**Disciplinary Policy and Procedure**

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# Introduction

## Policy statement

The purpose of this policy is to provide a mechanism to deal appropriately with breaches of staff discipline.

All employees are required to carry out their duties diligently, to the best of their ability and in the best interests of the organisation. Specifically, employees are expected to observe all applicable policies and procedures.

There may be situations where an informal meeting between an employee and their manager is more appropriate than formal disciplinary action. This may result in an informal warning which is noted on the employee’s personnel file.

However, occasions do occur when it is necessary to take formal action towards employees whose behaviour or performance is unacceptable or detrimental to the organisation, staff, clients, patients or suppliers.

## Status

The organisation aims to design and implement policies and procedures that meet the diverse needs of our service and workforce, ensuring that none are placed at a disadvantage over others, in accordance with the Equality Act 2010. Consideration has been given to the impact this policy might have in respect to the individual protected characteristics of those to whom it applies.

This policy and procedure is written in accordance with the ACAS Code of Practice on Discipline and Grievance.

This document and any procedures contained within it are non-contractual and may be modified or withdrawn at any time. For the avoidance of doubt, it does not form part of your contract of employment.

## Training and support

The organisation will provide guidance and support to help those to whom it applies understand their rights and responsibilities under this policy. Additional support will be provided to managers and supervisors to enable them to deal more effectively with matters arising from this policy.

# Scope

## Who it applies to

This policy and procedure applies to all employees of the organisation who have been confirmed in post. It does not apply to employees during their probationary period.

The organisation reserves the right to instigate disciplinary proceedings at any stage of the procedure dependent on the circumstances, the seriousness of the situation and the employee's previous disciplinary record.

The organisation also reserves the right to take account of an employee’s length of service and to vary the procedure accordingly. For example, notwithstanding the probationary period, if an employee has less than two years’ service, he/she may not be in receipt of any warnings before dismissal but will retain the right to a hearing and the right of appeal.

## Why and how it applies to them

The disciplinary procedure is designed to establish the facts quickly and to deal consistently with disciplinary issues.

If deemed appropriate, while misconduct is being investigated, the employee may be suspended, during which time he or she will be paid their normal full pay rate.

At every formal stage, employees will be informed (in writing where practical) of what is alleged and have the opportunity to state their case at a disciplinary meeting and be represented or accompanied, if they wish, by a trade union representative or a work colleague. In exceptional circumstances, such as where an employee’s professional registration may be affected, they may wish to be accompanied by a solicitor.

If the employee wants to exercise the right to be accompanied, they must tell the organisation as soon as possible who they want to accompany them. It is the employee’s responsibility to arrange for their companion to attend. The trade union representative, or work colleague may; explain the key points of the employee’s case and respond on their behalf. An employee and their companion may confer during the meetings. However, the companion must not answer questions directly put to the employee or try to prevent the organisation from asking questions or outlining the arguments.

An employee has the right to appeal against any formal disciplinary penalty.

If an employee lodges a grievance whilst investigations into a disciplinary matter are ongoing, the organisation will not normally hold up the disciplinary process. If the subject of the grievance is linked to the disciplinary, the matters will normally be considered as part of the disciplinary process and will not start a separate grievance process.

# Definition of terms

## Misconduct

The following are examples of breaches of disciplinary rules that may constitute misconduct (the list is not exhaustive):

* Failure to observe general rules in respect of health and safety
* Failure to observe defined organisation procedures and/or rules
* Persistent absenteeism or lateness for work
* Unsatisfactory standards or output of work
* Failure or refusal to carry out a reasonable management instruction which is within the individual’s capabilities and which would be seen to be in the interests of the organisation
* Failure to devote your time, attention and abilities to work and the affairs of the organisation during working hours. This may include the use of mobile telephones and/or IT equipment for personal communications/activity, whether owned by the organisation or employee.
* Rudeness to patients, members of the public or other employees, objectionable or insulting behaviour, unintentional harassment or bullying, use of bad or inappropriate language (whether in person or by written communications, including email and other electronic media)
* Using social media to discuss the affairs of the organisation
* Loss of licence or certification that prevents carrying out the designated role
* Unauthorised/inappropriate use of and/or negligent/willful damage to organisation equipment or other property

## Gross misconduct

Where a breach of disciplinary rules is so serious as to result in a fundamental breach of the contractual relationship between the organisation and the employee, this is considered gross misconduct. In such cases, the employee will be summarily dismissed.

