DISCIPLINARY POLICY AND PROCEDURE
Contents

Section ........................................................................................................... Page

1.0 Purpose ................................................................................................... 3
2.0 Area ......................................................................................................... 3
3.0 Duties ...................................................................................................... 3
4.0 Principles ................................................................................................ 5
5.0 Freedom to Speak Up ........................................................................... 6
6.0 Actions .................................................................................................... 7
7.0 Monitoring Compliance and Effectiveness ......................................... 16
8.0 Associated Documents ......................................................................... 17
9.0 References ............................................................................................. 17
10.0 Definitions .............................................................................................. 17
11.0 Consultation .......................................................................................... 18
12.0 Dissemination ......................................................................................... 18
13.0 Implementation ....................................................................................... 18
14.0 Vision and Values Statement ................................................................. 18
15.0 Equality Act (2010) ............................................................................... 18

Appendices:

Appendix A - Disciplinary Hearing Procedure ........................................... 19
Appendix B - Appeal Hearing Guidelines .................................................... 21
Appendix C - Example of Offences Which May Be Construed As Misconduct ..... 23
Appendix D - Examples of Offences Which May Be Construed As Gross Misconduct .................................................. 24
1.0 Purpose

1.1 The following policy and 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 is in accordance 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 “Managing Attendance Policy and Procedure”.

2.0 Area

2.1 This policy and procedure applies to all staff employed by the Trust, excluding all grades of medical and dental staff for which the “Maintaining High Professional Standards in the Modern NHS” applies, which covers all disciplinary matters.

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 Case Manager

It is the responsibility of the case manager to:

- Make a decision on progression of an incident/allegation(s) to an investigation or an informal resolution
- Commission an investigation into the allegation(s), if an informal resolution is not appropriate
- Consider whether suspension is appropriate, using the risk assessment form.
- Appoint an Investigating Officer
- Determine a Terms of Reference for the investigation within 7 calendar days of notification of the incident
- Appoint a secretary to provide administration support throughout the investigation. At the start of the process, employee to be advised who the secretary is
- Make a decision on whether there is a case to answer upon receipt of the investigation report
- If the employee is suspended the case manager will review this suspension on a monthly basis
- Chair a disciplinary hearing if it is deemed there is a case to answer
- Ensure referral to professional body or Disclosure and Barring Scheme where appropriate. Employee to be informed of any such referral/disclosure

3.2 Investigating Officer

It is the responsibility of the Investigating Officer to:

- Investigate and establish the facts of the case by requesting statements, where appropriate, arranging and conducting investigatory interviews and gathering any other relevant facts/evidence
- Produce an investigation report to be submitted to the case manager
- Should a case proceed to a disciplinary hearing the Investigating Officer will present the case to a disciplinary panel and invite witnesses as appropriate
- Make recommendations as appropriate to prevent further incidents from occurring where possible

3.3 Human Resources

It is the responsibility of human resources to:

- To provide professional guidance, support and advice to managers on the application of the policy
- To provide support to Investigating Officers where necessary ensuring that the investigation is following due process and escalating where appropriate
- To provide support to the case manager at a disciplinary hearing
- Work with the Investigating Officer to make recommendations as appropriate to prevent further incidents from occurring where possible
- On conclusion of the case Human Resources will ensure retention of all records pertaining to the case
3.4 Line Manager

It is the responsibility of managers to:

- Ensure staff understand the expected Trust standards in line with The Staff Charter and are encouraged to maintain such standards through regular feedback, training/retraining and early counselling/action and discussion of problems

- Keep written records of any discussions

3.5 Employee

All employees of Northern Lincolnshire and Goole NHS Foundation Trust must ensure they are aware of and understand this policy and the associated procedure. It is the responsibility of the employee to ensure that their conduct is consistently aligned with the Trust’s Vision and Values. All employees should ensure they maintain appropriate standards of conduct.

3.6 Trade Union Representatives

To support employees being managed under this policy. At any stage, the employee may seek advice from a trade union representative or professional organisation representative.

4.0 Principles

4.1 No disciplinary action will be taken against an employee except under this policy, medical and dental staff matters of a disciplinary nature will be dealt with under the Trusts’ Maintaining High Professional Standards.

4.2 Disciplinary procedures are intended to be corrective; no formal disciplinary action may be taken against an employee without referring first to the casework screening questions and the Decision Tree or a formal disciplinary hearing.

4.3 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.

4.4 Where an investigation has taken place 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.

4.5 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.
4.6 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.

