



DISCIPLINARY POLICY

Compiled by: Human Resources Department

Status: Approval date: April 1999
Ratified by: Trust Executive Committee
Review date: May 2019

Patients first • Personal responsibility • Passion for excellence • Pride in our team

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History

Issue	Date Issued	Brief Summary of Change	Approved by
1	Apr 1999	New Policy	TEC
2	Mar 2004	Section 4, 1 st sentence new Section 10, 2 nd paragraph new, Appendix 1 new	Management Board
3	Dec 2005	Changes to comply with Statutory Disciplinary Procedures and latest DOH and legal guidance	Policy Group Management Board
4	August 2006	Changes to Disciplinary rules and representation	Policy Group Management Board
5	Dec 2012	General review and policy update	TEC

For more information on the status of this document, please contact:	Deputy Director of Workforce
Policy Author	HR department
Date of issue	Jan 2017
Review due	May 2020
Ratified by	TEC
Audience	All non-medical staff

DISCIPLINARY POLICY

See also:

- Appeals Policy
- Performance and Capability Policy
- Sickness Absence Policy
- Single Equality Scheme
- Alcohol and Drugs at Work Policy
- Dignity At Work Policy
- Policy & Procedure for Grievance
- Conduct, Capability, Ill Health And Appeals Policies And Procedures For Practitioners (Doctors And Dentists)
- Smoke-free Site Policy
- Professional Registration Policy
- Temporary Staffing Policy
- Social Media Policy

1. INTRODUCTION

This policy forms part of Ashford & St. Peter's Hospitals NHS Foundation Trust's commitment to create a positive culture of respect for all individuals including staff, patients, their families and carers as well as community partners. The Trust's Values (the '4P's') and Staff Pledge are integral to all aspects of day-to-day life in the organisation and underpin the application of all our employment policies and procedures.

The primary purpose of the policy is one of guidance and problem-solving, and aims to encourage employees to achieve and maintain high standards and to encourage improvement amongst employees whose conduct is unsatisfactory.

2. SCOPE

The policy applies to all staff employed by the Trust except medical and dental staff to whom the Conduct, Capability, Ill Health and Appeals Policies and Procedures for Practitioners (Doctors and Dentists), applies.

For staff who are required to maintain current registration with a professional body, (such as nurses, midwives and allied health professionals), disciplinary issues may be reported to the appropriate professional body such as the Nursing and Midwifery Council or Health Professions Council if appropriate.

This policy is intended to cover acts of misconduct. The Performance and Capability Policy deals with concern regarding insufficient performance. The Sickness Absence Policy deals with sickness absence.

In the case of disciplinary action against employees who are accredited trade union representatives, a full-time official of the union or organisation should be contacted by a Workforce & OD manager at an early stage and allowed to accompany the

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employee at any investigatory interviews and disciplinary hearings if the employee wishes.

Nothing in this policy affects employees' legal rights or employers' legal responsibilities.

3. DUTIES

Corporate/trust-wide duties:

- Corporate responsibility for this policy lies with the Director of Workforce Transformation

Managers:

- To promote and embed the Trust Values (4P's) and Pledge
- To ensure that their own staff who have any responsibility for managing or supervising staff are made aware of this policy
- To ensure that both they and their staff are properly trained and updated in the use of employment policies
- To implement this policy and appendices, fairly and consistently, ensuring that principles of equality of opportunity are adhered to
- Take all reasonable steps to maintain confidentiality within the application of this policy
- To ensure that staff are aware of the policy

Workforce & Organisational Development department:

- To advise managers and staff on the interpretation and application of this policy
- To monitor and evaluate the application of this policy

Employees:

- To use the Trust Values (4P's) and Pledge as the point of reference for their conduct and behaviour at work
- To communicate effectively with their line manager, raise any issues of concern in an appropriate manner and be willing to work constructively to resolve concerns regarding their personal or professional conduct
- Take all reasonable steps to maintain confidentiality regarding the application of this policy
- To take all reasonable steps to attend any meetings that are arranged, including as a witness

4. KEY PRINCIPLES

- The 'Pledge' (values and behaviours) provides an overarching framework in respect of personal and professional conduct for **all** employees of Ashford & St. Peter's Hospitals
- All staff are dealt with in a fair and consistent manner
- All disciplinary issues are dealt with in a timely manner
- The formal disciplinary procedure will only be used when either:
 - informal procedures have failed to achieve the desired results or
 - the issue is sufficiently serious to warrant formal action being taken
- At every stage, the member of staff will be informed of the allegations against them and they will have the right to state their side of events.

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- The member of staff has the right to be represented at all formal stages by a staff representative from a trade union or staff association or by a colleague employed by the Trust or by another NHS employer
- If the employee has difficulty reading or if English is not the first language, the manager should take all reasonable steps needed to ensure that the employee fully understands the allegations and the process. This can include the provision of an interpreter or translator if requested by the employee. Where the employee has communication difficulties as the result of a disability, consideration should be given to whether, for example, a British sign language interpreter or loop system is needed.
- No dismissal will normally be made for a first offence except in cases of gross misconduct.
- All disciplinary matters will be dealt with confidentially.
- Where appropriate, training, and/or other supportive measures may be provided at all stages short of dismissal and in a reasonable period of time in order to avoid recurrence of the problem.
- Employees will have the right of Appeal against any formal action taken under this policy, in line with the Appeals Policy.

5. MANAGEMENT PRIOR TO DISCIPLINARY PROCEDURES

The disciplinary procedure is not intended to replace the normal management/employee relationship. Therefore, the line manager will consider offering appropriate training, mentoring, coaching, or any other support as appropriate to improve standards of conduct in an effort to avoid formal action.

