



## DISCIPLINARY POLICY AND PROCEDURE

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## **1 Purpose**

- 1.1** It is to the mutual benefit of both the staff and the management of the Trust that an agreed procedure is available for achieving and maintaining standards of conduct. This procedure observes current employment legislation and the ACAS Code of Practice on Disciplinary and Grievance.,
- 1.2** This procedure has three main objectives, the first is, when necessary, to improve the conduct of staff, the second is that management endeavour to take corrective action as appropriate and where necessary, and the third objective is to ensure that poor conduct is dealt with reasonably and consistently across the Trust through a system of warnings.
- 1.3** All employees will have the right, if they wish, to be represented by a work colleague or a Trade Union representative, at all stages of the policy / procedure. However, the person accompanying the employee may not act in a legal capacity during any hearing/meeting
- 1.4** Where this policy is required for an accredited trade union representative, the Trust's Trade Union Recognition Agreement will be followed.
- 1.5** It is the responsibility of management to ensure staff are aware of this policy and procedure. It is the responsibility of staff to ensure that they are familiar with the contents of this policy and procedure.
- 1.6** The Human Resources Department will provide advice and guidance concerning the procedure for all parties.

## **2 Scope**

- 2.1** The Policy & Procedure applies to all employees of the West Midlands Ambulance Service NHS Foundation Trust (hereinafter known as "the Trust"), and supersedes any other Disciplinary Policy & Procedures currently in place in the Trust.
- 2.2** This document would not normally apply to issues of capability, sickness absence or clinical competence. These are dealt with in separate policies/ procedures. However, it is noted that in cases of Clinical Misconduct, an investigation under the Disciplinary Policy may be necessary.
- 2.3** Specific measures are in place to counter potential fraud and these are detailed in the appropriate Trust Policy.
- 2.4** The Trust will endeavour to resolve matters within the context of this procedure within reasonable timeframes. This will normally be 3 months, although some cases may extend beyond this timeline.
- 2.5** Conduct issues referred from the Investigation Policy related to misconduct will be dealt with through this policy and procedure. Any investigation that

commenced under the Investigation Policy will continue, and will form part of the investigation process in this Policy and Procedure.

- 2.6** Instigating Managers may consider the use of a Root Cause Analysis, in line with the agreed mechanisms within the Trust, either before, during or after an investigation.

### **3 Investigation**

All matters investigated within this procedure will use the following principles:

- 3.1** The manager who commissions the investigation will be known as the Instigating Manager who will appoint an Investigation Team.
- 3.2** The Investigation team shall comprise:
- The individual who will lead the investigation into the allegation(s), and will be known as the "Investigating Officer". This will be a person with sufficient seniority and experience and will be a higher ranked officer than the individual being investigated to deliver a competent investigation.
  - An nominated individual, supporting the Investigating Officer as required.
- 3.3** All members of staff will be informed of investigation meeting(s) in writing, with a minimum of 48 hours' notice (unless agreed between all parties to take place earlier), together with the allegations being investigated (anonymised as appropriate) and where appropriate, PRF, anonymised.
- 3.4** Reasonable time will be allocated to members of staff and their representative prior to the interview for preparation.
- 3.5** The purpose of investigation meetings is to gather evidence relating to the allegations under investigation
- 3.6** Questions will primarily be asked by the Investigating Officer, however the nominated individual may also ask questions.
- 3.7** Records will be made of all investigation meetings and of statements made by the employee and the employee will be asked to sign, date and return the notes to the Investigating Team. A copy will be made available to the employee. This process should be completed on the same day as any interview unless mutually agreed.
- 3.8** Where appropriate the Investigating Officer may request a statement from a witness without interviewing them in person.

This statement should be signed and dated by the witness. This does not negate the need to interview the witness if required but the witness should be advised that they may be called to attend the disciplinary hearing and maybe questioned by those present at the hearing.

- 3.9** At the conclusion of the investigation, the Investigation Team will produce a report and issue it to the Instigating Manager for review. Advice will be sought from Human Resources where required for procedural matters.
- 3.10** If a grievance is raised about the investigation this will be dealt with as part of the disciplinary process.
- 3.11** The employee may, during the investigation, be given and take the opportunity to accept responsibility for a breach of conduct, under a “quick resolution”. A full investigation may be forestalled by the individual submitting a full and detailed explanation for their conduct. This approach could be via management, but most likely requested by the employee or their representative. The Instigating Manager will consider whether a 3.11 resolution is appropriate or whether to continue with the ongoing formal disciplinary process. In respect of a 3.11 meeting a single disciplinary sanction may be applied, with the prior agreement of all parties, and conducted by the Line Manager, upon advice of the Instigating Manager (where these two roles are separate), with a member of the Human Resources Department present. Disciplinary sanctions available under this paragraph 3.11 range from verbal warnings to final written warnings. By their nature, 3.11 discussions are “without prejudice” and should not form part of the Investigation Pack, any other documentation, or be verbally referred to at a later date should the 3.11 not be accepted

## **4 Suspension**

### **4.1** Suspension will only be taken:

- in cases of alleged gross misconduct;
- to protect patient / staff safety, or Trust property; or
- to allow for an unbiased investigation, where the Trust considers that presence of the staff member at work might interfere with the investigation.

