the chair of the panel within 7 calendar days of the hearing, together with the right of appeal against the decision.

10 Grievances raised during the disciplinary process

- If, during a disciplinary process, the employee raises grievances of a serious nature, for example, allegations of sexual or racial discrimination and harassment, or something of a similar nature the employee must raise this with the HR overseeing the case.
- In some cases a separate investigation relating to the grievance may need to be concluded before a final decision can be reached at the disciplinary hearing.
- Knowingly vexatious or malicious allegations from the employee may be taken into account when the appropriate sanction is being considered.

11 Employees Resigning from the Trust

- Where an employee voluntarily resigns from their post and leaves with immediate effect prior to the date of a disciplinary hearing, the Trust may proceed with the disciplinary investigation or Hearing. The employee must still be formally invited to any Hearing and advised that should they not attend, a decision will be made in their absence. The individual is notified formally in writing of the outcome and any subsequent actions.
- Any decisions taken in these circumstances will be reflected in any future reference requests.

12 Standards of behaviour

12.1 Examples of behaviour expected by the Trust

The following are examples of the behaviour expected by the Trust, although the list is not exhaustive:

- The Trust has established a behavioural framework that all staff should adhere to and that includes the behaviours associated with the Trust's values.
- Attend work punctually and regularly in line with operational requirements
- Carry out reasonable requests/instructions from your manager promptly and efficiently and to the required standard
- Time off must be approved in advance by the appropriate level of manager and be in line with your contract of employment
- Follow the procedure outlined in the Managing Attendance and Wellbeing when notifying the Trust of your sickness absence

- You must comply with all the Trust policies and procedures and bring serious breaches to the attention of management
- Adhere to professional body and statutory guidelines as appropriate and act professionally at all times
- For those within the remit of the Fit and Proper Persons Regulations, they must continue to comply with, and meet, the requirements of the regulations.

12.2 Examples of Misconduct

No set of disciplinary standards can cover all circumstances that may arise during employment. This list is not exhaustive or complete. It has been drawn up to enable employees to know and understand the types of conduct that will warrant informal or formal disciplinary action. Minor offences or first offences of the examples below may be suitable to be resolved through an informal warning (see section 8.1).

Failure to comply with reasonable management instructions	Unauthorised /inappropriate use of NHS property i.e. IT equipment or patient property
Acts of insubordination	Smoking in non-designated areas
Persistent failure to wear ID badges/adhere to dress code	Using offensive language
Deliberate failure to administer drugs in line with NMC & Trust guidelines	Actions that bring the Trust into disrepute
Persistent bad timekeeping	Deliberately not providing safe and high-quality service without concern or respect for the feelings of other staff, patients & visitors.
Unauthorised absence	Failure to disclose a conflict of interest.

In serious or persistent cases of the above, the misconduct may be regarded as 'gross misconduct'

12.3 Examples of Gross Misconduct

This list is not exhaustive:

Dishonesty/Theft	Assault (verbal or physical)
Serious personal or professional misconduct or negligence	Malicious damage
Harassment/bullying of an employee who has made a protective disclosure including cyber bullying	Under the influence of alcohol or drugs whilst on duty
Breach of contract	Intentionally making false statements
Breach of confidentiality	Inappropriate use of the internet or the Trust's social media
Covert recording (e.g. making a video or audio recording of a private meeting/discussion involving others, without their knowledge and consent)	Breach of Equality and/or Human Rights Legislation
Breach of visa/immigration rules	Breach of legislative or regulatory duty e.g. H&S, CQC

Deliberate failure to renew professional registration	Criminal offences outside employment affecting the employee's role
Permanent or temporary loss of professional registration (see HR04 Verification of Professional Registration Policy)	Deliberate failure to disclose a conflict of interest.
Breach of professional standards	Fraud and/or corruption

13 Training Managers in this Disciplinary Policy

The Trust acknowledges the importance of training managers involved in the application of this policy and will therefore ensure that appropriate training and support is available from the People & OD Directorate.

14 Review process

This policy will be reviewed every three years or before if there are legislation changes. The monitoring of this policy includes an annual audit and where non-compliance is identified an action plan will be drawn up and monitored at Operational People Group.

15 Equality Impact Assessment (EQIA)

The Trust will ensure it is compliant with the Equality Act 2010 and the employment practices within it, and will commit itself to eliminate all unfair discrimination, harassment, bullying and victimisation.

