

Trust-wide Policy

For

Disciplinary

A document recommended for use

In: All Trust Directorates

By: Trust Management and Employees

For: All Trust Staff

Key Words: Disciplinary

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1	June 2003	New Policy
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Equality Impact Assessment

This document has been reviewed in line with the Trust's Equality Impact Assessment guidance and no detriment was identified. This policy applies to all regardless of protected characteristic - age, sex, disability, gender-re-assignment, race, religion/belief, sexual orientation, marriage/civil partnership and pregnancy and maternity.

Dissemination and Access

This document can only be considered valid when viewed via the East & North Hertfordshire NHS Trust Knowledge Centre. If this document is printed in hard copy, or saved at another location, you must check that it matches the version on the Knowledge Centre.

Associated Documentation

- Trust's Disciplinary
- Raising Concerns
- Appeals
- Dignity and Respect at Work
- Grievance and Capability policies

Review

This document will be reviewed within one year of issue, or sooner in light of new evidence.

Key Messages

- To outline clear approach to managing disciplinary matters
- To ensure staff are treated fairly during disciplinary procedures
- To ensure disciplinary matters are dealt with timely and efficiently

1. INTRODUCTION

East and North Hertfordshire NHS Trust requires high standards of conduct from all staff. When conduct falls short of required standards this policy and procedure is designed to ensure that a fair, systematic and consistent approach is followed.

2. PURPOSE AND SCOPE

2.1 The Disciplinary Policy and Procedure provides a framework to manage concerns which arise about someone's conduct in a fair and timely way. It aims to help all employees achieve and maintain required standards of conduct.

2.2 The Policy applies to everyone employed by East and North Hertfordshire NHS Trust. It applies to all categories of misconduct by non-medical and medical staff. For further information about managing the conduct issues of Doctors and Dentists see the Policy and Procedure for Handling Concerns about Doctors and Dentists' Conduct, Performance and Health.

3. POLICY STATEMENT

- 3.1 Managers are responsible for ensuring that their team are aware of the required standards of conduct. Managers will ensure that concerns about conduct are brought to the attention of staff at the earliest opportunity.
- 3.2 Managers should try to resolve minor matters of concern informally. If informal approaches do not bring about improvement or, if the misconduct is sufficiently serious, the formal stages of the disciplinary procedure will apply.
- 3.3 Managers will ensure that all action taken under this policy and procedure is reasonable. Employees will be given the opportunity to know the reasons and the nature of evidence for disciplinary action. Employees will be given the opportunity to be represented at all formal stages of the procedure and they will have the opportunity to respond fully to allegations before disciplinary action is taken. Managers will ensure that the main points of a formal meeting are summarised in an outcome letter. Everyone has the right to appeal against any formal disciplinary action.
- 3.4 Information relating to disciplinary cases will be shared only with those who have a legitimate right to be informed. Breaches of confidentiality by any party to a disciplinary process may lead to disciplinary action.
- 3.5 The Trust will provide training on the application of the disciplinary procedure to ensure managers have the skills and confidence to apply the procedure appropriately.

4. THE PROCEDURE

4.1 Investigation

- 4.1.1 When allegations of misconduct arise, an immediate preliminary investigation to establish the facts of a case will be carried out before formal disciplinary action is taken. As soon as the allegation comes to light the manager will meet the person to establish their version of events and determine if the case requires further investigation. Statements may be sought at this time to support the preliminary investigation. Employees may wish to consult their trade union representative if asked to submit a written statement in relation to an alleged incident.
- 4.1.2 Once the line manager has completed a preliminary investigation, they will confirm with the individual(s) concerned whether or not a full investigation is required or if the matter can be dealt with informally. The line manager should seek advice from the Employee Relations Advisory Service if they consider that a formal investigation may be required. The line manager can complete the formal investigation, or in some circumstances they will delegate responsibility for the investigation to another appropriate person.
- 4.1.3 Employees are entitled to seek trade union representation and advice. It is the responsibility of the employee(s) concerned to arrange for representation. Should a representative be unable to attend a planned meeting then meetings may be rescheduled at the employees request where to do so does not unreasonably delay the investigation.
- 4.1.4 The investigating officer will provide the person with an electronic or hard copy of notes taken at investigation meetings. A copy will also be sent to any representative if present at the meeting.
- 4.1.5 Investigations by the Counter Fraud Team and Police are separate from investigations carried out in accordance with this procedure. The Trust will only delay its disciplinary processes because of other investigations when it is absolutely necessary.