When an employee's conduct is below acceptable standards, the manager should meet informally with them to discuss any perceived problems. These meetings are part of the normal management and employee relationship and do not constitute part of the formal disciplinary procedure.

The purpose of these meetings is to ensure that the employee clearly understands what is expected by the Trust, the acceptable standards of behaviour, and the potential consequences (disciplinary action up to and including dismissal) of failure to comply. It is also to help the employee rectify faults by discussing problems with the manager and thereby avoiding the use of the formal disciplinary procedure wherever possible.

The manager will write to the employee advising them of the content and outcome of the informal meetings and a copy of the letter or email will be placed on the employee's personal file.

If, following the informal meetings and supportive actions, there is no improvement in conduct or there is a repeat of the original misconduct, or if the misconduct is sufficiently serious, the formal disciplinary procedure may be invoked.

The Counselling Guidelines based on ACAS are enclosed at Appendix 3

6. WHO CAN TAKE DISCIPLINARY ACTION

Formal disciplinary action (disciplinary warnings or dismissal) may only be taken in the following circumstances:

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- after a formal hearing,
- Following an agreed outcomes process as described in section 13ii of this policy

Only designated managers may take disciplinary action or managers authorised to do so, on their behalf, in accordance with this policy. All designated managers or those with delegated authority will receive coaching and/or training in order to apply this policy fairly and consistently. At all stages of the formal process, advice may be obtained from a Workforce & OD manager.

The manager hearing a disciplinary case in a formal disciplinary hearing must not be the same manager that carried out the investigation and should be a more senior manager than the investigating manager.

The designated managers are listed in Appendix 1.

7. MANAGING ALLEGATIONS AGAINST STAFF SUSPECTED OF ABUSE OF VULNERABLE ADULTS

See the “Safeguarding Adults in the Trust: Safeguarding Adults Policy”
<http://trustnet/documents/menu801.htm>

8. MANAGING ALLEGATIONS AGAINST STAFF SUSPECTED OF ABUSE OF CHILDREN/YOUNG PEOPLE

See the “Safeguarding Children Policy”. <http://trustnet/documents/menu858.htm>

9. MANAGING ALLEGATIONS AGAINST STAFF SUSPECTED OF FRAUD/CORRUPTION

See the “Counter Fraud and Corruption Policy”
<http://trustnet/documents/menu127.htm>

10. ALLEGATIONS OF MISCONDUCT RELATED TO ACTIVITY UNDERTAKEN ON-LINE

This policy provides advice and guidance to managers and employees regarding their personal and professional conduct in relation to their work. Allegations of misconduct can also relate to activity undertaken on-line, through Internet and e-mail usage, including activity on social networking sites, personal websites and blogs, discussions boards, e-mail groups and instant messaging. The key principle that applies in this situation is that conduct on-line and conduct in the real world should be judged in the same way, and should be at a similar high standard.

11 CRIMINAL OFFENCES

Where the misconduct is the subject of a police investigation or legal process, the Trust has the discretion to proceed with its own investigation and disciplinary action in accordance with this procedure, without awaiting the outcome of any police investigation or prosecution.

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The Trust may decide to stay relevant internal proceedings, pending police/legal proceedings.

Where an employee is questioned or arrested; and or cautioned; and or convicted of a criminal offence; and or issued with a reprimand letter for an offence committed outside of work, it is the employee's responsibility to inform their manager of the circumstances. Failure to report or disclose this information will/may result in disciplinary action being taken up to and including dismissal.

Where an employee is charged with or convicted of a criminal offence not related to work this is not in itself reason for disciplinary action. The facts of the case will be established and consideration given to whether the matter is serious enough to warrant starting the disciplinary procedure. Consideration will be given to what effect the charge or conviction has on the employee's suitability to do their type of work and their relationship with their employer, work colleagues and service users. Consideration will also be given to whether an incident which is or has become public knowledge, might as a result bring the trust into disrepute. A risk assessment will be completed to inform the impact on an individual's employment.

12. REQUEST TO SEARCH PROPERTY

When undertaking an investigation, an investigating manager may need to request to search an employee's personal property. Such a request would normally be appropriate, for example, where there were allegations of theft. A request to conduct a search should be on the basis of a reasonably held belief, and if so, would constitute a reasonable management request. A refusal to allow a search may in itself be seen to be a disciplinary matter.

13. DISCIPLINARY PROCEDURE

13.i Investigation

See ACAS Investigation Guidelines at Appendix 4

When an employee's conduct appears to warrant consideration of disciplinary action an investigation should be commissioned by an appropriate manager who will determine the terms of reference and /or allegations. These are then forwarded on to the investigating officer for them to instigate the investigation process. The investigation is then carried out by the 'investigating officer' who may be the line manager or other appropriate manager

If during the course of an investigation further concerns are identified that need to be addressed these can be reported to commissioning manager and the terms of reference may be extended to reflect this.

When investigating a disciplinary matter the investigating officer should take care to deal with the employee in a fair and reasonable manner. The investigation is a neutral process and not aimed to prove or disprove guilt. It is a process for obtaining facts and presenting them in a logical fashion. It is the manager with authority to discipline (the hearing manager) who ultimately decides whether or not to convene a disciplinary hearing based on the report of the investigating officer. The commissioning manager usually but not necessarily acts as the hearing manager.