4.7 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 Trade Union Representative, or their chosen support, before attending an investigatory interview or providing a statement.

4.8 An employee can only be dismissed for a first offence where it is construed as gross misconduct; examples are detailed at Appendix D.

4.9 Where an investigation is undertaken 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 12 week timescale from receipt of the Terms of Reference. It is however recognised that more complex cases may take a longer period of time. Where, from an employee’s perspective, there is a period of more than two weeks without any contact then a letter should be sent to inform them of the status of the investigation. See template letter in the tool kit.

4.10 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.

4.11 Where an employee has special requirements, e.g. disability, every effort will be made to ensure these are catered for.

5.0 Freedom to Speak Up

5.1 The Trust may receive allegations via the Freedom to Speak Up Policy and Procedure and/or the Freedom to Speak Up Guardian. These allegations will be investigated in accordance with the Disciplinary Policy and Procedure and any other applicable policy.

5.2 Where an employee has previously spoken up via the Trust’s Freedom to Speak Up Policy and Procedure and/or the Trust’s Freedom to Speak Up Guardian and they are subject to an investigation themselves, clarification will be sought to identify whether any allegation is motivated by a desire to cause detriment to the employee because they spoke up. If such evidence is found, appropriate action will be taken.

5.3 The Trust may receive anonymous allegations through the Freedom to Speak Up Policy and Procedure, the Freedom to Speak Up Guardian, directly to a manager and/or a department. Whilst we recognise that it is may be difficult to investigate such complaints, management will conduct an investigation as thoroughly as possible, given the information available. This will always include informing the employee that a complaint has been received about them and asking for their views. Given the anonymity of the complainant however it may not be possible to investigate such complaints thoroughly via the normal route.
5.4 Where a member of staff has a safety or other concern about any arrangements or practices undertaken in accordance with this policy, please speak in the first instance to your line manager. Guidance on raising concerns is also available by referring to the Trust's Freedom to Speak Up Policy and Procedure. Staff can raise concerns verbally, by letter, email or by completing an incident form. Staff can also contact the Trust's Freedom to Speak Up Guardian in confidence by email to nlg.tr.ftsuguardian@nhs.net. More details about how to raise concerns with the Trust's Freedom to Speak Up Guardian or with one of the Associate Guardians can be found on the Trust's intranet site.

6.0 Actions

6.1 The Decision Tree

6.1.1 When an issue or allegation is raised the manager must undertake an initial fact find and refer to the casework screening questions and the Decision Tree within the toolkit which will determine an appropriate course of action and this must be done as soon as reasonably practicable.

6.2 The Deliberate Harm Test – assesses whether the actions taken were deliberate and whether harm was intended by those actions. If it is found that there was deliberate harm the manager must follow the actions specified and instigate a disciplinary investigation where the normal disciplinary process will be followed. Please see flowchart 3 within the toolkit.

6.3 The Reflection Test – focuses on whether the matter is minor and undisputed and can be resolved informally without the need for a disciplinary investigation or disciplinary action. Where the matter is minor misconduct and the employee does not dispute it the manager should meet with the employee within two weeks of the incident and issue a file note in line with section 6.7 and flowchart 1 within the toolkit. The employee must also submit a reflective piece of work which will be set by the manager in line with section 6.6. If there is already a live formal sanction on the employee’s file the Reflection Test will not apply and a formal investigation must be instigated.

6.4 The Foresight Test – will determine whether protocols, policies and procedures were properly adhered to. It will examine whether the incident arose because:

- No protocol, policy or procedure existed
- The protocol, policy or procedure was poor
- There were conflicting protocols, policy or procedure
- Protocols were misapplied or
- The employee ignored protocols, policy or procedure
6.4.1 Where protocols, policies or procedures are in place but the employee departed from them the manager must present the evidence in report format to their manager (the next level of management) who will have the authority to issue a First Written Warning without proceeding to a formal disciplinary investigation, please refer to flowchart 2 within the toolkit. The employee must be given 7 calendar days' notice of the meeting and it must be held within two weeks of the incident. The employee must be in agreement with this and will have 48 hours in which to make their decision. There will be no right of appeal against the First Written Warning. If the employee is not in agreement a formal disciplinary investigation must be undertaken. If there is already a live formal sanction on the employee’s file the Foresight Test will not apply and a formal investigation must be instigated.