The following are examples of serious breaches of disciplinary rules that may be considered gross misconduct (the list is not exhaustive):

* Fraud or theft, including unauthorised possession of the organisation’s property
* Breaches of confidentiality, data protection or security procedures prejudicial to the interest of the organisation and/or its employees or patients
* Being unfit for duty because of the misuse/consumption of drugs or alcohol
* Taking or supplying psychoactive substances, formerly known as legal highs, on the organisation’s premises
* Breach of health and safety rules that endangers the lives of, or may cause serious injury to, employees or any other person
* Bribing or attempting to bribe another individual, or personally taking or knowingly allowing another person to take a bribe
* Falsification of the organisation, patient or client records
* Physical assault (or threat of), breach of the peace or verbal abuse, swearing
* Deliberate and/or serious acts of unlawful discrimination, bullying or harassment, whether in person or by written communication, including email or other electronic media.
* False declaration of qualifications or professional registration
* Incompetence or failure to apply sound professional judgement
* Bringing the organisation into disrepute or acting in such a way as to potentially cause damage to the organisation’s reputation or its standing. This may include (possibly through the use of social media) discussing the organisation, its affairs or the affairs of its patients, partners and suppliers

## Gross negligence

Gross negligence may be considered gross misconduct resulting in dismissal without notice. This means that gross misconduct can include situations where the employee has failed to act (omissions) as well as deliberate and non-deliberate acts or conduct.

# Procedure

## Investigation

If the nature of the allegations against the employee are considered to be serious or complex, then a formal disciplinary investigation will be undertaken.

Ordinarily, no disciplinary action will be taken until the matter has been investigated and the employee concerned has been invited to a formal meeting. That meeting may be the only meeting they are invited to attend; for example, there may not be separate meetings for the investigation and disciplinary stages in some circumstances.

Any disciplinary investigation will ideally be conducted by someone who is independent of the matters being investigated, if such a person is available. That person will conduct an investigation and the findings will be presented at any hearing that takes place.

Employees do not have a right to be accompanied at a stand-alone investigatory meeting, unless the organisation has chosen, given the circumstances, not to hold separate meetings for the investigation and disciplinary stages. However, consideration will be given to employee requests.

## Suspension

While the alleged misconduct (or gross misconduct/negligence) is being investigated and/or until a hearing takes place, the employee may be suspended or assigned to other duties, during which time he or she will be paid their normal full pay rate.

Suspension is a neutral act, and not a disciplinary sanction in itself. It is normally intended to cause the least disruption to the business whilst an investigation is undertaken.

Suspension will only occur where it is considered inappropriate for the employee to remain in the workplace until the case is heard, or if it is considered that remaining in the workplace may prejudice the investigation.

Whilst on suspension the employee must stay away from work, not visit any organisation premises or make contact with staff, clients, patients or suppliers (unless otherwise authorised in writing by the organisation, for example, to contact a colleague or trades unions representative in relation to seeking advice or being accompanied at a disciplinary hearing).

## Disciplinary hearing

Should it be considered that an employee may have committed a breach of disciplinary rules, the employee will be advised of such allegations and invited to attend a disciplinary hearing. The written invitation to attend will specify; when and where the meeting will take place, the nature of the allegations made against the employee, and advise of the potential outcome (if the allegations are proven) and will provide sufficient time for the employee to prepare their case. Copies of any witness statements and other documents may be included, where relevant.