### **4.2** Suspension is a neutral act, at full pay (in line with the individual’s contract i.e as per Agenda for Change Terms and Conditions.)

### **4.3** Suspension will be considered as a “last resort” action following consideration of any other alternatives, which may be available such as temporary alternative duties.

- 4.4 Any decision to suspend will be sanctioned by a Senior Manager / equivalent / above, although the action may be delegated to a manager, and formally confirmed in writing within 3 working days. Every effort will be made to ensure a TU Representative is available at the time of suspension.
- 4.5 Suspension may occur at any point during an investigation.as per 4.1.
- 4.6 The individual may be reinstated at any point during the investigation if the manager initiating the suspension is of the view that the reasons for suspension are no longer appropriate.
- 4.7 Suspension is precautionary, pending the outcome of the investigation or disciplinary proceedings should they ensue. No record will be kept on the personal file, of any suspension, which does not lead to disciplinary action.
- 4.8 An employee who is suspended for longer than 4 weeks shall have the right to submit a written request a review of their suspension through the Senior Manager in conjunction with the Head of Human Resources; a written reply will be given to the employee and/or Representative.

## **5 Counter Fraud and Security Management Service**

- 5.1 It is important for all staff to be aware that some forms of misconduct could potentially be considered 'fraudulent' under criminal law, and could lead to criminal prosecution as well as disciplinary or civil action. Examples could include (but are not limited to) deliberately making false or exaggerated mileage claims on travel expenses forms; making false claims on timesheets for hours not actually worked; making false statements about, or forging documentation relating to, qualifications/references when applying for a particular job; working elsewhere whilst off sick; or obtaining financial or other property/services of the Trust by deception.
- 5.2 Where a disciplinary issue of possible fraud of this nature is being considered, the Instigating Officer must discuss the matter in the first instance with Trust's Local Counter Fraud Specialist (LCFS). Depending on the exact nature and scale of the possible misconduct, it may be that a criminal investigation into the activities of the employee is considered necessary. In such cases, commencing disciplinary action at the outset may not always be appropriate, especially if it would alert the employee to any criminal investigation and lead to the possible altering or destruction of evidence of potentially criminal activity. In any such situation, decisions on the way to proceed should only be taken after consultation with the LCFS, the Director of Finance and the Director of Workforce and Organisational Development.

## **6 Police Investigation**

- 6.1** Any individuals under investigation by the Police are duty bound to inform their manager of this, and to provide information about the police investigation. It may be necessary or appropriate for the Trust to also investigate under this policy and procedure, but all cases will be considered on an individual basis.
- 6.2** If remanded in custody, or if any bail conditions are imposed which prevent you from working, you will not be available for work and therefore will not be entitled to receive pay during the period of any remand/bail conditions. This does not stop the right of an employer to investigate the issue for any implications on the employment of the member of staff. (see 4.3 also).

## **7 Record Keeping**

- 7.1** A record must be made and retained of all action taken at every stage of this procedure.

## **8 The Disciplinary Hearing**

- 8.1** On completion of the investigation a report detailing the Investigating Officer's findings is submitted to the Instigating Manager. A decision as to whether to convene a disciplinary hearing or not, will be made by the Instigating Manager, who cannot participate on the disciplinary panel.
- 8.2** The employee must be given a minimum of 14 calendar days advance notice that they are attending a disciplinary hearing. Two copies of the investigation report will be provided to the employee. The employee must submit to the Chair of the panel any paperwork they wish to be considered, and the names of any witnesses they will be calling, such information to be provided not less than 3 working days in advance of the hearing. Any documentation not submitted within these timeframes will be considered by the panel at their discretion.
- 8.3** Patient details must be anonymised in the documentation issued to the disciplinary hearing and any subsequent appeal. Further appropriate details may be made available to the employee during the investigation meetings so that the employee can identify the incident/patient in question.
- 8.4** Every effort will be made to ensure that employees and their representatives are able to attend hearings as per the Recognition Agreement. In the event of any employee, or their representative being unable to attend, the hearing will be re-arranged, providing the employee gives 5 days' notice, or rearranged as mutually agreed. In order to ensure a timely resolution of the issue, unless there are wholly exceptional circumstances, hearings will only be re-scheduled twice in total. Failure to attend on the second occasion will mean that the case may be heard in the employee's absence and considered on the evidence available to the panel.