4.2 Informal Resolution – Conversation of Concern

The Trust recognises that cases of minor misconduct are best dealt with informally and quickly. A quiet word is often all that is required to improve conduct. In some cases additional training, coaching and advice may be needed. When there are concerns about conduct, managers will ensure that they talk to the person in private as soon as possible, normally within a few days. This will be a two-way discussion, aimed at discussing shortcomings in conduct and encouraging

improvement. Criticism should be constructive with an emphasis on finding ways to improve. Where improvement is required the manager will make sure that the person understands what needs to be done, how their conduct will be reviewed, and over what period. Managers should keep brief notes of any informal action for reference purposes. Following a Conversation of Concern, managers will also be required to summarise concerns and expectations in the form of a letter, a copy of which will be placed on the personal file. If informal action does not bring about the required improvement, or the misconduct is too serious to be classed as minor, formal disciplinary action will be considered.

4.2.1 Many conversations of concern will take place before the need for a formal investigation is required. In some instances, following the formal investigation, it may be considered that there is no case to answer and that no formal action is required in respect of the concerns raised however a conversation of concern may be required to outline any concerns and expected behaviours moving forward. Where a conversation of concern follows a formal investigatory process then the line manager or investigating officer may be accompanied by a representative from the Employee Relations Advisory Service and the individual concerned may be accompanied to the meeting by a trade union representative or colleague. A written summary of this meeting will be provided and retained on the personal file accordingly.

4.3 Formal Procedure – see Appendix A

4.3.1 At all formal stages of the Disciplinary Procedure, once the matter has been investigated and it has been established that there is a case to answer, a disciplinary hearing will be arranged with minimum delay.

4.3.2 Employees will be given seven calendar days' notice of all formal meetings with the exception of a Disciplinary Hearing when fourteen calendar days' notice will be provided. Written notice will be provided, including who will be present at the hearing. The manager chairing the meeting will provide the employee in advance with a copy of the written details of the allegation and any witness statements or supporting documentation. Should a copy be required for a representative then an electronic copy will be supplied. The employee must be advised if a formal warning or dismissal is a potential outcome. Employees, managers and representatives must take all reasonable steps to attend.

4.3.3 Employees have the right to be accompanied by an accredited trade union representative, colleague or a friend, not acting in a legal capacity. Where action is proposed involving an accredited trade union representative, the appropriate full time officer will be contacted before action is taken. It is the responsibility of the employee to arrange representation. When an allegation arises which might result in formal disciplinary action managers should a) advise employees to seek trade union advice b) ask the employee to notify the manager of the name and contact details of their trade union representative. When it is necessary to organise meetings at which staff are entitled to representation, if the manager knows the name of the trade union representative, managers should liaise with the representative to try to agree a mutually convenient date.

4.3.4 The manager hearing the allegation will be accompanied by a professional HR adviser if considered necessary. An HR adviser will be present at meetings at which first written and final written warnings are a potential outcome and they will always attend hearings at which dismissal is a potential outcome.

4.3.5 If dismissal is a potential outcome, the chair of the meeting must be employed in sufficiently senior position, i.e. band 8c or above, and have received adequate training.