If the employee cannot attend the meeting, it will normally be rescheduled (provided the explanation for non-attendance is satisfactory) although not if it is likely to lead to unreasonable delay. A meeting will only be rescheduled once and may be held in the employee’s absence and decisions made without them if they remain unable to attend.

Should an employee be unable to attend the meeting due to sickness, it will normally be rescheduled although if the employee is unable to attend within what the organisation considers to be a reasonable period of time, then alternative ways of conducting the hearing will be looked at.

A disciplinary hearing will normally be conducted by the employee’s line manager unless there is good reason for him/her not to do so in which case another manager will be appointed, if the resources of the organisation allow.

Where the allegations against the employee could result in a written warning (or a more serious sanction) being issued then, where possible, the employee will be given at least three working days’ notice of the hearing to allow them to prepare their case.

At any disciplinary hearing, the case against the employee will be presented including any evidence, following which the employee will be given time to respond to the allegations and asked to present their own case. Either party may call upon witnesses who may assist in ascertaining the facts of the matter or present evidence. Questions may be asked by any party at any stage of the disciplinary hearing.

Following any disciplinary hearing, the employee will normally be informed of the outcome in writing, as soon as possible, normally within five working days unless there is reason for further delay.

## Stage 1 – first warning

If conduct or performance is found to be unsatisfactory, the employee will be given a written warning or performance note. Such warnings will be recorded and, normally, disregarded for disciplinary purposes after 12 months of satisfactory service. The employee will also be informed that a final written warning may be considered if there is no sustained satisfactory improvement or change.

(Where the first offence is sufficiently serious, for example because it is having, or is likely to have, a serious harmful effect on the organisation, it may be justifiable to move directly to a final written warning, without issuing a first written warning.)

## Stage 2 – final written warning

If the offence is serious, or there is no sustained satisfactory improvement or change in standards, or if a further offence of a similar kind occurs, a final written warning will be given which will include the reason for the warning and a note that if no improvement results within a reasonable period of time, action at Stage 3 will be taken.

Such warnings will be recorded and, normally, disregarded for disciplinary purposes after 12 months of satisfactory service.

## Stage 3 – dismissal or action short of dismissal

If the conduct or performance has failed to improve, or if a further offence of a similar kind occurs, the employee may suffer demotion, disciplinary transfer, loss of seniority, extension to the final written warning period, or dismissal with notice.

## Gross misconduct – summary dismissal

If, after investigation, it is considered that an employee has committed an offence of gross misconduct, the normal consequence will be summary dismissal without notice or payment in lieu of notice.

What is meant by misconduct, and gross misconduct, is given in the Definitions above.

## Appeal

The employee has the right to lodge an appeal in respect of any formal disciplinary action taken against them (including dismissal).

An employee who wishes to appeal against any formal disciplinary decision must do so in writing (an appeal against a formal warning or dismissal should give details of why the employee believes the penalty imposed is too severe, inappropriate or unfair in the circumstances), to the person named in the outcome letter within five working days of receipt of the disciplinary outcome.

The employee will be invited to an appeal hearing. The appeal procedure will normally be conducted by a person not previously connected with the process so that an independent decision into the severity and appropriateness of the action taken can be made. The employee may be represented or accompanied at any stage of the appeal hearing by a trade union representative or work colleague.

If the employee is appealing on the grounds that they have not committed the offence, then the appeal may take the form of a complete re-hearing and re-appraisal of all matters so that the person/panel who conducts the appeal can make an independent decision of the case before deciding to uphold or refuse the appeal.

Following any appeal hearing, the employee will normally be informed of the outcome in writing, as soon as possible, normally within five working days of the hearing, unless there is reason for further delay.

Where there is an appeal against a dismissal, an employee will not be entitled to be paid or reinstated (unless they are entitled to notice) between the date of dismissal and the conclusion of the appeal process. In the event however that the decision to dismiss is overturned on appeal, the employee will be reinstated with immediate effect and they will be paid for any period between the date of the original dismissal and the successful appeal decision. Their continuous service will not be affected.

The decision of the appeal panel is final and binding on the employee. There is no further right of appeal.