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The investigating officer will carry out an investigation as soon as possible to establish the facts promptly before memories of events fade. This will include the collection of statements and where appropriate, interviews with those involved. All witnesses and the employee should be reminded of the requirement for confidentiality. The investigation will normally be completed within a reasonable time taking into account the complexity of the case and the availability of witnesses; preferably within four weeks. If there is to be any delay, the investigating officer will keep all concerned informed as to the reasons why.

The employee under investigation has the right to be accompanied (see section 2 above) at any investigatory interviews about his/her conduct. Before any such interview, the employee should be informed of the allegations against him/her and given time to prepare but will not have the right to see any written statements or evidence or be informed of the names of witnesses until the matter is submitted to a formal disciplinary hearing. Where an investigatory meeting is held solely to establish the facts of a case, it should be made clear to the employee involved that it is not a disciplinary hearing but could lead to a formal disciplinary hearing.

The investigating officer will be expected to carry out the investigation and is responsible for the production of the final report and presentation of the findings to any resulting disciplinary hearing.

An HR Business Partner or Advisor will be informed of the circumstances of the investigation and will be available to advise on the investigation process and should attend investigatory interviews, meetings and disciplinary hearings in an advisory capacity.

Having established the facts the investigating officer will complete a report of the investigation to include a summary of the investigatory meetings, a description of the findings and a clear and logical conclusion based upon obtained evidence with a recommendation as to whether the matter should be presented to a disciplinary hearing. This report will be sent to the commissioning manager. The employee will be informed as soon as possible by the commissioning manager the outcome of the investigation:

- whether the matters investigated are to be resolved informally or formally
- if informally the date of the meeting to discuss this outcome and any informal measures to be imposed,
- if formally the arrangements for a hearing reference section 13iv.

Where Police Involvement may be necessary, please contact an HR Business Partner.

13.ii Agreed Outcomes

It is recognised that lengthy disciplinary proceedings can create anxiety for all those involved in the process. It is further recognised that lengthy processes, can create additional pressure on service delivery; as such an 'agreed outcomes' option is available to support the process.

Where the employee has admitted and accepted the allegations, the agreed outcomes framework may be used at any point in the process if

- The manager considers it is appropriate to conclude the matter without the need for a disciplinary hearing, by using an agreed outcomes procedure and
- The employee requests that the agreed outcome framework be followed.
- This is decided in consultation with a member of the HR team.

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Where the manager feels it is not appropriate to proceed to an agreed outcome they will provide the individual with written reasons for this. There will be no right of appeal or of grievance against this decision. It may not always be appropriate to use agreed outcomes (e.g. in cases of gross misconduct where dismissal is a potential outcome), although it may be appropriate where the employee has expressed admission of the alleged offence(s) and contrition for it/them. Where the employee is already subject to a current final written warning for similar or related misconduct the agreed outcome process will not be followed. This approach should therefore only be considered where the alleged conduct is likely to result in some level of warning, and only following receipt of advice from a member of the HR team. The possible agreed outcomes are those contained in section 13 of this policy, excluding those of dismissal or summary dismissal.

Agreed outcomes will only proceed if the employee and their representative (if they have one) are agreeable to the process and have accepted that there is substance to the allegations and that the facts gathered support it, i.e. there must be mutual consent. It is open to either party, without prejudice, to suggest an agreed outcome at any stage of the disciplinary process. If there is not agreement with a proposal for an agreed outcome then the formal disciplinary process must be followed.

If the agreed outcomes process is to be used, a meeting should be held at which the manager plus another manager, as well as the employee and their representative, are present. The supporting documents, and investigation report, where applicable, will be provided to the employee and their representative 5 working days prior to the meeting, or lesser period, if agreed. At the meeting all available relevant information must be available to those attending.

The agreed outcome will be confirmed in writing to the employee within 5 working days, by the manager.

The employee will be required to confirm in writing that they accept and understand the agreed outcome. There is no appeal against an agreed outcome which by definition should be mutually agreed. If an employee refuses to accept the outcome, or decides to withdraw from the agreed outcome process at any time, then the manager will arrange for matters to be considered at a formal disciplinary hearing in accordance with this policy. In all such situations further advice should be sought from HR.

Any disciplinary sanction issued in this way has the same status as one issued after a disciplinary hearing. Any decisions taken as part of this process will impact upon future disciplinary issues in the same ways as a sanction issued after a full disciplinary hearing. For example, if a first written warning is an agreed outcome, any further repetition of the behaviour (or similar behaviour) that led to that level of warning may result in more serious action being taken.

13.iii Suspension

In certain cases, consideration should be given to a period of suspension from work duties with full pay whilst an unhindered investigation is conducted. Managers should consult Workforce & OD at the earliest opportunity where suspension of an employee is under consideration. The suspension should be carried out by a manager with the authority to act, see Appendix 1.

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Examples where suspension may be considered include:

- There is a risk of harm to patients, colleagues or Trust property as a result of the employee remaining at work during the investigation;
- where relationships have broken down;
- where there are reasonable grounds for concern that evidence may be tampered with or destroyed during the investigation

This is not an exhaustive list.

Suspension is a neutral act and does not necessarily imply guilt; it is simply a mechanism to achieve safety, (protecting the individual, the trust, staff, patients and property). Before deciding to suspend other ways of achieving safety should be explored, such as temporary redeployment, additional supervision, and temporary diminished duties and so on. Where safety cannot be obtained satisfactorily with the employee remaining at work suspension will usually be the outcome.

The manager should inform the employee exactly why they are being suspended, and that they will be contacted in order to attend an investigatory meeting as soon as possible. Guidance notes on carrying out suspensions are attached in Appendix 6.