4.3.6 At the meeting, the investigating manager will state the nature of the allegations and outline the case by going through the available evidence. The employee will be given full opportunity to respond to the allegations. Whilst the employee has to respond directly to any questions, the employee's representative has the right to outline the employee's case, ask questions and clarify questions and statements for and on behalf of the employee. In considering the sanction, the manager will take account of the employee's previous work record and other mitigating factors. The meeting will follow the procedure in Appendix A.

- 4.3.7 Witnesses will be called if they have a contribution to make to the case. If statements from Trust employees are presented as evidence, every reasonable effort will be made to ensure that they attend the meeting, unless it is agreed with the member of staff that the facts are not in dispute and/or the presence of one or more witnesses would serve no material purpose.
- 4.3.8 The outcome of the meeting will be confirmed in writing, within 7 calendar days. If disciplinary action is taken the letter will include details of the complaint, the improvement required (if appropriate), the sanction issued and the right to appeal. It will also state that further disciplinary action may be taken if there is not a satisfactory improvement.
- 4.3.9 The formal process for managing misconduct for medical and dental staff varies slightly for consultants and in cases of professional misconduct. For details see The Policy and Procedure for Handling Concerns about Doctors and Dentists' Conduct, Performance and Health.

5. FORMAL DISCIPLINARY SANCTIONS

- 5.1 The seriousness of the misconduct will determine the level of disciplinary action to be taken. The procedure may be entered at any stage.
- 5.2 **Stage 1 - First Written Warning:** If the employee fails to meet required standards following informal action or if the offence is sufficiently serious to warrant moving straight to the formal stages, a First Written Warning may be given. First Written Warnings are confirmed in writing and apply for 6 months after which time they lapse.
- 5.3 **Stage 2 - Final Written Warning:** If the failure to meet required standards continues or if the offence is one of sufficiently serious (but not gross) misconduct, a final written warning may be given. Final written warnings are confirmed in writing and apply for 12 months after which time they lapse. In exceptional circumstances, where a final written warning is an alternative to dismissal, final written warnings will be live for up to 24 months.

Where a formal warning is issued under section 5.2 & 5.3 please see also section 6.

- 5.4 **Stage 3 – Dismissal:** If conduct remains unsatisfactory or if the offence constitutes gross misconduct, dismissal will normally result. Except in cases of gross misconduct, dismissal will be with notice or with pay in lieu of notice. Cases of gross misconduct will result in summary dismissal, i.e. dismissal without notice. Dismissal due to professional misconduct will be reported to the relevant professional body as appropriate.

Consideration should also be given as to whether a referral needs to be made to the Independent Safeguarding Authority, and this decision should be made in consultation with the Safeguarding Lead Nurse.

6. ADDITIONAL ACTION AS A RESULT OF BEING ISSUED WITH A DISCIPLINARY WARNING

If a first or final written warning is issued then the member of staff will not be awarded an incremental pay increase on the incremental date that follows the warning.

- 6.1 In addition to the issue of a final written warning for up to 24 months, the following actions may be appropriate:

- Transfer to an alternative department / site.
- Change of shift or working pattern.

7. APPEALS

Appeals will be handled in accordance with the Appeals Policy and Procedure.

8. DISCIPLINARY RULES

8.1 General Rules

The following rules give an indication [but not an exhaustive list] of the circumstances that could lead to disciplinary action.

- All staff are expected to combine prompt and efficient service with a concern and respect for the feelings of others, including patients, visitors and colleagues, whatever their background.
- Employees must be honest, open and truthful in all their dealings with patients and the public.
- All staff are expected to attend for duty for the hours laid down in their contracts of employment and as agreed with their managers.
- Employees have to attend work unless they have prior permission to be absent. In cases of sickness or sudden domestic emergency, staff have to inform their manager in accordance with departmental notification rules.
- During sickness absence, all staff are expected to keep absence assist informed and update their manager of their progress and submit sickness certificates promptly.
- Employees should carry out reasonable instructions.
- Anyone undertaking other employment outside their contractual hours must ensure it does not hinder or conflict with the interests of their employment with the Trust or their duty to abide by relevant professional codes of conduct or have any adverse effect upon their work performance. Staff should inform their managers of employment outside working hours.
- All staff are expected to comply with health and safety requirements.
- All staff are expected to treat Trust facilities and property with respect.
- All staff must inform their managers of any charge, caution or conviction, relating to acts committed on or off duty, at the earliest possible opportunity.
- All staff should at all times undertake their work in accordance with Trust and departmental policies and procedures and, where appropriate, their professional codes of conduct.

