

Disciplinary Policy

CATEGORY:	Policy
CLASSIFICATION:	Human Resources
PURPOSE	For compliance with the Statutory requirements of Employment Law specifically the Employment Act 2008. This policy is to be used when a conduct issues arises.
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1. Policy Statement

- 1.1 University Hospitals Birmingham NHS Foundation Trust (the Trust) recognises that effectively handling disciplinary issues as they arise plays an important role in maintaining strong employment relations and a high morale amongst its workforce.
- 1.2 The Disciplinary Policy – in the following referred to as the “Policy” - has been specifically designed to handle issues as soon as they arise, by an appropriate manager (with the relevant authority), within a timely manner, and has taken into account best practice promoted by employment organisations.
- 1.3 All Human Resources policies are underpinned by the partnership commitment between management and staff and the Trust’s Vision and Values Framework.

2. Scope of the Policy

- 2.1 This Policy and its associated procedural documents (in particular, the Disciplinary Procedure – referred to as the “Procedure”) are applicable to all staff (except those in the medical and dental staff group, see section 2.6 below) employed on a contract of employment with the Trust. This Policy does not apply to contractors, agency or locum workers, but does include honorary staff.
- 2.2 This Policy is applicable in the following classifications - minor, serious and gross misconduct.
- 2.3 This Policy is designed to assist Trust staff to achieve and maintain satisfactory standards of conduct and behaviour and comply with the Trust’s operating frameworks.
- 2.4 The Trust is committed to ensuring that this Policy and the Procedure are applied fairly and consistently to all staff.
- 2.5 This Policy is not to be used for the management of ill health, capability or perceived poor work performance as those issues are subject to the Trust Sickness Absence and Attendance Policy and/or Managing Poor Performance Policy in the first instance.
- 2.6 Medical and dental professionals disciplinary and/or capability issues will be subject to the requirements of the Trust’s Maintaining High Professional Standards Policy.
- 2.7 This Policy must be read in conjunction with the Procedure.

3. Framework

3.1 Framework for implementing Statutory Code

The core principles that support this Policy framework are as follows:

- 3.1.1 Where a disciplinary issue arises, all parties will ensure that the issue is managed in accordance with this Policy, and the Procedure will be followed by all parties working within the spirit of 'Partnership Working' and in the interests of the service.
- 3.1.2 Timescales are indicated in calendar days and are included in the Procedure to ensure that matters are dealt with promptly and without unreasonable delay. Timescales detailed in the Procedure are not exact requirements; all reasonable efforts must be made to ensure that the timescales are achieved. Disciplinary issues will be dealt with thoroughly and without unreasonable delay to minimise distress and impact on service delivery.
- 3.1.3 Informal action will be considered, where appropriate, to resolve problems.
- 3.1.4 No disciplinary action will be taken against a member of staff until the case has been sufficiently investigated.
- 3.1.5 Where a formal investigation has been initiated, the process is only considered to be concluded after a hearing/meeting has taken place or feedback to the member of staff has been given. Any holding action in place during the investigation will remain in place until the process is considered by management to be closed.
- 3.1.6 A disciplinary meeting (fast track) is a meeting in which a disciplinary warning (up to, and including, a final written warning) is given to a member of staff. A disciplinary meeting will only be appropriate where the member of staff has taken full responsibility for their actions and accepted the allegations against them.
- 3.1.7 A disciplinary hearing is a formal meeting where:
 - 3.1.8 a case is particularly complex or serious enough to potentially result in dismissal (serious and/or gross misconduct);
 - 3.1.9 a member of staff has a live final warning;
 - 3.1.10 the member of staff has requested a formal hearing; and/or
 - 3.1.11 the member of staff disputes the findings of the investigation.

- 3.1.12 Staff will be provided with written copies of evidence and relevant witness statements (where appropriate) in advance of a disciplinary hearing. These are not necessary for a disciplinary meeting (fast track).
- 3.1.13 For formal action, staff will be advised of the nature of the complaint made against them, and will be given the opportunity to state their case before any decision is made.
- 3.1.14 At all formal stages of the process the member of staff will have the right to be accompanied by an accredited Trade Union Representative, or work colleague.
- 3.1.15 Where appropriate, and depending on the severity of the offence, the Trust may omit any of the stages within the Disciplinary Procedure.
- 3.1.16 No member of staff will be dismissed for a first offence of misconduct unless this is serious misconduct.
- 3.1.17 In cases of gross misconduct staff will be dismissed without notice or payment in lieu of notice.
- 3.1.18 Staff will be given a written explanation of any disciplinary action taken. Where recommendations have been made the letter must also give clarification of what actions are required to be achieved and timescales set.
- 3.1.19 Staff will have the right to appeal against disciplinary warnings or dismissal.