The suspension will be reviewed regularly - at the fourth week and every two weeks thereafter - to ensure it is not unnecessarily protracted. It should be made clear that the suspension is not considered a disciplinary sanction. Approval must be obtained from the Deputy Director of Workforce (or designated deputy) before any suspension is made except out of hours when the on-call senior support manager must be contacted for approval. An HR Business Partner should be informed on the next working day.

Where practicable the member of staff will normally have the opportunity to be accompanied by a representative when they are suspended. While suspended, staff will not be allowed on Trust premises except by prior arrangement, for example to attend meetings or as a patient. Staff members will be permitted to access the Trust's Freedom to Speak Up Guardian, a Trade Union Representative or Occupational Health when they are suspended. The suspending manager must be informed by the individual if so.

In order to preserve confidentiality the individual and suspending manager should agree what explanation will be given to colleagues for the absence from work. At, or immediately following the suspension, the manager should ensure that the member of staff hands in their security pass, name badge, and any workplace keys. Any suspension will be confirmed in writing as soon as practicable.

When under suspension, staff must not work for any other employer without the permission of the Trust.

13.iv Disciplinary Hearing

The disciplinary hearing will be set up as soon as possible after the completion of the investigation, preferably within two weeks. The timing of the hearing will however need to take account of the availability and varying shift patterns of staff and representatives.

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The disciplining manager will set up and chair the disciplinary hearing. The investigating officer will present the investigation report at the hearing and the employee will present their response.

The disciplining manager has several responsibilities in setting up the disciplinary hearing. Unless prior agreement is obtained, they will write to the employee giving at least seven calendar day's notice of the disciplinary hearing. The letter will normally contain the following information:

- the reasons for the hearing, detailing the specific allegation(s), with dates and other relevant information including specific Trust policies or codes of practice that may have been breached if applicable. The allegations detailed in this letter are normally those allegations that have been explored at the investigatory interview(s) with the employee. The allegations cannot normally be amended or added to at the hearing;
- the fact that it is part of the formal meeting held under the Trust's Disciplinary procedure;
- who will present the management case and the names of any witnesses;
- the right of the employee to call witnesses and to submit documents and statements prior to the hearing by a stipulated date;
- the right of the employee to be represented;
- that the potential outcome of the hearing is formal action up to and including dismissal;
- the management case and all witness statements and any other documentary evidence that will be discussed or referred to at the hearing should be attached;

The employee must take all reasonable steps to attend the hearing. An employee who cannot attend a meeting should inform the disciplining manager in advance whenever possible, but before the meeting is due to start at the latest. If the employee fails to attend through circumstances outside their control and unforeseeable at the time the meeting was arranged (e.g. certificated illness) the employer should arrange another meeting. A decision may be taken in the employee's absence if they fail to attend the rearranged meeting without a reason that is satisfactory to the Trust. This should be stated in the letter sent to the employee notifying him/her of the rearranged hearing date. In exceptional circumstances, where there is a history of the employee failing to attend meetings, the employee may be informed from the outset that the first scheduled hearing may be heard in their absence, if they fail to attend without a satisfactory reason.

If an employee's union representative or work colleague cannot attend on the first arranged date, the manager will rearrange the hearing within a reasonable timeframe. The employee must notify the manager in advance of the hearing (no less than two working days prior to the scheduled date) if a second date must be arranged for this reason. The representative's unavailability is not sufficient reason to postpone the hearing for a second time and the employee should make alternative arrangements to be accompanied or represented. A hearing will only be postponed on one occasion for this reason.

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The representative may attend in place of the employee but their evidence will not carry the same weight as oral submissions made by the employee.

The disciplinary panel will consist of the disciplining manager and an HR Business Partner or Advisor.

In more complex cases, or where specialist information will be discussed, a professional advisor may be co-opted on to a disciplinary panel to provide advice on professional or technical issues at the discretion of the manager.

The decision regarding the outcome of the disciplinary hearing rests with the disciplining manager. Other members of the panel attend in an advisory capacity.

13.v Procedure

See Disciplinary Hearing Guidelines at Appendix 5.

- a) The investigating officer will present their case going through the evidence that has been gathered and calling witnesses as appropriate. The panel members and the employee/their representative will have the opportunity to ask questions.
- b) The employee or their representative will provide their response to the allegations, calling witnesses as appropriate. The panel members and the investigating officer will have the opportunity to ask questions.
- c) Witnesses will attend only whilst giving evidence. Only signed statements which have been available to all parties beforehand can be used at the hearing.
- d) Any party can request an adjournment at any time. The disciplining manager will determine whether it should be allowed.
- e) At the end of the hearing, each side will summarise their case following which the disciplining manager will adjourn to consider the outcome.
- f) Once an outcome has been decided the hearing will be reconvened and the outcome communicated to the employee with details of the right of appeal. At this point the disciplinary process comes to an end.

A representative can carry out all the functions on behalf of the employee, apart from answering questions on their behalf.

14. DISCIPLINARY ACTIONS

Before making any decision, the manager should take account of all the written and verbal evidence submitted at the hearing. The manager should also take into account the employee's disciplinary and general record, and length of service. Possible outcomes are as follows:

NO FORMAL ACTION

The manager may decide to take no formal action but may make recommendations about future management and behavioural standards

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FIRST WRITTEN WARNING

This may be given for a first offence of misconduct where this is relatively minor. Appropriate training and support to improve standards of conduct will be given, where deemed necessary/feasible.

This warning will remain active for one year.