8.2 Serious Misconduct

- Repeated acts of minor misconduct
- Adversarial relationships with colleagues, that prevents the employee or their colleague(s) from carrying out their duties satisfactorily.
- Breach of confidentiality.
- Acceptance of bribes.
- Inappropriate use of the Internet/e-mail or social networking
- Unauthorised and/or inappropriate use of computers and/ or software, including the use of personal software on the Trust's system.
- When an employee recklessly or without reasonable cause acts in a manner that damages or is likely to damage the reputation of the Trust.
- Use of foul language.
- Failure to comply with a health and safety requirement.
- Failure to comply with mandatory trust procedures.
- Failure of managers and/or individuals to ensure statutory and mandatory training is completed unless there are exceptional circumstances.
- Any act of negligence or breach of duty of care, e.g. failure to take reasonable care of the health and safety of oneself, a colleague or patient whom it is reasonably foreseeable may be affected by the act or omission.
- Making malicious, vindictive or deliberately untrue statements against colleagues or patients.
- Conviction for an offence that is liable to adversely affect the performance of the contract of employment and/or the relationship between the employer and the employee.
- Loss, damage to or misuse of the Trusts equipment, facilities and/or property, assets or funds through wilfulness, negligence or carelessness.

- Making untrue statements regarding another employee.
- Failure to comply with Trust information governance protocols, leading to the risk of a breach of data security.

8.3 Gross Misconduct

The following offences are among those regarded as serious enough to warrant summary dismissal. (The list is not exhaustive).

- Theft
- Fraud
- Deliberate falsification of records or documents
- Failure to maintain professional registration where it is a requirement of the job
- Working without valid "Right to Work" documentation
- Working without statutory required qualifications
- Working elsewhere whilst on sick leave
- False declarations made during the recruitment process
- Receipt of money, goods, favours or excessive hospitality in respect of services rendered
- Assault – verbal or physical, including fighting
- Harassment or bullying
- Ill treatment/abuse of patients.
- Unlawful discrimination
- Unauthorised Absence
- Negligence which could result in serious loss, damage or injury
- Reckless behaviour
- Being unfit for duty through the effects of alcohol or drugs
- Sleeping on duty (this does not include sleeping during agreed breaks or out of hours arrangements)
- Abuse, misuse or deliberate damage of Trust property or equipment
- Serious breach of confidentiality
- Serious breach of data security requirements
- Serious breach of Health and Safety and other statutory rules
- Serious breach of a professional code of conduct
- Failure to act impartially or to declare interest in a contract or business in which the Trust is engaged or considering
- Scientific Misconduct - Fabrication, falsification, plagiarism or deception in proposing, carrying out or reporting results of research
- Breach of Trust - Any act which causes irreparable damage to the relationship of trust and confidence between the employee and the Trust.

9. SUSPENSION [ALSO KNOWN AS EXCLUSION]

9.1 Suspension is appropriate in cases of alleged misconduct where there is:

- **EITHER** a need to protect patients, colleagues or the business interests of the Trust pending a full investigation of allegations of gross misconduct
- **OR** the presence of someone is likely to hinder an investigation
- **AND** there is no workable alternative to suspension

Please refer to Appendix B if you consider that there may be a requirement to suspend an employee(s). A record of this must be kept along with any case file where suspension is considered.