16 Process for monitoring compliance

Aspect of compliance or effectiveness being monitored	Monitoring method	Responsibility for monitoring (job title)	Frequency of monitoring	Group or Committee that will review the findings and monitor completion of any resulting action plan
The policy is fairly applied to staff in a transparent and consistent manner	Use of workforce database to review cases by protected characteristics under the Equality Act 2010. Review of disciplinary sanctions to check consistency	People Advisory Team Manager	Yearly	JNCC JNCC
Number of cases being referred to HR Advisors/Managers for support	Use of workforce database	People Advisory Team Manager	Yearly	JNCC

Number of appeals against decisions taken under this procedure.	Use of workforce database	People Advisory Team Manager	Yearly	JNCC
Learning from investigations is identified and shared	Use of Advisory Team OPG Reports	People Advisory Team Manager	Yearly	JNCC
Ongoing discussions with JNCC representatives		Deputy Director of People & OD	Ongoing	JNCC

17 References

- Legislation
 - Employment Act 2008
 - Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2008
 - Employment Rights Act 1996 as amended
 - Employment Rights Dispute Resolution Act 1998
 - Employment Relations Act 1999
 - Employment Rights Act 2004.

Previous legislation covering discipline and grievances at work was historically found in the Employment Act 2002 and the Employment Act 2002 (Dispute Resolution) Regulations 2004 (SI 2004/752). However, the procedures were repealed in their entirety from 6 April 2009 under the Employment Act 2008)

- CIPD – Good Practice Guidelines for Disciplinary and Grievance Procedures (Members only section of website)
- ACAS – Code of Practice for Disciplinary and Grievance Procedures - http://www.acas.org.uk/media/pdf/k/b/Acas_Code_of_Practice_1_on_disciplinary_and_grievance_procedures-accessible-version-Jul-2012.pdf
- HR Inform Guidelines for Disciplinary and Grievance Procedures (Members only section of website)
- DBS website <https://www.gov.uk/government/publications/dbs-referrals-form-and-guidance>
- Lessons and recommendations set out in the letter from Baroness Dido Harding to NHS Trust Chairs and Chief Executives of the 24 May 2019

18 Associated Documentation

Equality, Diversity & Inclusion Policy
Handling Concerns about Doctors and Dentists Policy
Drug, Alcohol and Other Substance Misuse Policy
Reimbursement of Travel, Accommodation and Subsistence Expenses Policy
Employee Wellbeing & Attendance Management Policy
Employee Performance Management Policy & Procedure
Leave Policy Cluster
Employee Investigations Policy
All the above are available from:
Internal - http://intranet/hr/HR_Policies.asp
External - <https://www.sath.nhs.uk/working-with-us/hr/policies/>
CG26 Managing Allegations against Staff who work with Children and Young People
CG07 Concerns and Complaints
Available from http://intranet/document_library

GUIDANCE AND TOOL KITS

The following guidance should be read in conjunction with the Disciplinary policy.

Disciplinary Fast-Track Meeting where an employee opts to use the Fast track procedure (see 8.3.1)

- It is recommended good practice for regular and ongoing conversations with the employee, managers and TUPO to try and resolve disciplinary matters at the earliest opportunity having awareness to the underlying principles in this policy.
- The Fast-Track Meeting is applicable in cases where an employee has opted to follow the Fast Track procedure (see 8.3.1), accepts full responsibility for their actions and has submitted the Fast-Track proforma (Appendix 2). The outcome from the meeting will result in a sanction of up to and including a Final Written Warning.
- The decision to progress to a Fast-Track meeting will first require the Decision making group (DMG) to have seen clear evidence from an initial assessment or from fact finding that there is a case to answer and that a Fast Track procedure can be applied. The employee must submit the Fast-Track Proforma within 10 working days after they have been informed that the DMG has agreed that the Fast Track procedure can be utilised. Otherwise, their case will be advanced to a full investigation and Disciplinary hearing.
- Out of scope: The Fast Track procedure does not apply:
 - to medical and dental staff (see W31),
 - the employee disputes the allegations and/or requests a full hearing,
 - the outcome may be dismissal, or
 - the employee is already subject to a live final written warning.
- The Fast-Track Meeting is a formal meeting that follows the principles outlined in the ACAS Guide, including the right to representation but does not require the attendance of an Investigating Officer to present the case.
- The Fast-Track Meeting will consist of the Chair, HR, the employee, their TUPO or workplace colleague).
- Prior to the meeting the anticipated sanction is shared with the employee by the Chair, in order to be transparent in terms of the principles of openness and to manage expectations.