FINAL WRITTEN WARNING

This may be given if there is no improvement following a first warning or if there is further misconduct of any nature. A final warning may be issued without a first warning if an employee's misconduct is sufficiently serious, for example because it is having, or is likely to have, a serious harmful effect on the Trust that does not in itself warrant dismissal but the Trust cannot tolerate a repetition. Where appropriate training and support to improve standards of conduct will be given.

This will remain active for two years.

DISMISSAL

This may be imposed if, during the period a final warning is active an employee commits further misconduct of any nature, which is not in itself gross misconduct.

SUMMARY DISMISSAL

This may be imposed if an employee commits an act of gross misconduct whether or not there are previous warnings. In this circumstance, the employee will be dismissed without notice.

If summary dismissal is imposed, the employee will return all passes, name badges, keys, uniforms etc, preferably before they leave the premises. The employee must be escorted back to their workplace to collect any personal belongings and hand back any Trust property. If this is not possible on the day of the disciplinary hearing then line manager should arrange to meet the dismissed employee to complete this.

In both dismissal and summary dismissal the date of dismissal will be the date of the disciplinary hearing unless there is a delay in making the decision in which case the date of dismissal will be the date on which the final decision is communicated.

When an employee who is required to be registered with a professional body is dismissed a report will normally be made to the appropriate registering organisation by the Trust Lead nominated to liaise with the body, normally the Chief Nurse.

OTHER PENALTIES:

Other disciplinary penalties may be applied in appropriate cases in addition to formal warning or as an alternative to dismissal. These penalties can include:

- Demotion.
- Transfers within/between departments.
- Permanently withholding payment for periods of unauthorised absence.
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15. TIME LIMITS ON PENALTIES

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All records of investigations and disciplinary hearings will be kept on the employee's personal file stored in the Workforce & OD department in a sealed envelope marked CONFIDENTIAL and with the warning expiry date written on it. Only Workforce & OD managers are allowed access to these records.

Any disciplinary action taken will be disregarded for future disciplinary purposes after a period of satisfactory conduct as specified above. Warnings will cease to be 'live' following the specified period of satisfactory conduct and should thus be disregarded for future disciplinary purposes.

There may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where there is evidence of such abuse, the employee's disciplinary record may be borne in mind in deciding on the length of any subsequent warnings.

Exceptionally there may be circumstances where the misconduct is so serious – verging on gross misconduct – the panel may impose a longer period for the final written warning to remain on file. The reasons and time limits for this should be made clear and that any recurrence of misconduct at any time may lead to dismissal.

Where the disciplinary penalty includes demotion or transfer within/between departments, the situation will be reviewed at the end of the specified period unless the demotion is made on a permanent basis. However, there is no automatic right to return to the previous role or band.

16. WRITTEN CONFIRMATION OF DISCIPLINARY ACTION

The outcome will be confirmed in writing by the manager within a reasonable timeframe following the conclusion of the hearing, for the sake of clarity, this does not extend the disciplinary process. The letter should show how a reasonable and logical conclusion has been reached and should contain at least the following:

- the original allegation;
- the key points of evidence collected;
- the employee's defence;
- The reason for the disciplinary action;
- what was taken into account in making the decision;
- why and how the employee's conduct needs to change and if appropriate the process agreed to help them meet the shortfall in the standards required;
- the likely consequences of further misconduct. In the case of a final warning, it should warn the employee that failure to improve or modify behavior might lead to dismissal;
- the period of time the warning will remain active;
- in the case of dismissals, the reason for and the effective date of dismissal;
- any right of appeal, the timescale for lodging an appeal and how it should be made.

Formal verbatim notes will not normally be taken at disciplinary hearings. The panel members will take informal notes to aid their decision making process but these do not constitute formal minutes. Employees and their representatives are advised to take their own notes during the hearing.

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17. GRIEVANCES DURING DISCIPLINARY PROCESSES

The Trust's grievance procedure cannot be used purely to prevent the progress of a disciplinary process or as an alternative appeal process against any action taken under the Trust's disciplinary policy.

In the course of a disciplinary process, an employee might raise a grievance that is directly related to the case. If this happens, the manager should consider whether to suspend the disciplinary procedure for a short period while the grievance is dealt with, or deal with the respective issues concurrently as part of the same process. Another manager may be identified to deal with the grievance process.

Any grievances raised during the disciplinary process that are not related to that process may be dealt with at the same time as the disciplinary process or put on hold and dealt with once the disciplinary process has ended.

18. RESIGNATION OF THE EMPLOYEE DURING DISCIPLINARY PROCEDURES

If an employee resigns during a disciplinary procedure, the investigation should be completed. If a disciplinary hearing would have been convened but for the resignation a hearing should still take place where there might be a requirement to refer the outcome to a professional body or the DBS because this would require a judgement to be made based on reasonable grounds to determine whether the allegations have foundation. The employee will be invited to attend the hearing as usual and informed that, if they choose not to attend, a decision will be made in their absence. Once the employee's employment has terminated, a disciplinary sanction cannot be imposed. Any finding should also be reflected in any future work or professional references.

19. TIME LIMITS

The time limits for the various parts of the Disciplinary Procedure are set out in Appendix 7.

20. DISSEMINATION AND IMPLEMENTATION

This policy will be published on the Intranet and staff will be notified via Aspire. Training will also be provided to managers responsible for implementing this policy.

21. MONITORING/REPORTING

Workforce & OD managers will monitor the use and implementation of the policy and suggest further operational amendments as appropriate. They will also monitor legislation, case laws and best practice to ensure that the policy is kept up to date as appropriate.

