

Directorate of Organisational Development & Workforce

DISCIPLINARY POLICY

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Northern Lincolnshire and Goole Hospitals NHS Foundation Trust actively seeks to promote equality of opportunity. The Trust seeks to ensure that no employee, service user, or member of the public is unlawfully discriminated against for any reason, including the "protected characteristics" as defined in the Equality Act 2010. These principles will be expected to be upheld by all who act on behalf of the Trust, with respect to all aspects of Equality.

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1.0 Purpose

- 1.1** The following policy (and the associated procedure) aims to support high standards of conduct, behaviour and performance within the Trust and to ensure that breaches of these standards are dealt with fairly and consistently.
- 1.2** Disciplinary action is an extremely serious matter for both the employee and the Trust. It is very important that managers follow the specified procedure carefully and apply it fairly and consistently, bearing in mind the circumstances of each individual case. This procedure accords with the disciplinary aspect of the ACAS Code of Practice on Disciplinary and Grievance Procedures and applies principally to conduct issues. There is a complementary policy for handling performance issues entitled "Managing Employee Performance". For cases involving ill health and absenteeism refer to the Trust's policy entitled "Policy for the Management of Absence Due to Sickness".

2.0 Area

- 2.1** This policy (and the associated procedure) applies to all staff employed by the Trust, excluding all grades of medical and dental staff for which the MHPS covers all disciplinary matters. For medical and dental staff the procedures set out in "Maintaining High Professional Standards in the Modern NHS" will apply.
- 2.2** This policy does not apply to independent contractors working within the NHS on a contract to provide goods or services.
- 2.3** Where there are external statutory or other provisions affecting Trust employees, e.g. the Nursing and Midwifery Council Order 2011 and associated Statutory Instruments, these must be taken into account where appropriate when disciplinary action is taken.

3.0 Duties

- 3.1** All employees of Northern Lincolnshire and Goole Hospitals NHS Foundation Trust must ensure they are aware of and understand this policy and the associated procedure.
- 3.2** It is the responsibility of managers to ensure staff understand the expected standards and are encouraged to maintain such standards through regular feedback, training/retraining and early counselling and discussion of problems.
- 3.3** HR Managers and HR Advisors will advise and assist in the application of this policy (and procedure).

4.0 Principles

- 4.1 No disciplinary action will be taken against an employee except under this policy, except for medical and dental staff for matters of disciplinary which will be dealt with under the Trusts' Maintaining High Professional Standards.
- 4.1.1 Disciplinary procedures are intended to be corrective and no formal disciplinary action may be taken and no sanctions applied against an employee without a formal disciplinary hearing.
- 4.1.2 It is recognised that disciplinary proceedings may be stressful for the employee. The employee should therefore be advised of the support available during this time including the counselling services available and given the opportunity to access them.
- 4.2 The investigating officer may not sit on the disciplinary panel or take disciplinary action against an employee in respect of whom he/she has carried out the investigation.
- 4.3 Suspicions of fraud or corruption must be dealt with in accordance with the Trust's Counter Fraud Policy, which itself is in line with the requirements of the Secretary of State Directions regarding counter-fraud measures within the NHS. All suspicions of fraud and corruption must be reported immediately to the Director of Finance or the Trust's Local Counter Fraud Specialist (LCFS). The LCFS will undertake any investigation considered necessary, including the taking of statements, carrying out formal interviews and the seizing of evidence. Managers must not carry out their own investigation as this may jeopardise any potential criminal investigation.
- 4.4 An employee has the right of representation at all stages of the procedure, by either a Trade Union representative (professional organisation or staff association) or a work colleague not acting in a legal capacity.
- 4.5 Although an employee only has the statutory right at the formal disciplinary hearing and appeal stages it is recommended by ACAS that the employee should be encouraged to access a TU Rep before making any statement.
- 4.6 An employee can only be dismissed for a first offence where it is construed as gross misconduct (examples are detailed at Appendix D of the procedure).
- 4.7 Every attempt will be made to conclude the investigation and any subsequent disciplinary process as speedily as possible and the standard for this will be within a six week timescale from commencement of the investigation to conclusion. It is however recognised that more complex cases may take a longer time period.
- 4.8 No investigation held under this policy will commence without appropriate and agreed terms of reference which must always identify the policy under which the investigation is taking place.
- 4.9 Where an employee has special requirements, e.g. disability, every effort will be made to ensure these are catered for.

5.0 Actions

5.1 Informal Discussion

Minor breaches of discipline or conduct which result in substandard performance or behaviour, unless persistent, are usually best dealt with on an informal basis by the employee's immediate line manager. This represents an attempt to help an employee and may identify a training need or a personal or an organisational problem. It is essential to ensure that all employees receive a regular review and feedback, as detailed in the Development Review Policy.