- 8.5** The disciplinary hearing will be chaired by an appropriate manager not directly involved with the management of the employee. Panel membership will be a minimum of two persons with a member of Human Resources department also being present to provide advice on areas of law, procedure and consistency. The HR member will not be a decision-maker on the panel. The Investigation will be presented with the supporting facts and material. The procedure to be followed appears at Appendix 1.
- 8.6** Whilst the procedure is designed to be a series of progressive warnings it may be necessary to proceed directly to the use of a written or final written warning, or even dismissal, depending upon the seriousness of the offence and therefore this procedure allows for any appropriate sanction to be imposed as the panel considers appropriate..

## **9 Outcome of Disciplinary Sanction**

- 9.1** With the exception of a 3.11 outcome, a hearing will precede the award of a disciplinary sanction.

In determining the level of sanction consideration will be given to the employee's length of service, past performance, and other mitigating factors which may be relevant

**9.2 Formal Verbal Warnings:**

For a minor offence or offences a formal verbal warning may be given. This warning will make it clear that further misconduct will render the employee liable for further disciplinary action involving more serious consequences.

**9.3 First Written Warnings:**

For a more serious offence a first written warning may be given for a first offence, or for the repetition of a lesser offence after a formal verbal warning has previously been given, a first written warning may be given. This will set out the nature of the offence and informs the employee that further misconduct is liable to result in further disciplinary action under this procedure.

**9.4 Final Written Warnings:**

A final written warning may be given for first offences of a serious nature or for an offence after a first written warning has been given. . This warning will set out the nature of the offence and informs the employee that further misconduct of any sort would render him/her liable to further action under this procedure and could result in dismissal.

**9.5 Time Limits:**

The length of time a warning remains active on an employee's record will be determined by the Manager and / or Panel after considering all relevant facts, but will normally fall within the following guidelines:

Verbal Warning	Norm: 3 Months but maybe extended to 6 months
Written Warning	Norm: 6 Months but maybe extended to 12 months
Final Warning	Norm: 12 Months

Once spent, it will be removed from all files relating to the individual.

#### **9.6 Level of Authority:**

A Senior Operations Manager / Head of Department / equivalent / above will chair the disciplinary panel.

A Senior Operations Manager / Head of Department / equivalent / above has the authority to dismiss.

## **10 Dismissal**

**10.1** Where an employee who has a final written warning and commits a founded further act or acts of misconduct, the employee may be liable to dismissal with pay in lieu of notice.

Where summary dismissal is warranted, then the dismissal will take immediate effect and will not attract pay in lieu of notice.

**10.2** The Chief Executive Officer and Executive Directors may only be dismissed by the remuneration committee chaired by the Chairman of the Trust.

**10.3** The result of the hearing, and details of the right of appeal, will be confirmed in writing within five working days.

**10.4** In circumstances where there is evidence indicating that a registered individual's fitness to practice has been impaired, the Trust has a duty to notify the matter to the relevant professional body, e.g. Health Care Professions Council (HCPC)

Also consideration should be given to whether an Independent Safeguarding Authority Referral form should be completed in relation to the following areas:

- Harmed or poses a risk of harm to a child or vulnerable adult
- Satisfied the harm test; or
- Received a caution or conviction for a relevant offence

## **11 Appeals**

**11.1** An appeal may be made after the imposition of a disciplinary sanction. The appeal will involve a review of the sanction imposed.

**11.2** The employee is required to appeal in writing, citing the grounds for the appeal. These could include a perceived unfairness of the judgment, the severity of the penalty, new evidence coming to light, or procedural irregularities. Any appeal should be made within 7 calendar days, 14 calendar days for dismissal, of the employee receiving written notification of disciplinary action. All appeals must be in writing and addressed to the Director of Workforce and Organisational Development.

**11.3** The disciplinary hearing will be chaired by an appropriate manager not directly involved with the management of the employee. Panel membership will be a minimum of two persons with a member of Human Resources department also being present to provide advice on areas of law, procedure and consistency. The HR member will not be a decision-maker on the panel. The Investigation will be presented with the supporting facts and material. The procedure to be followed appears at Appendix 2.

In all cases of dismissal, the appeal will be chaired by a Director of the Trust. In all other cases, the appeal panel will be chaired by a manager of equal or higher seniority to the chair of the disciplinary hearing.

**11.4** The employee shall have the right of appearing personally before the appeal panel or represented by a work colleague or Trade Union representative.