At the Fast-Track Meeting

- All documents or evidence collated will be shared with the employee and they will be notified of the arrangements in writing and their right to representation.
- The employee will be asked to confirm that they admit to the allegations, submitted a Fast-Track Proforma and they have had sight of the evidence following the fact finding or initial assessment of findings and concur with the conclusions.
- The Chair of the Fast-Track Meeting may ask questions about the case and likewise the employee can provide a statement regarding the circumstances that gave rise to the disciplinary.

- The meeting will be adjourned in order that the panel can reach a decision on the sanction. The sanction could range from first written or final written warning. The Chair could also refer the case back to the DMG if further concerns not previously identified have been raised which may require further investigation.
- The employee will be informed of the sanction at the meeting.
- The outcome letter will be confirmed in writing within 7 calendar days of the meeting.
- If the employee rejects the sanction, they must notify the Chair within 10 working days of receipt of the outcome letter. In this eventuality a full investigation and disciplinary hearing will follow.

FAST-TRACK PROFORMA

Employee Name:	
Position Held:	
Division:	
Ward/Department:	
Date of Allegation:	
Allegation: (To be written by the Commissioning Manager or HR)	
<p>I (<i>insert name</i>) request a fast-track meeting where a sanction of, a first written or final written warning in accordance with the Disciplinary Policy (W7) may be given for the above allegation/s.</p> <p>Optional: Provide any mitigating circumstances for consideration by the panel:</p>	
<p>I have/have not (<i>delete as appropriate</i>) discussed the fast-track meeting with Staff Side rep or Workplace colleague</p> <p>Signature of Staff Side rep or Workplace colleague (where applicable)</p> <p>Signature Date</p>	
I understand and admit the allegation occurred as stated	<input type="checkbox"/>

Employee Signature Date

On completion forward to the Commissioning Manager within the timescales set out in your letter

Received by Commissioning Manager

Signature Date

Procedure at Disciplinary Hearing

1. The Disciplinary Hearing Panel

- 1.1 Panel members are selected with no previous involvement in the case and must be trained in the Disciplinary policy.
- 1.2 Where the case concerns professional conduct, a senior member of that profession should be part of the panel if the Chair is not qualified in that profession.
- 1.3 The role of HR is to provide support and advice to the panel and to participate in the hearing and decision-making process, with the chair making the final decision.
- 1.4 The employee will be notified of the panel members in advance and may request an alternative panel be appointed, if there are justifiable reasons; made in writing, to the HR representative supporting the panel at least five working days before the hearing is due to take place.

2. Exchange of Evidence and Witnesses

- 2.1 The employee will be provided with a copy of the investigation report, all relevant documentary evidence, and names of management witnesses no later than 10 working days prior to the hearing.
- 2.2 If the individual intends to rely on any additional written evidence at the hearing that has not already been provided in the investigation report, this should be presented to the Chair at least 5 working days prior to the hearing.
- 2.3 It is the responsibility of each party to arrange for their witnesses to be present at the hearing. Non-availability of witnesses must be shared as far in advance as possible by both sides.

3. The Process

- 3.1 The Chair will open the hearing with introductions and will outline the process to be followed. Any participant may request an adjournment at any time during the process.
- 3.2 Management will present the case against the employee and summarise the findings of the investigation. (The management representative will normally be the Investigating Officer, but the overall presentation of the case may be by a senior manager, with the Investigating Officer presenting their findings.) The lead Management representative may be supported in the hearing by a representative from Human Resources.
- 3.3 Management will then call each of their witnesses to answer questions, with the first questions being from themselves.
- 3.4 The employee or their representative may question each witness.
- 3.5 The Chair and other members of the hearing panel may question each witness.
- 3.6 Management may then re-question each witness to clarify any matters that have arisen during the hearing.