Exclusion may also be used to defuse situations, e.g. following a fight.

- 9.2 Suspension will be for the minimum time necessary and will only be used after alternative ways of managing risk have been considered, such as clinical suspension, other restrictions on normal duties, temporary change of location etc.
- 9.3 Suspension is not a form of disciplinary action however breaches of the conditions attached to exclusion may lead to disciplinary action.
- 9.4 The decision to suspend will normally be taken by the Director of Workforce and OD and the Director of Nursing for clinical staff. If a sufficiently senior Director is not available when an incident occurs which appears to warrant suspension, the most senior member of staff on duty (typically the Duty Matron or Executive On-Call) will ask the person to leave the premises subject to an appropriate manager taking charge of any subsequent action no later than the next working day.
- 9.5 It is good practice to ensure that staff are appropriately supported if the need to suspend an individual from duty arises. For this reason staffside will be contacted in advance of any suspension to seek their support at suspension meetings if they are available and regardless of trade union membership. However, the unavailability of a representative will not prevent suspension from taking place. Where possible, suspensions should take place at a face to face meeting where this does not pose a risk to the individual concerned or other Trust colleagues and where this will not significantly delay an investigation commencing. When a manager considers that suspension may be required; this should be discussed with the Employee Relations Advisory Service and consideration should be given in line with Appendix B. A manager should not carry out a suspension on their own and should, if possible, be accompanied by another senior manager or HR representative.
- 9.6 When undertaking a suspension, the person should be told:
- The reason for suspension.
 - They must not do anything that might interfere with the investigation.
 - They are not allowed to contact their work area or approach anyone involved, or likely to be involved, in the case.
 - If they would like to contact witnesses who may support their case, they should do this via the investigating manager, or, if different, their own manager, or their Trade Union representative.
 - Except in medical emergencies, they are required to remain off Trust premises unless given express permission by the line manager or a named deputy to attend for a specific purpose, e.g. a meeting a representative, an investigation meeting, a counselling appointment, a medical consultation etc
 - They have to be available between 9.00 am to 5.00pm, Monday to Friday, excluding public holidays, to attend meetings. Permission for any periods of absence, e.g. annual leave, must be requested.
- 9.7 Details of the suspension are confirmed in writing within 3 working days. The original letter must be sent via recorded delivery to the staff member; additional copies to be sent via standard mail and email if appropriate.
- 9.8 The suspending manager must ensure that the person hands in any Trust property including keys, ID card, Trust mobile phone, bleep, laptop or any other mobile device at the time of exclusion.
- 9.9 Suspension is on normal pay, i.e., the pay the person would have received if they had been at work based on a 12 week reference period (excluding pay for bank shifts). Employees will receive no pay when they are suspended because they have allowed their professional registration to lapse or because they have lost their entitlement to work under the Immigration and Asylum Act. Employees on bank contracts receive no pay during suspension.
- 9.10 A suspended employee is not allowed to undertake any paid work during the hours for which they are contracted to work. Employees suspended for clinical / professional reasons must not undertake any work, paid or unpaid, without prior permission from the appropriate manager.
- 9.11 Most investigations should be concluded within 21 days of suspension. Where this is not possible employees should be informed that they remain suspended and are told when the

investigation is likely to be completed. Investigating managers should make themselves available to meet employees to discuss the progress of the investigation.

9.12 Exclusion arrangements for Medical & Dental Staff are outlined in the Policy and Procedure for Handling Concerns about the Conduct, Performance and Health of Doctors and Dentists.

10. CRIMINAL OFFENCES AND OFFENCES COMMITTED OUTSIDE WORK

If an employee is charged or convicted for an offence, whether committed on or off duty, the Trust will consider whether the offence renders the employee unsuitable for continued employment and may take disciplinary action up to and including dismissal. The Trust reserves the right to take action independently of any legal proceedings.