6.5 The Substitution Test – should be applied where protocols, policies or procedure were not in place or were ineffective. This test will assess how a peer would have acted in the same situation. The test will also highlight if there have been any deficiencies in training, experience and/or supervision. If there were no deficiencies in training and there are no mitigating circumstances a formal investigation should be commenced. Where there has been a system failure focus should be on resolving any problems identified to improve practice and minimise the likelihood of the incident reoccurring and therefore no further disciplinary action will be taken.

6.6 Reflective Piece

Where the outcome is for the employee to write a reflective piece regarding what has occurred the reflection should show their responsibility, their learning and what they have put in place to ensure any such incident does not occur again. The reflection will be signed by both the employee and manager and placed on the employee’s personal file. Whether reflective learning as an alternative to a formal investigation can be applied is dependent on the error made and whether there are any live sanctions on the employee file.

6.7 File Note

6.7.1 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. The manager should ensure that a structured discussion takes place with the employee and complete a file note. The file note should reiterate the necessary standards required and the required improvement in their performance.

6.7.2 During the meeting the manager should:

- Identify specifically where the expected standards of conduct are not being met
- Explore with the employee any reasons that may exist for these standards not being met
- Encourage, facilitate and support the employee to improve their standard of conduct
- Consider training and/or any other support that may be required
• Complete the file note template to be agreed and signed by manager and employee

6.7.3 It should be made clear to the employee that this is not a disciplinary sanction. 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.

6.8 Suspension or Alternative Duties

6.8.1 Suspension is intended to protect the interests of patients, other employees and the individual, and/or to assist in the investigative process. It is not a disciplinary action or sanction. Suspension may be invoked in the following circumstances although this list is not exhaustive:

• The misconduct is serious enough that, if substantiated, it may warrant summary dismissal on the grounds of gross misconduct

• There is a risk that, if the employee remains at work, they may impede the disciplinary investigation

• An investigation regarding suspected fraud or the safeguarding of children or vulnerable adults is being conducted

• An employee’s registration with their professional body has been suspended or is subject to conditions of practice

• The employee is subject of a Police investigation into allegations which may impact on their employment

6.8.2 Where the alleged offence is one of gross misconduct the employee is likely to be suspended although this may not be necessary in every case.

6.8.3 Advice must be sought from Human Resources in relation to suspension.

6.8.4 Prior to undertaking any suspension a risk assessment must be undertaken, please refer to the toolkit.

6.8.5 Prior to any suspension consideration will be given as to whether the nature of the matter under investigation makes it possible for the employee to continue to undertake their duties, undertake alternative duties, undertake a limited range of duties or a be moved to another Trust site. An employee will 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.

6.8.6 The employee will continue to receive pay whilst suspended 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. If employees still submit timesheets they do not need to do so 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.
6.8.7 Should an employee fall ill during the period of their suspension normal contractual sick pay entitlements will come into force for the period of the illness, albeit suspension will continue. Employees should comply with the sickness absence reporting procedures in full and should continue to seek approval for annual leave.

6.8.8 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.

6.8.9 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.

6.8.10 Depending on the nature of the matter under investigation, the Trust reserves the right to limit the employee’s access to Trust premises and electronic access including emails and patient systems, 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.

6.8.11 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.

6.8.12 The authority to suspend will normally be given to an appropriate senior manager. Where this is not possible the site manager/most senior manager on site may place the employee on formal suspension.

6.8.13 The suspending officer should advise the individual of his/her rights, including that the suspension will be with pay, does not constitute disciplinary action, that the matter will be dealt with as quickly as possible, and that the individual can seek advice from a trade union representative if he/she is a member of a union. The employee will be advised they may not undertake other paid employment within their normal working hours which does not already exist, without prior agreement of the Trust. The employee will also be advised of any restrictions to access Trust premises. Details of the suspension will be confirmed in writing to the employee, please refer to the toolkit.

6.8.14 The employee should be provided with details of support.

6.8.15 Where the employee works on the Bank they will also be suspended from working on the Bank during their suspension.

6.8.16 Suspension should be reviewed by the suspending manager on a monthly basis as the investigation progresses and facts and information come to light which could mean that suspension is no longer necessary.

6.9 Investigation

6.9.1 Where it is considered that a formal Disciplinary investigation is required, this 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.
6.9.2 The case manager of the investigation will identify a suitable investigating officer (to be supported by an appropriate HR Representative) and provide written terms of reference for the investigation.

6.9.3 At the point of terms of reference and initial contact with the employee, 14 weeks hence, a hearing date will be provisionally booked with the panel and representatives being notified of that date as a matter of course, should the outcome of the investigation require a hearing. If not, this will be cancelled. An appeal hearing will also be scheduled 6 weeks post hearing date. Panel attendees need to be arranged for next level of management and Trust Board in case the outcome is dismissal. If this is not required this will be cancelled.