3.2 Application of the Policy Framework

- 3.2.1 All staff will be treated fairly in the application of this Policy and its associated Procedure.
- 3.2.2 This Policy framework requires that any disciplinary processes must adhere to the standard application/approach below:

Step 1 - Once the Manager has established that an investigation is required, the member of staff will be invited to submit their account of events; this can be via a statement or an investigatory meeting (at which the member of staff has the right to be accompanied by an accredited Trade Union representative or colleague) to discuss the matter.

Step 2 – When appropriate, witness statements will be taken to ascertain the facts and interviews undertaken where further detail is required. Where, from this investigation, there is evidence to suggest there is a case to answer a hearing or disciplinary meeting (fast track) must be convened. The member of staff will be given copies of the relevant documentation in advance of a hearing only i.e. not a fast track meeting.

Step 3 - At the hearing/meeting the disciplinary panel will consider the evidence provided. A decision will be taken. Where this is a fast track, the member of staff will be offered the sanction in advance of the meeting that they can accept or reject. The decision, from either a hearing or a fast track meeting, will be confirmed in writing and where a sanction has been given, the letter will give details of the right to appeal.

Step 4 - The right to appeal. If the member of staff wishes to appeal a hearing will be arranged (at which the member of staff has the right to be accompanied). The member of staff will be informed verbally of the final decision and confirmed in writing.

Implementation of these processes is detailed within the Procedure.

3.2.3 The following four levels of disciplinary actions which will be evoked as appropriate, and as further outlined in the Procedure, to the offence confirmed:

- Formal verbal warning
- First written warning
- Final written warning
- Dismissal or other sanction.

Managers authorised to discipline (by role) are listed in the Procedure.

3.3 Areas covered by the Disciplinary Policy Framework

3.3.1 This Policy is applicable in the following classifications - **minor, serious and gross misconduct**. However, the lists provided are not exhaustive and other areas may be included, for example,

behaviour outside of the work environment if it affects an individual's continued suitability for employment.

3.3.2 Minor matters: These affect the performance or behaviour of the individual, for example, poor timekeeping or small infringements of working practices.

3.3.3 Serious matters: These are infringements serious enough to require disciplinary action up to and including dismissal with notice, but not serious enough to be classified as gross misconduct i.e. dismissal without notice. Managers may take into account any mitigation or where it is a first offence in making a decision on the appropriate sanction. The following is a non-exhaustive list of examples which amount to serious misconduct falling short of gross misconduct:

- Use of abusive language;
- Unauthorised absence;
- Insubordination;
- Wilful poor performance;
- Failure to carry out reasonable instructions; and
- Infringement of policies, procedures or other controlled documents which are serious, but do not constitute gross misconduct.

3.3.4 Gross misconduct: Gross misconduct is an offence usually so serious, it fundamentally breaches the employment contract and will normally lead to dismissal without notice for a first breach. This includes, but is not limited to:

- Theft, fraud or falsification of records;
- Physical violence, threatening behaviour or bullying;
- Deliberate and serious damage to property;
- Serious misuse of the Trust's property or name;
- Deliberately accessing internet sites containing pornographic, offensive or obscene material;

- Serious insubordination;
- Discrimination or harassment;
- Bringing the organisation into serious disrepute;
- Serious incapacity at work brought on by alcohol or substance misuse, causing loss, damage or injury through gross negligence;
- A serious breach of health and safety rules including infection control, whether or not this resulted in an accident or harm;
- The inclusion of incorrect or misleading information on the member of staff's job application or the provision of false certificates or false references;
- Any action constituting a criminal offence which makes the member of staff unsuitable for their role or employment within the Trust; and
- A serious act which irrevocably damages trust and confidence.

3.3.5 Out of Work environment/Police enquiries

If the member of staff is subject to investigation by the police for alleged offences or is subject to investigation by their professional body, the Trust will be entitled to pursue its own enquiries within the application of this Policy and its associated Procedure. Investigations and disciplinary action will not necessarily wait for, or be dependent on, the outcome of police enquiries or legal proceedings. Any conditions or restrictions imposed by the Police or courts, which prevent a member of staff from attending work will be dealt with as an unauthorised absence and normal pay will not be paid. Depending on the timeframe from the Police or Courts, the Trust may decide to pursue a termination of contract on the basis of frustration of that contract as the individual is not permitted to carry out their day to day duties due to that condition. Further advice must be sought from Human Resources and/or the Deputy Director of Corporate Affairs, if this situation arises.