11. DUTIES WITHIN THE ORGANISATION

11.1 **Managers** must ensure that their employees are aware of the required standards of conduct and handle disciplinary concerns fairly and promptly in accordance with this policy and procedure. They are responsible for promoting a culture in which concerns are dealt with openly and fairly, with an emphasis on learning from mistakes. Managers must log formal disciplinary cases with the Employee Relations Advisory Service (ERAS).

11.2 **Our employees** are required to maintain good standards of behaviour and comply with the policy and procedure. Employees are expected to raise concerns about colleagues' behaviour to an appropriate manager, especially where there could be consequences for patient safety. The Whistleblowing Policy applies.

11.3 **Employee Relations Advisory Service (ERAS)** advises managers on the application of the procedure in cases up to and including dismissal and appeals. To get advice from ERAS phone 01438 285757 or email eras.enh-tr@nhs.net

11.4 **HR Business Partners** will coach line managers to develop the skills necessary to deal with cases confidently and effectively. The Employee Relations Advisory Service will, along with staff side partners, ensure that the policy is regularly reviewed and monitored.

11.5 **Trade Union representatives** will work in partnership with managers to ensure that the policy and procedure is applied in a fair, consistent and timely manner. Where an allegation arises, trade union representatives will work with other stakeholders to ensure that decisions can be taken promptly, thereby minimising staff anxiety. If an accredited Trade Union representative's request for time off to attend a meeting under the Disciplinary Procedure is refused and they believe the refusal to be unreasonable, they should raise the matter with the Head of HR.

12. IMPLEMENTATION AND MONITORING

12.1 Advice and support on the application of this policy and procedure can be obtained from the ER Advisory Service [01438 285757 or eras.enh-tr@nhs.net], and trade union representatives.

12.2 Managers will ensure that the disciplinary procedure is applied fairly. The application of the formal procedure by ethnicity, gender, disability and age is monitored by the Workforce and OD department.

12.3 All letter templates concerned with the implementation of this policy can be found on the Employee Relations Advisory Service knowledge centre pages or can be obtained by contacting the service as above. .

13. MISAPPLICATION OF THE PROCEDURE

If an employee believes that the policy has not been applied properly, they can submit a statement of grievance.

Appendix A: Procedure for Disciplinary Hearings

1. Introduction by manager chairing the hearing

- Introduce those present
- Confirm purpose of the hearing is to consider whether disciplinary action should be taken in accordance with the Disciplinary Policy and Procedure
- Confirm that all parties have received the necessary paperwork
- Outline procedure for the hearing

2. Investigating manager presents case

- Investigating manager outlines findings
- Investigating manager calls any witnesses
- Employee/representative and chair/HR Adviser may question the witnesses
- Investigating manager may re-examine the witnesses
- Employee/representative and chair/HR Adviser may ask questions about the case in order to clarify facts

3. Employee/representative responds to the management case

- Employee/representative responds to the allegation, offers an explanation for the alleged misconduct and/or raises any special or mitigating circumstances to be taken into account
- Employee/representative calls any additional witnesses
- Investigating manager and chair/HR Adviser may question the witnesses
- Employee/representative may re-examine the witnesses
- Investigating manager and chair/HR adviser may ask questions of the employee in order to clarify facts

4. Summing up – no new evidence presented at this stage

- Investigating manager sums up
- Employee/representative sums up

5. Adjournment for manager to consider case

- Agree with all parties how and when the decision will be notified to the employee / representative if time does not permit decision to be given in person following the adjournment. Where the conduct of more than one member of staff is being considered in relation to the same incident, the adjournment between the Disciplinary Hearing and the Decision Meeting may be a few days, until all the Disciplinary Hearings have been completed.

6. Notification of decision – manager can either verbally inform or notify in writing the employee/representative of

- The outcome of the hearing/disciplinary action
- The right of appeal
- The outcome of the hearing to be confirmed in writing within five working days of the date of the hearing.

Appendix B – Consideration to Suspension