6.9.4 This in no way pre-judges the outcome of the investigation.

6.9.5 The employee will be advised of their right to access their Trade Union Representative or workplace support.

6.9.6 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 interview and disciplinary hearing, should one take place.

6.9.7 Investigative interviews will be held with all relevant parties at the earliest opportunity. In some cases it may be necessary to request statements whilst arrangements are made for the investigative interviews.

6.9.8 It should be noted that where an employee of the Trust is asked to provide a witness statement, attend an investigation interview or a hearing as a witness the Trust regards this as a reasonable management request, which should be complied with. Employees providing witness statements have the right to representation from a trade union representative, professional organisational representative or work colleague not acting in a legal capacity in order to support them through the process.

6.9.9 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 Freedom to Speak Up Policy and Procedure 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 People and Organisational Effectiveness and the employee (or the employee’s representative where applicable).

6.9.10 It is the employee’s responsibility to call any witnesses to the hearing as appropriate and notify the case secretary of who they will be. The Investigating Officer may also call witnesses to the hearing. Employees attending a hearing as a witness have the right to representation from a trade union representative, professional organisational representative or workplace colleague not acting in a legal capacity.

6.9.11 Where an employee is absent from work due to sickness advice will be sought from the Occupational Health Department on the employees fitness to attend any meetings associated with this policy and procedure. If, having been deemed fit, the employee fails to attend any such meeting it may be conducted in their absence, where they have been previously advised of this.

6.9.12 When the investigation is concluded the Investigating Officer will submit a written report of their findings and recommendations in accordance with the terms of reference.
6.9.13 Where an employee tenders their resignation during the course of an investigation the investigation will still proceed. Wherever possible the individual should be provided with the opportunity to respond to the allegations.

6.10 Disciplinary Hearing and Sanctions

6.10.1 If it is decided that a disciplinary hearing is required this will be undertaken in accordance with Appendix A and subject to pre-booking the hearing date, in extenuating circumstances where a representative is no longer available, the employee and representative 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. If it is found there is no case to answer then the pre-booked hearing date should be cancelled. The secretary assigned to support the investigation will cancel the hearing under the instruction from the case manager.

6.10.2 Where a hearing has been arranged and the employee fails to attend, the hearing will be rearranged. The employee must be notified that if they fail to attend the rearranged hearing it will go ahead in their absence.

6.10.3 The Manager conducting the disciplinary hearing will be supported by an appropriate HR Representative and the hearing will be conducted in accordance with the guidelines contained at Appendix A.

6.10.4 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). All outcome letters must be sent by recorded delivery.

6.10.5 Details of all sanctions will be held on the employee’s file and will remain current for the appropriate periods as below.

6.10.6 In accordance with the Trust’s Pay Progression Policy and Procedure if there is a current/live sanction on file the employee’s incremental pay review may be deferred whilst the disciplinary action is in force.

6.11 First Written Warning (remains current for 6 months):

- Appropriate in cases of misconduct
- Sets out the nature of the misconduct issue
- Further misconduct within the 6 months could lead to further disciplinary action which could lead to a final written warning and ultimately dismissal if misconduct recurs

6.12 Final Written Warning (remains current for 12 months):

- Issued if a further misconduct issue is proven while there is a current First Written Warning on file.
- Issued for a “first offence” where a misconduct issue is proven and sufficiently serious but does not justify dismissal.
- Where the misconduct issue is deemed seriousness enough, this sanction may be applied for a longer period, e.g. 24 months.
6.12.1 The employee may, if they wish, provide a statement of mitigation to accompany the sanction held on their personal file. Once warnings have expired they must be disregarded and removed from their file.

6.13 Action Short of Dismissal:
- Dismissal is warranted but organisational and employee circumstances may best be served by action short of dismissal itself
- The alternatives to dismissal may be demotion without pay protection or redeployment, where a vacancy exists (the Trust cannot create posts to accommodate either demotion or transfer)
- Such sanction can be accompanied by a Final Written Warning which may be applied for a longer period e.g. 24 months – to be discussed with and explained to the employee before implementation
- This sanction does not allow for downgrading within a Band
- Where there is a clinical registration and the panel deem the individual not to be competent they may be demoted into an alternative role where available

6.14 Dismissal
This will occur when there is a current Final Written Warning sanction on the employee’s record and a further allegation of misconduct is proven. It will also occur when an employee declines a sanction of action short of dismissal. The employee will receive paid notice.