The Trust records equality data in relation to all formal disciplinary action including associated appeals in relation to members of staff. The data is reported quarterly to the Equality & Diversity Steering Group.

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22. EQUALITY IMPACT ASSESSMENT

A baseline assessment has been carried out for the policy (attached in Appendix 8). This has indicated that no further action is required.

23. REVIEW

Policies will be reviewed when statutory requirements/best practice guidelines dictate, or no longer than 3 years after the previous review/initial ratification.

24. ARCHIVING ARRANGEMENTS

This is a Trust-wide document and archiving arrangements are managed by the Quality Department, who can be contacted to request master/archived documents.

25. REFERENCES

The Acas Advisory Handbook Discipline and Grievances at Work and the Acas Code of Practice on disciplinary and grievance procedures at www.acas.org.uk or Acas Helpline: 08457 47 47 47 (or Text Relay: 18001 08457 474747).

Department For Business Innovation & Skills: www.bis.gov.uk

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APPENDIX 1

ASHFORD & ST PETER'S HOSPITALS NHS FOUNDATION TRUST - LEVELS OF AUTHORITY TO ACT

Staff Group	Suspension	Investigations	Warnings	Dismissal
Executive Directors	Chief Executive	Immediate manager or manager from another department, if delegated to do so. The person chairing the disciplinary hearing and making the disciplinary decision must be one level higher in the line of management than the investigating manager	Chief Executive	Chief Executive
Staff reporting directly to an Executive Director	Executive Director		Executive Director	Executive Director
Staff reporting directly to a Divisional, Associate or Deputy Director	Divisional, Associate or Deputy Director		Divisional, Associate or Deputy Director	Divisional, Associate or Deputy Director
All other staff	Service Manager or equivalent; Head of Department/Service; Head of Midwifery or Divisional Chief Nurse		Service Manager, or equivalent; Head of Department/Service; Head of Midwifery or Divisional Chief Nurse	Divisional, Associate or Deputy Director;; Head of Midwifery or Divisional Chief Nurse
Medical and Dental Staff	See: Conduct, Capability, Ill Health And Appeals Policies And Procedures For Practitioners (Doctors And Dentists)			

- Where the designated manager has had direct, previous involvement with the case, the authority to act will be delegated to another manager of equal status
 - This document should be read in connection with the Trust's Disciplinary Policy
 - In the absence of the line manager, cross cover/deputisation arrangements may apply

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APPENDIX 2

EXAMPLES OF MISCONDUCT

A breach of any Trust Policy could constitute misconduct or gross misconduct depending on the seriousness of that breach. All policies can be found on Trustnet.

It is unlikely that any set of rules will cover all possible disciplinary issues and no list can be exhaustive, but examples are:

- misuse of Trust facilities (for example excessive or inappropriate use of email or internet or making private telephone calls);
- poor timekeeping and lateness;
- unauthorised absence;
- breach of the Trust's Leave or Sickness Policies, including local/departmental procedures;
- failure to follow reasonable management instructions;
- minor dishonesty;
- minor breach of health and safety rules; breach of Trust's Uniform or Dress Code Policy;
- breach of Trust's Smoke Free Policy;
- minor breach of Trust's Alcohol & Drugs at Work Policy;
- minor breach of Dignity at Work Policy
- minor breach of Internet Usage and Security Policy
- Breach of Social Media Policy

Examples of acts that are likely to constitute gross misconduct leading to dismissal or summary dismissal include:

- fighting or drunkenness;
- theft or fraud (this could include repeatedly making private telephone calls or failure to pay for car parking)
- serious dishonesty;
- physical or verbal abuse or bullying of patients, staff, relatives or visitors to the Trust
- deliberate damage to Trust or other property;
- serious misuse of Trust's property or name;
- deliberately accessing internet sites containing pornographic, offensive or obscene material;
- serious or repeated failure to follow reasonable management instructions;
- serious insubordination;
- serious breach of Trust Equal Opportunities Policy;
- discrimination, harassment or victimisation;
- bringing the Trust into serious disrepute;
- serious incapability at work brought on by alcohol or illegal drugs;
- causing loss, damage or injury through serious negligence;
- serious breach of health and safety rules;
- serious breach of Dignity at Work Policy
- serious breach of Internet Usage and Security Policy
- breach of confidentiality;
- failure to disclose relevant information during an application for employment with the Trust;
- committing a criminal offence. However if an employee is charged with, or convicted of, a criminal offence not related to work, this is not in itself reason for disciplinary action. The manager should establish the facts of the case and consider whether the matter is serious enough to warrant starting the disciplinary procedure. The main consideration should be whether the offence, or alleged offence, is one that makes the employee unsuitable for their type of work. Similarly, an employee should not be dismissed solely because they are absent from work as a result of being remanded in custody.

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APPENDIX 3

Counselling Guidelines (based on ACAS Codes of Practice)

Problems dealt with early enough can be ‘nipped in the bud’, whereas delay can make things worse as the employee may not realise that they are below standard unless they are told. Arrange to speak to the employee as soon as possible – the matter may then be able to be dealt with in an informal manner and not as part of the disciplinary process

In many cases the right word at the right time and in the right way may be all that is needed, and will often be a more satisfactory way of dealing with a breach of rules, or unsatisfactory performance, than a formal meeting. Additional training, coaching and advice may be needed, and both manager and employee should be aware that formal processes will start if there is no improvement or if any improvement fails to be maintained.

Whilst maintaining satisfactory standards and dealing with disciplinary issues requires firmness on the part of the manager, it also requires fairness. Be as objective as possible, keep an open mind, and do not prejudge the issues.