- 3.7 The employee or their representative may question the management side or their case
- 3.8 The Chair and other members of the hearing panel may question the management side or their case.
- 3.9 The employee or their representative will present their case.
- 3.10 The employee will call any witnesses who have not already given evidence to answer questions, with the first questions being from the employee or their representative.
- 3.11 Management may question each witness.
- 3.12 The Chair and other members of the hearing panel may question each witness.
- 3.13 The employee or their representative may then re-question each witness to clarify any matters that have arisen during the hearing.
- 3.14 Management side, the Chair and other members of the hearing panel may question the individual, or their case.
- 3.15 Management will sum-up the case against the employee.
- 3.16 The employee or their representative will sum-up their case.
- 3.17 The Chair of the hearing will ask any further questions of either party to resolve any outstanding queries or matters that have arisen during the hearing. Where necessary, witnesses may be recalled by the Chair.
- 3.18 The Chair of the hearing may adjourn the hearing at any time to seek advice or clarification on any matters that remain outstanding, for example if further evidence is required on any issue raised.
- 3.19 Once all evidence has been presented, the panel will adjourn to consider the information and reach a decision.
- 3.20 The Chair will reconvene the meeting, calling back the employee and their representative and the Management representative(s) to inform them of the decision. In many cases, the hearing will reconvene on the same day. In other circumstances, the Chair will inform both parties that more time will be required before a decision can be reached.
- 3.21 On reconvening the panel, the Chair will inform the employee of the decision. Where appropriate, he/she will also inform the employee of the right of appeal.
- 3.22 In all cases the Chair will confirm the outcome of the hearing and, where relevant, of the right of appeal in writing to the employee, with copies to the employee's representative and to the management representative.

4. Learning and Improving

- 4.1 Commissioning Managers/Chair of the hearing panel have a responsibility to feedback any general learning points identified during a particular disciplinary case.

This should be part of the Process of monitoring (see section 16).

Procedure at an Appeal Hearing

- 1. The Appeal Hearing Panel procedure follows the same procedure as the Disciplinary hearing (see points 1 – 2 above).**
- 2. The Process**
 - 2.1 The Chair will start with introductions and will outline the process to be followed.
 - 2.2 The employee/appellant or their representative will present their appeal, explaining why they believe the decision taken at the disciplinary hearing was unfair or unreasonable.
 - 2.3 The employee/appellant or their representative may present any new evidence not available at the disciplinary hearing. The Chair may decide whether to continue with the appeal, remit the case back to the earlier hearing panel or to have the case re-investigated.
 - 2.4 The chair of the original disciplinary hearing will then present their response, explaining the basis on which their decision was made, including any mitigation offered by the employee and respond to any new evidence presented by the employee, including relevant witnesses.
 - 2.5 All parties will have the opportunity to ask questions during the appeal process.
 - 2.6 The employee or their representative will then sum up their case.
 - 2.7 The chair of the original disciplinary hearing will then sum-up their case.
 - 2.8 The Chair of the appeal hearing may adjourn the hearing at any time to seek advice or clarification on any matters that remain outstanding, for example if professional advice is sought. The panel will adjourn to consider its decision.
 - 2.9 The Chair will reconvene the appeal hearing, calling back the employee and their representative to inform them of the decision of the hearing. The Chair may inform both parties that more time will be required before a decision can be reached and therefore will write to the employee/appellant.
 - 2.10 The Chair will confirm the outcome of the hearing in writing to the employee, the employee's representative, and the previous chair of the original disciplinary hearing within 10 working days of the date of the appeal hearing.
 - 2.11 The decision of the appeal panel is final and concludes the Disciplinary Procedure.

Authority to Act Chart

	Minimum level of Authority to act or hear appeals				
Employee Status	Suspension	First or Final Written Warnings	Written Warning Appeals	Dismissal	Dismissal Appeal
Chief Executive and Board Directors	As determined by the Remuneration Committee				
Managers who report to a Trust Board Director	Must be authorised by Trust Board Director	Trust Board Director*	Chief Executive*	Trust Board Director *	Chief Executive*
Consultants and other career grade medical and dental employees	See policy W31	As set out in the Trust's Handling Concerns about Doctors and Dentists Policy W31. Where the case is remitted back into this procedure, the following applies:			
		Division Medical/Clinical Director or Assistant COO	Medical Director or Deputy Medical Director*	Medical Director or Deputy Medical Director*	Medical Director or Chief Executive*
Other medical and dental employees	See policy W31.	As set out in the Trust's Handling Concerns about Doctors and Dentists Policy W31. Where the case is remitted back into this procedure, the following applies:			
		Centre Manager	Division Medical/Clinical Director	Division Medical/Clinical Director	Deputy Medical Director
Other employees	Must be authorised by Trust Board Director	Min. Band 7 (See section 6 of Appendix 1)	Must be more senior than the manager who issued the warning	Min. Band 8a	Must be more senior than dismissing manager

Notes

- Action may only be taken by an individual who is more senior than the member of staff against whom allegations have been made.
- *The Chief Executive and Trust Board Directors may delegate their authority to another Trust Board Director or to a Divisional Director where appropriate. The delegate must still be senior to the employee being disciplined.