6.15 Summary Dismissal
This will occur only in cases where gross misconduct is proven, seen as misconduct serious enough to destroy the employment relationship between the Trust and the employee and to make any further contractual and/or working relationship and mutual trust impossible. The employee will not receive the normal period of paid notice or pay in lieu of notice. Examples of offences which may be regarded as gross misconduct are set out in Appendix D of the procedure, although this is neither exclusive nor exhaustive.

6.16 Lease Cars, Salary Sacrifice and Any Other Trust Equipment
(Please refer to checklist on returning items to the Trust within toolkit.)

6.16.1 Where an employee is dismissed from the Trust and they have a lease car, they are able to continue to drive the car throughout their notice period. The Trust will notify Knowles of the dismissal and Knowles will contact the employee to agree a collection date for the car. The collection date must be no later than the final date of the notice period as insurance is not valid after this point. Any early return of the car will be subject to an early termination fee, payable by the employee.

6.16.2 Where an employee is dismissed from the Trust and paid in lieu of notice and they have a lease car they will no longer be insured to drive the car from the date of their dismissal. The Trust will notify Knowles of the dismissal and the lease car must be returned to the Trust on the same day. Any early return of the car will be subject to an early termination fee, payable by the employee.
6.16.3 Where an employee is summarily dismissed from the Trust and they have a lease car they will no longer be insured to drive the car from the date of their dismissal. The Trust will notify Knowles of the dismissal and the lease car must be returned to the Trust on the same day. Any early return of the car will be subject to an early termination fee, payable by the employee.

6.16.4 Where an employee has purchased items through the Trust’s salary sacrifice scheme i.e. computers/bikes, any outstanding payments will be deducted from their final salary payment where possible, if there are insufficient funds to do this an invoice will be sent to the individual requesting payment.

6.17 Authority to Apply Sanctions and Action Short of Dismissal, to Dismiss and to Hear Appeals

<table>
<thead>
<tr>
<th>Action</th>
<th>Lowest Level of Management</th>
<th>Appeal to Next Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Written via Decision Tree/Foresight Test</td>
<td>Second tier manager</td>
<td>Matron, or other Senior Manager or equivalent</td>
</tr>
<tr>
<td>First Written Warning</td>
<td>Immediate Line Manager or Supervisor</td>
<td>Matron, other Senior Manager or equivalent</td>
</tr>
<tr>
<td>Final Written Warning</td>
<td>Matron, other Senior Manager or equivalent</td>
<td>Assistant General Manager, Divisional Head of Nursing, Divisional General Manager, Assistant/Deputy Director</td>
</tr>
<tr>
<td>Action Short of Dismissal</td>
<td>Assistant General Manager, Divisional Head of Nursing, Divisional General Manager, Assistant/Deputy Director</td>
<td>Director</td>
</tr>
<tr>
<td>Dismissal</td>
<td>Assistant General Manager, Divisional Head of Nursing, Divisional General Manager, Assistant/Deputy Director</td>
<td>Trust Board (2 Directors and 1 Non-Exec Director)</td>
</tr>
</tbody>
</table>

6.18 Right of Appeal

6.18.1 An employee has the right to appeal against a formal disciplinary sanction.

6.18.2 An employee who wishes to appeal against a formal disciplinary sanction must do so in writing, stating the reason for the appeal, to the next appropriate level of management. In cases of dismissal or summary dismissal, the appeal must be put in writing to the Director of People and Organisational Effectiveness within 14 calendar days of receipt of the letter confirming the original outcome. The appeal hearing will be held within 8 weeks of being submitted.

6.18.3 The employee should clearly state the specific grounds for appeal. Simply disagreeing with the decision made is not sufficient grounds on which to appeal. The employee must believe that they can demonstrate that the decision has not taken sufficient account of particular evidence, that the penalty awarded was inappropriate or that the process followed was incorrect.
6.18.4 The appeal will be conducted in line with the guidance contained at Appendix B.

6.18.5 The appropriate level of appeal at each stage of the disciplinary procedure is summarised in the table above. An appropriate Human Resources 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.

6.18.6 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.

6.18.7 The employee will be given as much notice as possible of the date of the appeal and may call witnesses in their own defence. The names of witnesses will be provided to each party in advance of the appeal hearing. It is the responsibility of those calling witnesses to notify the Appeals Secretary accordingly so arrangements can be made for the witnesses to attend.