How should it be done?

- talk to the employee in private. This should be a two-way discussion, aimed at pointing out the shortcomings in conduct and encouraging improvement. Criticism should be constructive, with the emphasis being on finding ways for the employee to improve and for the improvement to be sustained
- listen to whatever the employee has to say about the issue. It may become evident there is no problem – if so make this clear to the employee
- where improvement is required make sure the employee understands what needs to be done, how their performance or conduct will be reviewed, and over what period. The employee should be told that if there is no improvement then the next stage will be the formal disciplinary procedure. The agreed action in writing should be confirmed in writing.
- be careful that any informal action does not turn into formal disciplinary action, as this may unintentionally deny the employee certain rights, such as the right to be accompanied. If during the discussion it becomes obvious that the matter may be more serious, the meeting should be adjourned. The employee should be told that the matter will be continued under the formal disciplinary procedure
- keep brief notes of any agreed informal action for reference purposes. There should be reviews of progress over specified periods.

The use of an agreed action plan may be useful for recording and measuring improvements or lack of improvement within specified time frames.

- Consider at any stage whether the use an independent mediator may be helpful.

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APPENDIX 4

Investigation Guidelines (based on ACAS Codes of Practice)

Conduct enquiries, investigations, and proceedings with thought and care. Avoid snap decisions, or actions in the heat of the moment. The disciplining of a worker is a serious matter and should never be regarded lightly or dealt with casually. Be as objective as possible, keep an open mind, and do not prejudge the issues.

While consistency is important, it is also essential to take account of the circumstances and people involved. Personal details such as length of service, past disciplinary history and any current warnings will be relevant to such considerations. Any provocation or other mitigation also needs to be taken into account. Any decision to discipline an employee must be reasonable in all the circumstances and must not discriminate in relation to any of the recognised protected characteristics.

Any investigations should be conducted by a management representative and should be confined to establishing the facts of the case.

- arrange for a second member of management or an HR Manager/Advisor to be present at any interviews whenever possible to take notes of the proceedings and act as a witness
- check if there are any special circumstances to be taken into account. For example, are there personal or other outside issues affecting the conduct of the employee
- be careful when dealing with evidence from an informant who wishes to remain anonymous. Take written statements, seek corroborative evidence and check that the informant's motives are genuine
- are the standards of other employees acceptable, or is this employee being unfairly singled out?
- consider what explanations may be offered by the employee, and if possible check them out beforehand

Is disciplinary action necessary?

Having gathered all the facts, the manager or supervisor should decide with the disciplining manager whether to:

- drop the matter – there may be no case to answer or the matter may not require further action.
- arrange counselling/take informal action – this is an attempt to correct a situation and prevent it from getting worse without using the disciplinary procedure
- consider using an independent mediator. A mediator won't take sides or judge who is right but can help the parties reach their own agreement where the employer and employee are unable to solve a disagreement alone. The mediator may also recommend a way forward if both parties agree that they want this.
- arrange a disciplinary meeting – this will be necessary when the matter is considered serious enough to require disciplinary action.

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Disciplinary Hearing Guidelines (based on ACAS Codes of Practice)

At the meeting, the employer should explain the complaint against the employee and the employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be allowed to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by witnesses.

How should the disciplinary meeting be conducted?

Meetings rarely proceed in neat, orderly stages but the following guidelines may be helpful:

- introduce those present to the employee and explain why they are there
- introduce and explain the role of the accompanying person if present
- explain that the purpose of the meeting is to consider whether disciplinary action should be taken in accordance with the organisation's disciplinary procedure
- explain how the meeting will be conducted.

Statement of the complaint

- the presenting manager should state precisely what the complaint is and outline the case briefly by going through the evidence that has been gathered. (the employee and his or her representative or accompanying person should have already had any statements made by witnesses)
- remember that the point of the meeting is to establish the facts, not catch people out. Establish whether the employee is prepared to accept that he/she may have done something wrong. Then agree the steps which should be taken to remedy the situation.

Employee's reply

- give the employee the opportunity to state his/her case and answer any allegations that have been made. He/she should be able to ask questions, present evidence and call witnesses. The accompanying person may also ask questions and should be able to confer privately with the employee. Listen carefully and be prepared to wait in silence for an answer as this can be a constructive way of encouraging the employee to be more forthcoming
- if it is not practical for witnesses to attend, consider proceeding if it is clear that their evidence will not affect the substance of the complaint

General questioning and discussion use this stage to establish all the facts

- adjourn the meeting if further investigation is necessary, or, if appropriate, at the request of the employee or his or her accompanying person
- ask the employee if she or he has any explanation for the misconduct or failure to improve, or if there are any special circumstances to be taken into account
- if it becomes clear during this stage that the employee has provided an adequate explanation or there is no real evidence to support the allegation, stop the proceedings
- keep the approach formal and polite and encourage the employee to speak freely with a view to establishing the facts. A properly conducted disciplinary meeting should be a two-way process.

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Use questions to clarify the issues and to check that what has been said is understood. Ask open-ended questions, for example, 'what happened then?' to get the broad picture. Ask precise, closed questions requiring a yes/no answer only when specific information is needed

- do not get involved in arguments and do not make personal or humiliating remarks. Avoid physical contact or gestures which could be misinterpreted or misconstrued as judgemental.

Summing up

Summarise the main points of the discussion after questioning is completed. This allows all parties to be reminded of the nature of the offence, the arguments and evidence put forward and to ensure nothing is missed. Ask the employee if he/she feels that they have had a fair hearing, and whether they have anything further to say. This should help to demonstrate to the employee that they have been treated reasonably.