5.2 Suspension

5.2.1 Suspension is intended to protect the interests of patients, other employees and the individual, and/or to assist in the investigative process. It may therefore be invoked when serious misconduct is potentially involved and an inquiry into the facts is required, or whilst an investigation into an alleged criminal offence or other serious incident is taking place. Where the alleged offence is one of gross misconduct the employee is likely to be suspension although this may not be necessary in every case. Advice must be sought from Organisational Development and Workforce in these circumstances.

5.2.2 Suspension is not a disciplinary action or sanction and consideration will be given by Trust as to whether the nature of the matter under investigation makes it possible for the employee to continue to undertake their duties, alternative duties or a limited range of duties. An employee will only be suspended from work where it is considered there is no alternative course of action, or if they decline to undertake alternative duties suggested and there is no other course of action.

5.2.3 The employee will continue to receive pay whilst suspension from work and if they usually receive enhanced rates for unsocial hours/weekend working this will be calculated as an average of the pay received for the three months prior to suspension. An employee will not submit timesheets while suspended from work. During the period of suspension the employee may not undertake other paid employment within their normal working hours which does not already exist, without the prior agreement of the Trust.

5.2.4 Whilst it is impractical to lay down strict time limits for the overall length of suspension, i.e. due to degree of complexity, duration of investigation, legal factors or police investigations, every endeavour must be made to keep this to a minimum.

5.2.5 The Trust reserves the right to notify outside bodies of the suspension when health, safety and risk issues are identified and the employee must be informed prior to the notification. The outside body should also be notified if the allegations are determined to be unfounded.

5.2.6 Depending on the nature of the matter under investigation, the Trust reserves the right to limit the access by the employee to Trust premises, unless by prior agreement or by reason of a medical appointment or emergencies. The Trust may also advise the employee to refrain from practice elsewhere, depending on the nature and seriousness of the matter being investigated.

5.2.7 Should a period of suspension not lead to disciplinary action the employee will be notified in writing and all other references to the matter will be removed from the employee's file. This will also apply to anyone exonerated from allegations that prove unfounded.

5.3 Investigation

5.3.1 Where it is considered that the employee's conduct or behaviour may constitute misconduct and may potentially result in formal disciplinary action, rather than an informal discussion, a full investigation of all the facts and circumstances must be undertaken as soon as is practicable once the matter is known about, but not so as to preclude the careful collection of all facts.

5.3.2 The manager commissioning the investigation will identify a suitable investigating officer (to be supported by an appropriate HR Manager or HR Advisor) and provide written terms of reference for the investigation, advising what is to be investigated and the anticipated deadline for submission of the final report of findings.

5.3.3 The employee will be advised to access their Trade Union Representative.

5.3.4 The employee will be advised in their own interest to keep their own record of the matter(s), before recollection fades, to be used at the investigative meeting and disciplinary hearing, should one take place.

5.3.5 Investigative meetings will be held with all relevant parties at the earliest opportunity and in accordance with Appendix A of the procedure. In some cases it may be necessary to request statements whilst arrangements are made for the investigative meetings.

5.3.6 Witnesses will be made aware that should the investigation result in a disciplinary hearing being held, they may be required to give evidence. Under the Trust's Speaking Out Policy there may be exceptional circumstances where the identity of the witness(es) providing statements remains undisclosed, although this will normally only be where agreed in consultation between Organisational Development and Workforce and the employee (or the employee's representative where applicable).

5.3.7 When the investigation is concluded the investigating team will submit a written report of their findings and recommendations in accordance with the terms of reference.

5.4 Disciplinary Hearing and Sanctions

5.4.1 If it is decided that a disciplinary hearing is required this will be undertaken in accordance with procedure and the employee has the right to representation at the hearing. If a representative is not available for the hearing, the employee should seek an alternative representative in the first instance. Where no alternative representative can be identified, the hearing will be re-arranged for the earliest opportunity. Only one postponement of the hearing will be permitted. The Manager conducting the disciplinary hearing will be supported by an appropriate HR Manager and the hearing will be conducted in accordance with the guidelines contained at Appendix B of the procedure.

5.4.2 Where a formal disciplinary sanction is applied to an employee, this must be confirmed in writing and a copy sent to the employee's representative (if applicable) as detailed in Appendix A of the procedure.