6.18.8 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 Investigating Officer and the Case Manager.

6.18.9 No new evidence may be presented at the appeal hearing. New evidence will only be permitted if it was overlooked at the original hearing or it has come to light afterwards and could materially affect the outcome. The panel will then decide whether to refer the matter back to the original hearing.

6.18.10 The decision of the appeal panel is final. There is no further right of appeal.

6.19 Legal or Criminal Charges and Offences

6.19.1 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.

6.19.2 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.
6.19.3 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. 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.

6.20 Referral to Professional Body

Where an employee is aligned to a professional body a review of their professional body’s matrix for referral must be undertaken and if appropriate raise the concerns with the professional body. In cases where disciplinary action is taken against employees regarding allegations that may raise concerns around behaviour in line with the Code of Practice of the relevant Professional Body, the Trust may refer the case to the employee’s Professional Body. All referrals will be reviewed by the Chief Nurse or Medical Director prior to submission.

6.21 Referral to Disclosure and Barring Service

Where there are allegations that an employee has harmed or placed at risk of harm a child or adult, the Trust has a legal duty to refer the case to the Disclosure and Barring Service. A referral will generally be made following an investigation into the allegations; however, there may be exceptional circumstances where the Trust is required to refer to the Disclosure and Barring Service immediately. Any referral made will be done so taking into account the best interests of the vulnerable client group we provide services to.

6.22 Staff Organisation Representatives

Should it be necessary to apply this policy and 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.

7.0 Monitoring Compliance and Effectiveness

7.1 The Director of People and Organisational Effectiveness 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.

7.2 Key People and Organisational Effectiveness indicators will be monitored and reported to the Executive Team regularly and the Trust Board on a quarterly basis.
8.0 Associated Documents

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

- Managing Employee Performance and Capability Policy and Procedure (DCP323)
- Managing Attendance Policy and Procedure (DCP265)
- Professional Codes of Conduct
- Personal Appraisal and Development Review (PADR) Policy and Procedure (DCP246)
- Local Counter Fraud Policy (DCP068)
- Freedom to Speak Up Policy and Procedure (DCP126)
- Maintaining High Professional Standard in the Modern NHS
- Trust Maintaining High Professional Standards
- Policy for Dealing with Serious Incidents (Clinical and Non Clinical) (DCP048)
- NMC Referral Guidance
- Staff Charter

9.0 References


9.2 Introducing the ACAS Code of Practice on Disciplinary and Grievance Procedures.


9.5 The ACAS Rights at Work – Trade Unions and Representation.

9.6 Professional Body e.g. NMC and HCPC (this list is not exhaustive).

9.7 Policy and Procedure for Trust Car Scheme.

10.0 Definitions

14 calendar days’ means two weeks.
11.0 Consultation

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

12.0 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 Business Partners and HR Advisors.

13.0 Implementation

From date of ratification by Workforce Sustainability and Transformation Committee or any subsequent replacement committee. The Directorate of People and Organisational Effectiveness will provide appropriate training and guidance, as required, to aid the successful implementation and operation of this policy and procedure.

14.0 Vision and Values Statement

This policy is aligned to, and aims to contribute towards delivery of the Trust’s vision and values. The Trust’s vision of 'Working together we will deliver the highest quality, innovative, safe and compassionate healthcare services' sits at the core of all our services and actions, of which this policy is a key component.

15.0 Equality Act (2010)

15.1 Northern Lincolnshire and Goole NHS Foundation Trust is committed to promoting a pro-active and inclusive approach to equality which supports and encourages an inclusive culture which values diversity.

15.2 The Trust is committed to building a workforce which is valued and whose diversity reflects the community it serves, allowing the Trust to deliver the best possible healthcare service to the community. In doing so, the Trust will enable all staff to achieve their full potential in an environment characterised by dignity and mutual respect.

15.3 The Trust aims to design and provide services, implement policies and make decisions that meet the diverse needs of our patients and their carers the general population we serve and our workforce, ensuring that none are placed at a disadvantage.

15.4 We therefore strive to ensure that in both employment and service provision no individual is discriminated against or treated less favourably by reason of age, disability, gender, pregnancy or maternity, marital status or civil partnership, race, religion or belief, sexual orientation or transgender (Equality Act 2010).

The electronic master copy of this document is held by Document Control, Trust Secretary, NL&G NHS Foundation Trust.
Appendix A

This must be used in conjunction with the policy

Disciplinary Hearing Procedure

The following procedure will be followed at all disciplinary hearings.