3.3.6 Criminal offences unrelated to the member of staff's employment

Criminal offences, cautions, convictions or arrests will not automatically be treated as reasons for dismissal. Where a member of staff has informed their manager of such issues and it has not come to notice via media sources or other sources, an appropriate manager will consider the situation. Failure to declare such situations will be treated as a serious matter and discipline breach and will therefore be investigated accordingly.

4. Duties

4.1 Executive Director of Delivery

The Executive Director of Delivery is responsible for this Policy and its implementation and has the authority to approve the Procedure and any amendments to the procedure in response to changes in legislation or best practice, provided that they are compliant with this Policy.

4.2 Executive and Divisional Directors

Executive and Divisional Directors are required to ensure the following requirements are met within their areas of responsibility:

- They are fully conversant with this Policy and the Procedure;
- All staff within their Division who hold line management responsibilities are familiar with this Policy and are trained in applying all elements of its associated Procedure; and
- Their staff who hold line management responsibilities must work effectively and consistently with Human Resources and accredited Trade Union Representatives.

4.3 Director of Human Resources

The Director of Human Resources has the responsibility to ensure the following requirements are met;

- The provision and maintenance of this Policy and its associated Procedure and guidance as part of the Trust's portfolio of controlled documents;
- The provision of training events for managers in support of this Policy and its Procedure; and
- To record and monitor all formal disciplinary issues using this Policy. Records will be retained in the Human Resources

Department and will be formally reported to the Board of Directors annually via the Annual Workforce Report. Trends will be identified as appropriate and necessary action taken (if applicable).

4.4 Line Managers

All staff with line management responsibilities are required to ensure the following requirements are met;

- They are familiar with this Policy and associated Procedural document and its application within their area of responsibility;
- They have received the appropriate training to implement this Policy and its associated Procedure in a consistent and fair manner as required by the Policy statement (1.0) and they maintain these skills via updates, ensuring that their Executive and Divisional Directors have records to that effect;
- Work in a collaborative fashion in implementing this Policy and associated Procedure with Trade Union Representatives;
- To seek appropriate advice from a Human Resource professional and any other specialist areas, where necessary;
- Staff are made aware of the process for dealing with disciplinary issues; and
- In the giving of information or advice involving this Policy, and its associated Procedure, that they are sensitive to the requirements of the Trust's Equality and Diversity in Employment Policy in their dealings with staff.

4.5 Human Resource Professionals

Human Resource professionals are required to ensure the following;

- To provide consistent advice to line managers in their application of this Policy and its associated Procedure;
- They have detailed awareness of the Policy and Procedure and maintain their learning in order that they are able to support those with line management responsibilities; and

- Provide professional advice within the context of the Policy and its associated Procedure to those with line management responsibilities.

4.6 **Accredited Trade Union Representatives**

Accredited Trade Union Representatives will be familiar with this Policy and its Procedure in order to provide advice and support to their members if requested to do so.

4.7 **Staff**

Staff are required to ensure:

- Compliance with any relevant professional codes of conduct in addition to all Trust policies, procedures and systems as non-adherence may lead to disciplinary action.
- Uphold and maintain their standards of work and behaviour in line with the Trust's Visions and Values framework.

5. **Implementation and Monitoring**

5.1 Implementation

This Disciplinary Policy and its associated Procedure will be disseminated throughout the Trust to ensure access is readily available to all.

5.2 Monitoring

Appendix A provides full details on how the Policy will be monitored by the Trust.

6. **References**

ACAS; Disciplinary and Grievances at Work – The ACAS Guide and Code of Practice

Employment Act 2008

Employment Relations Act 2004, sections 37 and 38

7. **Associated Policy and Procedural Documentation**

This Policy and its appendices must be used in conjunction with the following;

- Counter Fraud and Corruption Policy
- Disciplinary Procedure
- Equality and Diversity in Employment Policy
- Managing Poor Performance Procedure
- Sickness Absence and Attendance Procedure

Appendix A

Monitoring Matrix

MONITORING OF IMPLEMENTATION	MONITORING LEAD	REPORTED TO PERSON/GROUP	MONITORING PROCESS	MONITORING FREQUENCY
A training programme appropriate to the need/role for Trust staff on the requirements of this Policy and its Procedure is provided and implemented.	Director of Human Resources	[insert the name/group of who oversees this e.g. medical Director, Audit Committee etc]	Suite of people management training courses delivered by the Human Resources Department.	[insert the frequency e.g. annually, every 6 months etc]
Number of formal disciplinary matters	Director of Human Resources	Operational Workforce Group Board of Directors	Report	Annual