Types of informal / Organisational Development (O.D.) Interventions

Interventions that might be considered:

- Manager/ individuals supported through facilitated coaching conversations to resolve issues, meeting informally. They should work together to understand the problem and identify what support the employee needs to prevent this issue(s) re-occurring.
- The emphasis will be on agreeing corrective action without recourse to the formal Disciplinary Policy. Managers may also wish to utilise the Trust's Employee Performance Management Policy (W10) where appropriate.
- The manager should ensure the employee understands the standards of conduct expected and explain that future issues of a similar or related nature are likely to lead to a formal disciplinary process.
- The outcome of the meeting should be confirmed to the employee in writing and a copy of the letter kept on the employee's personal file for the duration that it remains live.
- Manager supported to undertake health & well- being conversations and agree plan with the employee.
- Mediation (internally/ external options) is available
- Commission SaTH cultural framework diagnostic tool to understand root causes. This will be commissioned by lead of the area and undertaken internally by an OD practitioner.

The role of HR during the Disciplinary Investigation

- The role of HR during disciplinary investigations should be limited to advising on - **Procedure - Process - Law.**
- Decision makers must reach their own conclusions.
- What is ok?
 - Give advice on how the investigation approaches investigation meetings
 - Give advice on the way an investigation report is presented
 - Ensure the report addresses all the necessary issues
 - Make disciplinary chair/ commissioning manager/TUPO aware of previous cases across the Trust to ensure consistency
- What is not ok?
 - Amend the investigating officers report
 - Decide on guilt or innocence
 - Decide on the level of sanction
- The role in practice
 - Assigned to an investigation. You will have overall oversight and co-ordination of the progress of that investigation. Includes procedural/ process and legal support to commissioning manager and investigator within HR role and remit.
 - Support Commissioning Manager to commission investigation in line with process.
 - Seek assurance from the investigation officer regarding their investigation plan.
 - Monitor progress and timescales in line with procedure and process.
 - Ensure Commissioning manager tracks progress and support to resolve any queries that arise.

- Escalate any concerns to the Investigation Officer and or commissioning manager.
- Confirm who will complete 'wellness checks' on individuals subject to investigation or who have raised concerns.
- Ensure wellness checks are carried out and offer advice and support in relation to the Health and Well Being interventions available.
- Review the draft investigation report and give advice on how the report is presented and ensure it addresses all the issues.
- Be aware of similar cases and sanctions to advise the disciplinary chair/ commissioning manager to ensure consistency.
- If commissioning manager decides to escalate the case to a hearing you would co-ordinate setting up of panel (with HR Assistant support). Then the case is allocated to new HR representative who supports Hearing Manager.
- Should the case go to appeal the HR representative who supported the hearing manager would then support the management case in appeal with a new HR representative allocated to support the appeal. HR assistant support to assist in co-ordination and setting up appeal.

Health and Wellbeing Support

- The Trust will adopt an inclusive, compassionate, and person-centred approach. The process must be underpinned by an overriding concern to safeguard employee health and wellbeing, whatever the circumstances.
- It is the responsibility of all those involved to make reasonable adjustments to the process to support the health and wellbeing of those taking part. Staff affected may seek wellbeing support from:
 - Line manager
 - Alternative senior manager if the line manager is not available or the line manager is involved in the case.
 - Human Resources (ext 2891 or email:)
 - A Trade Union/Professional Organisation representative (details and contact numbers are available on the HR pages of the Trust intranet site or via switchboard)
 - Freedom to Speak Up Guardians (telephone via switchboard or email: sath.fts@nhs.net)
- Occupational Health or the Trust's Employee Assistance Programme. There is also a wealth of wellbeing resources on the Trust's Intranet: http://intranet.sath.nhs.uk/hr/health_wellbeing/mind.asp.
- Where a person who is the subject of an investigation or disciplinary procedure suffers any form of serious harm, whether physical or mental, this should be treated as a 'never event' which therefore is the subject of an immediate independent investigation commissioned and received by the board. Further, prompt action should be taken in response to the identified harm and its causes.