The Manager with the authority to take the necessary action (see scheme of delegation within the Trust Disciplinary policy and procedure) shall conduct the hearing supported by a HR representative and they will make up the panel.

The employee has the right to representation at the hearing by a trade union representative/professional organisation representative or a work colleague.

It is acceptable for the Manager conducting the hearing to invite an independent manager of the Trust to assist them at the hearing at their discretion, particularly where expertise is required e.g. complex clinical cases.

On the day of the hearing new evidence should not be submitted to the panel, unless by prior agreement with the chair.

1. The panel chair will open the hearing by asking all parties to introduce themselves and outlining the reasons for the hearing taking place. They will explain the format of the hearing.

2. The management team will present the management case to the panel in the presence of the employee (and their representative if applicable) and may call witnesses as appropriate. Witnesses will attend the hearing individually (with representation by a trade union representative or a work colleague if they wish).

3. The management team shall have the opportunity to re-examine their witness(es) on any matter referred to in their questioning.

4. The employee and/or representative will have the opportunity to ask any questions of the witness(es).

5. The panel will then ask any questions they have for the witness(es). The witnesses will only be present to give their evidence and respond to any questions and then leave the hearing.

6. The employee and/or representative will have the opportunity to ask any questions of the management team. These must be clear questions and not statements, failure to ask questions will result in the chair intervening.

7. The panel will then ask any questions they have for the management team.

8. The employee (or representative) will then present their case and may call witnesses as appropriate. All parties as per points 3-5 above will have the opportunity to question the witnesses.

9. The management team will then sum up their case, followed by the employee (or representative). In summing up, neither party may introduce any new information.
10. Nothing in the foregoing procedure should prevent the normal process of either party seeking clarification or amplification of any statement made or question answered, as may be necessary in the course of the hearing at any time.

11. The disciplinary panel may decide upon an adjournment at their discretion at any point throughout the hearing, should it be required, i.e. for the production of further evidence to a matter under dispute, or for any other reason.

12. At the conclusion of the summing up the management team, the employee (and representative) shall withdraw, subject to being recalled if the panel wishes to clarify anything.

13. The panel, including the HR representative, shall deliberate in private, only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties shall return.

14. No statement of previous acts of misconduct by the employee or the issue of a formal warning or warnings unrelated to the alleged offence on which disciplinary action is based shall be made until after the panel has reached a decision on the allegations, but before any penalty is considered, at which stage the management team may report the previous disciplinary record of the employee, except where it is to be disregarded as a result of the time limits laid down in section 5 of the policy.

15. The disciplinary panel will call both parties back into the hearing and announce their decision to the parties. The panel chair should explain that consideration has been given to all of the issues raised at the beginning of the hearing, and all the facts and issues raised during the course of the hearing. The panel chair must then giving reasons for the decision outline what action, if any, will be taken including any sanctions and advising of the employee’s right of appeal.

16. It is important that where a warning/sanction is given, the employee is informed of the length of time it will remain on their record.

17. The panel chair will confirm the outcome of the hearing in writing within 7 calendar days.

An employee who wishes to appeal against a formal disciplinary sanction must do so in writing, stating the reason for the appeal, to the next appropriate level of management.

In cases of dismissal or summary dismissal, this must be put in writing to the Director of People and Organisational Effectiveness within 14 calendar days of receipt of the outcome letter.
Appendix B

Appeal Hearing Guidelines

The following procedure will be followed at all appeal hearings.

An employee who wishes to appeal against a formal disciplinary sanction must do so in writing, stating the reason for the appeal, to the next appropriate level of management within the timescales specified within the outcome letter.

Members of the appeal panel should not include anyone who has been directly involved in the case or in the circumstances leading to disciplinary action being taken. Where feasible at least one panel member will be from the same professional discipline as the employee requesting the appeal.

The employee will be given as much notice as possible of the date of the appeal and may call witnesses in their own defence. The names of witnesses will be provided to each party in advance of the appeal hearing. It is the responsibility of those calling witnesses to notify the Appeals Secretary accordingly so arrangements can be made for the witnesses to attend.

N.B. no new evidence can be presented at the appeal hearing, however new evidence will be permitted if it has been overlooked at the original hearing or has come to light afterwards and could materially affect the outcome. The panel will then decide whether to refer the matter back to the original hearing or continue with the appeals process.

The appeal panel will be made up of two Directors and one Non-Executive Director, supported by an HR Representative, the Non-Executive Director will chair the panel.