5.5 Right of Appeal

- 5.5.1** An employee has the right to appeal against a formal disciplinary sanction, as detailed in Appendix A of the procedure. The appeal will be conducted in line with the guidance contained at Appendix C of the procedure.
- 5.5.2** The appropriate level of appeal at each stage of the disciplinary procedure is summarised in the procedure. An appropriate Organisational Development and Workforce representative must be present as an advisor to the appeal panel. The members of any appeal panel should not include anyone who has been directly involved in the case or in the circumstances leading to disciplinary action being taken.
- 5.5.3** Any manager who has been directly involved in the circumstances which led to disciplinary action shall not be a member of the panel at the appeal hearing, except as a witness or as the representative of the Trust. Where feasible at least one panel member will be from the same professional discipline as the employee requesting the appeal.
- 5.5.4** Patients of the Trust will not normally be called as witnesses, but a written witness statement may be obtained from the patient in question in exceptional circumstances that are deemed necessary by the case investigator and the case manager.

5.6 Legal or Criminal Charges and Offences

- 5.6.1** An employee who is arrested on any criminal charge or served with a summons of a criminal charge, if relevant to their employment with the Trust, whether or not directly arising from their work, must inform their senior manager as soon as possible. The senior manager must discuss the matter with the appropriate HR Manager so that any appropriate action may be taken. This information will be treated in confidence and only divulged on a strictly "need to know" basis. If an employee is unsure whether a charge or summons is relevant to their employment they must seek advice from Human Resources.
- 5.6.2** Similarly, the Trust requires an employee who is subject to any form of investigation or disciplinary by a professional body or staff associated to report this to their senior manager as soon as possible following any incidents of possible professional or personal misconduct. The Trust may need to provide support or to investigate the circumstances separately and take any necessary action, including disciplinary action if appropriate.
- 5.6.3** Criminal offences outside employment should be treated as automatic reasons for disciplinary action, regardless of whether the offence has any relevance to the duties of the employee. The main consideration should be whether the offence is one that the Trust considers will make the individual unsuitable for their type of work.
- 5.6.4** Employees may be disciplined if they are absent through being remanded in custody. Where an employee has been charged with a criminal offence and the conduct requires prompt attention, there is no requirement to await the outcome of the prosecution before taking fair and reasonable action, in accordance with this procedure. Each case will be viewed on its own merits, taking into account legislation and advice, and action taken.

5.7 Staff Organisation Representatives

Should it be necessary to apply this policy (and its associated procedure) to an accredited representative of a recognised staff organisation, and the investigation results in a disciplinary hearing, the case should be discussed with the full-time officer of the organisation concerned after obtaining the employees agreement.

6.0 Monitoring Compliance and Effectiveness

6.1 The Director of Organisational Development and Workforce will be responsible for reviewing the policy on a three yearly basis in conjunction with staff side colleagues and other key stakeholders, to ensure the policy remains fit for purpose, identify where changes are required in order to comply with any relevant nationally agreed policies and/or legislation, and monitor its overall efficiency.

6.2 Key Organisational Development and Workforce indicators will be monitored and reported to the Executive Team regularly and the Trust Board on a quarterly basis.

7.0 Associated documents

This document relates to, and should be read in conjunction with, a number of other Organisational Development and Workforce documents, specifically:

- Disciplinary Procedure
- Managing Employee Performance Policy
- Policy for the Management of Absence due to Sickness
- Procedure for the Management of Absence due to Sickness
- Professional Codes of Conduct
- Personal Appraisal and Development Review (PADR) Policy and Procedure
- Local Counter Fraud Policy
- Speaking Out Policy
- Maintaining High Professional Standard in the Modern NHS
- Trust Maintaining High Professional Standards
- Serious Untoward Incident Policy

8.0 References

- 8.1 NHS Terms & Conditions of Service Handbook.
- 8.2 Introducing the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 8.3 The ACAS Code of Practice 1 (April 2009) – Disciplinary and Grievance Procedures.
- 8.4 The ACAS Guide – Discipline and Grievance at Work.
- 8.5 The ACAS Rights at Work – Trade Unions and Representation.

9.0 Definitions

None.

10.0 Consultation

This policy was subject to wide and lengthy consultation with key stakeholders including staff side representatives and management representatives.

11.0 Dissemination

All Trust employees via Directorate, Business Group and Departmental meetings, the Trust's intranet, education events including line managers training and through advice from the HR Managers and HR Advisors.

12.0 Equality Act (2010)

- 12.1 In accordance with the Equality Act (2010), the Trust has considered how this policy would affect all staff and it is believed no member of staff would be disadvantaged under the Equality Act in the implementation of this policy and if it is identified that a reasonable adjustment is required this will be taken as appropriate.
- 12.2 The Trust will wherever practical make adjustments as deemed reasonable in light of an employee's specific circumstances and the Trust's available resources paying particular attention to the Disability Discrimination requirements.

13.0 Implementation

From date of ratification by the Executive Team.

The electronic master copy of this document is held by Document Control, Directorate of Clinical and Quality Assurance & Trust Secretary, NL&G NHS Foundation Trust.