Adjournment

It is generally good practice to adjourn before a decision is taken about whether a disciplinary penalty is appropriate. This allows time for reflection and proper consideration. It also allows for any further checking of any matters raised, particularly if there is any dispute over facts. If new facts emerge, consider whether to reconvene the disciplinary meeting.

What problems may arise and how should they be handled?

It is possible that the disciplinary meeting may not proceed very smoothly – people may be upset or even angry.

If the employee becomes upset or distressed allow time for them to regain composure before continuing. If the distress is too great to continue then adjourn and reconvene at a later date – however, the issues should not be avoided. Clearly during the meeting there may be some 'letting off steam', and this can be helpful in finding out what has actually happened. However, abusive language or conduct should not be tolerated.

Taking action

Key Points

- The decisions that are made at the end of a disciplinary meeting are whether to take disciplinary action, if so what, and whether any other action should be taken (for example, training or job change)
- Before deciding whether a disciplinary penalty is appropriate, and at what level, consider the employee's disciplinary and general record, whether the organisation's rules point to the likely penalty, action taken in previous cases, any explanations and circumstances to be considered and whether the penalty is reasonable
- Leave the employee in no doubt as to the nature of the disciplinary penalty, the improvement expected and the need to sustain the improvement
- Give the employee written details of any disciplinary action
- Keep records of disciplinary action secure and confidential. Give a copy of the record to the employee concerned
- Do not allow disciplinary action to count against an individual indefinitely except in exceptional cases – such as where misconduct verges on gross misconduct

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What should be considered before deciding any disciplinary penalty?

When deciding whether a disciplinary penalty is appropriate and what form it should take, consideration should be given to:

- whether the rules of the organisation indicate what the likely penalty will be as a result of the particular misconduct
- the penalty imposed in similar cases in the past
- the employee's disciplinary record, general work record, work experience, position and length of service
- any special circumstances which might make it appropriate to adjust the severity of the penalty
- whether the proposed penalty is reasonable in view of all the circumstances.

It should be clear what the normal organisational practice is for dealing with the kind of misconduct or unsatisfactory performance under consideration. This does not mean that similar offences will always call for the same disciplinary action: each case must be looked at on its own merits and any relevant circumstances taken into account. Such relevant circumstances may include health or domestic problems, provocation, ignorance of the rule or standard involved or inconsistent treatment in the past. Take the opportunity to review rules and procedures and the organisation's communications with employees. Look at consistency of process and investigation rather than just at outcomes.

If guidance is needed on formal disciplinary action seek advice, where possible, from someone who will not be involved in hearing any potential appeal. Call the ACAS helpline on 08457 47 47 47 to talk to one of their advisers

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APPENDIX 6

NOTES FOR SUSPENSION

- I want you to listen to what I have to say to you before you make any comment:
- I must inform you that I am suspending you from work while an investigation takes place into allegations that you
- I don't want you to say anything about this allegation / these allegations to me because I may not be the investigating manager and you should think about trade union representation or other support before you make any statements.
- Your suspension is not a presumption of guilt and no decision has yet been taken about what action may be appropriate.
- It is felt necessary to remove you from the Department because of the nature of the allegation and to protect you and your colleagues while the investigation is being carried out.
- We will send you / here is a copy of the Trust's Disciplinary Policy.
- As part of your suspension from work you must return your security pass and name badge. They will be returned to you if and when you return to work.
- During your suspension you are not allowed to enter Trust premises unless it is as a patient or to visit someone who is a patient. Unless you are coming to the Trust as an emergency patient you must contact on 01932 72.... or on 01784 8.... or bleep to obtain permission before coming to the Trust.
- You are permitted to access the Trust's Freedom to Speak Up Guardian, a Trade Union Representative or Occupational Health while you are suspended but you must inform prior to attending any meetings or appointments. If you do have to come onto Trust premises you must confine yourself to the area it is necessary for you to attend.
- You must not attempt to contact any of your work colleagues without permission.
- Your suspension will be on full pay and you must make yourself available, at reasonable notice, to come to meetings arranged as part of this investigation. Before a decision is taken about what action is appropriate you will have the opportunity to state your version of events at an investigatory interview.
- Whilst under suspension, you must not work for any other employer without the permission of the Trust.
- In order to preserve your confidentiality we can agree what your colleagues will be told about your absence from work if you do not wish them to know that you have been suspended. For example: sick or had to take emergency leave to deal with an urgent private matter.
- You are reminded that a confidential counselling and advisory service is available through the Trust's Employee Advisory Service on 0800 282193. You are entitled to be accompanied at any meetings by your Trade Union Representative or by a work colleague.
- I do appreciate that this is a very distressing situation for you and we will make every effort to bring matters to a conclusion as quickly as possible.

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APPENDIX 7

Normal Time Limits

Aspects of Disciplinary Procedure	Normal Time Limits (may be extended in exceptional circumstances)
Investigation	To be concluded within 4 weeks of notification of alleged offence.
Suspension	Maximum of 4 weeks' Reviewed at 2 weekly intervals if it is necessary to extend beyond this period.
Notification of decision to proceed to disciplinary hearing	Within 2 weeks of the completion of the investigation, giving 7 calendar days notice of the hearing date.
Postponement of hearing for unforeseen circumstances	Reconvened hearing within a reasonable timeframe of the original hearing date
Notification of outcome of disciplinary hearing or appeal	Within a reasonable timeframe of concluding the hearing or appeal hearing
Time limit to lodge appeal	As per Appeals Policy