The employee has the right to representation at the hearing by a trade union representative/professional organisation representative or a work colleague. It is acceptable for the chair conducting the hearing to invite an independent manager of the Trust to assist them, at their discretion, particularly where expertise is required e.g. complex clinical cases.

The purpose of the appeal stage is to ascertain whether due process was followed and/or if the sanction applied was proportionate. The role of the appeal panel is to review the evidence presented to the Disciplinary Hearing and ensure that the decision made was a proportionate response in all circumstances. New evidence cannot be submitted to the Appeal Panel unless it could potentially alter the original decision and then a decision will be made as to whether the original hearing needs to be reconvened; (see paragraph ##)

Where at all possible this must be decided prior to the appeal hearing taking place.

Both parties will be required to submit written statements of case, any supporting documents and the names of any witnesses to be called, to the Appeals Secretary at least 14 calendar days before the date of the appeal.

If an employee successfully appeals against dismissal, reinstatement will be backdated to the date of dismissal and will result in the back-dating of pay.

At the appeal hearing the following procedure should be followed:

1. The panel chair will open the hearing by asking all parties to introduce themselves and outlining the reasons for the hearing taking place and explain the format of how the hearing will be conducted.
2. The employee (or representative) will be asked to present their case to the appeal panel in the presence of the management team.

3. The appeal panel will have the opportunity to ask questions of the employee (and/or representative).

4. The management team shall also have the opportunity to ask questions of the employee (and/or representative).

5. Witnesses may be called at this point and be questioned by all parties.

6. The management representative (supported by Human Resources representative) will be asked to present their case.

7. The appeal panel will have the opportunity to ask questions of the management representative.

8. The employee (or representative) shall also have the opportunity to ask questions of management.

9. Witnesses may be called at this point and be questioned by all parties.

10. The management representative will be asked to sum up their case.

11. The employee (or representative) will be asked to sum up their case.

12. Neither party may introduce any new evidence at this stage which has not been previously submitted.

13. The appeal panel may decide upon an adjournment at any point throughout the hearing, at their discretion, should it be required, e.g. for the production of further evidence to the matter under appeal, or for any other reason.

14. Both parties may request an adjournment at any point during the appeal hearing.

15. At the conclusion of the summing up the chair of the panel will ask for an adjournment.

16. The panel will then deliberate in private, only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties shall return.

17. The chair of the appeal panel will call both parties back into the hearing and announce their decision to the parties personally, providing their rationale for this. This will be confirmed in writing to the employee within 7 calendar days of the appeal hearing.
Appendix C

Example of Offences Which May Be Construed As Misconduct

This list is not exhaustive; in addition there are other offences of a similar gravity which the Trust may consider as a disciplinary matter. Repeat offensives in the categories below and/or any serious breaches may lead to gross misconduct.

- Persistent lateness.
- Refusal to follow a reasonable instruction of management.
- Absenteeism.
- Unauthorised Absence.
- Failure to wear protective clothing as prescribed.
- Minor infringement of Trust’s policies and procedures.
- Wilful poor performance.
- Persistent behaviour contrary to the Trust’s behavioural framework/Staff Charter.
- Behaviour/action likely to cause offense including inappropriate language.
- Unacceptable standards of dress and appearance.
- Not maintaining a safe and healthy environment.
- Causing minor damage to property.
Appendix D

Examples of Offences Which May Be Construed As Gross Misconduct

This list is not exhaustive, and in addition there are other offences of a similar gravity which the Trust may consider as a disciplinary matter under gross misconduct.

- Unauthorised removal of the Trust's property.
- Deliberate damage to the Trust's property.
- Stealing from the Trust, or members of staff, patients or the public.
- Reported breaches from professional bodies.
- Acting outside of professional body's codes and standards of conduct.
- Physical assault.
- Falsification of claims and other fraudulent practices.
- Falsification of qualifications or experience which are stated requirements of employment or which result in financial gain.
- Gross negligence which endangers other people.
- Breach of confidentiality.
- Misuse of Trust Vehicles.
- Incapacity for work due to being under the influence or alcohol or illegal drugs.
- Gross insubordination.
- Perpetration of a hoax.
- Corruption.
- Misuse or abuse of Trust machinery and/or equipment, including inappropriate or offensive use of the Internet, Intranet or other e-mail systems.
- Failure to observe Trust policies and procedures.
- Inappropriate use of Social Media.
- Misuse of the Trust's time.
- Continued unauthorised Absence.
- Bringing the Trust into disrepute.