**11.5** At appeal the panel may decide to uphold, reduce the penalty or dismiss the sanction.

**11.6** Where new evidence is presented either by management or the employee, the appeal panel, in consultation with staff side where appropriate, will determine how best to proceed.

**11.7** The Procedure to be followed at a Disciplinary Appeal Hearing is attached at Appendix 2.

## **12 Gross Misconduct**

**12.1** This is regarded as misconduct of such a nature that it fundamentally breaches the contractual relationship between the employee and the employer and justifies management in no longer accepting the continued presence of the employee at the place of work.

**12.2** The following list provides examples of offences which are normally regarded as gross misconduct:

- Theft, fraud, deliberate falsification of records
- Patient abuse
- Fighting, assault on another person
- Deliberate damage to organisational property
- Serious incapability through alcohol or being under the influence of illegal drugs

- Serious negligence which causes unacceptable loss, damage or injury
- Serious act of insubordination
- Unauthorised entry to computer records.
- Bringing the Trust into disrepute
- Bribery
- Actions of professional misconduct, including where the regulator is taking action.

**12.3** This list is neither exclusive nor exhaustive. Whether or not a particular action constitutes an offence, which falls into this category, will depend upon a number of factors including the degree of seriousness and the responsibilities of the employee. Management action following an offence will take into account any extenuating circumstances together with the employee's previous record.

### **13 Action Short of Dismissal**

#### **Decision to offer a downgraded post:**

In some cases, the downgrading of an individual may be considered as an alternative to dismissal following a disciplinary hearing. However, a post of a more suitable grade would have to be available. In such circumstances, the employee should be informed that as an alternative to dismissal there is the option of alternative employment which would be subject to the following conditions:-

- That the individual agrees to a variation to their contract of employment
- That if the post offered is of a lower grade and with altered conditions of employment, protection arrangements would not apply.
- Where the employee accepts the alternative offer of employment there is no reason for appeal consequently the right of appeal would be waived.
- A final written warning would automatically be issued and remain on the employee's file for 12 months, and as a condition of the warning the employee will not apply for any higher graded posts in the Trust during the time of the warning.
- That the employee be given time to consider their decision on the offer of alternative employment and has 24 hours in which to respond.

## Appendix 1 - Procedures to be adopted at Disciplinary Hearings

Management papers relevant to the disciplinary matter will be provided, two weeks in advance of the hearing. The member of staff may also provide papers if they wish, and should be within 3 working days of the hearing.

The Chair of the panel will outline the procedure to be observed and detail the allegations to be heard. The procedure is as follows:

1. The presenting officer shall state the management case and call any witnesses.
2. The panel hearing the matter and the employee or employee's representative shall be entitled to question the presenting officer, and any witnesses present, in relation to their evidence.
3. The presenting officer may re-examine their witnesses on any matter referred to in the examination by the panel hearing the matter, the employee or employee's representative.
4. The employee or employee's representative shall be entitled to reply to management's case. It is important that any submission is the employee's view or recollection of the incident and not the representative's view or opinion.
5. The employee or employee's representative shall state the case for the employee and call any witnesses.
6. The panel hearing the matter and the presenting officer(s) shall be entitled to question the employee, their representative and any witnesses called in relation to their evidence.
7. The employee or employee's representative may re-examine their witnesses on any matters referred to in the examination by the panel hearing the matter or the presenting officer.
8. The presenting officer and the employee or their representative may sum up their cases if they so wish. When this occurs, the employee or their representative has the right to speak last. No new matter or evidence may be introduced at this stage.
9. Nothing in the foregoing procedure shall prevent the panel hearing the matter from inviting the representative of either party to elucidate or amplify any statement they may have made; or from asking them questions as may be necessary.
10. The panel hearing the matter may at their discretion adjourn a hearing in order that further evidence may be produced by either party, or to allow for a more appropriate panel to be assembled.
11. No statement of previous acts of misconduct by the employee or the issue of a formal warning or warnings unrelated to the alleged offence(s) on which the disciplinary action is based shall be made until after the committee has reached a decision as to whether the allegations are proved or not.
12. Having heard the matter in full, the panel shall consider the merits of the case and make their decision in private. The decision of this panel will be made known at the earliest opportunity, to be confirmed in writing within 5 working days or as soon as possible thereafter.

## Appendix 2 - Procedures to be adopted at Disciplinary Appeal Hearings

Management papers relevant to the disciplinary matter will be provided, two weeks in advance of the hearing. The member of staff may also provide papers if they wish, within 3 working days of the hearing.

The Chair of the panel will outline the procedure to be observed and detail the allegations to be heard. The procedure is as follows:

1. The employee or employee's representative shall state their case and call any witnesses.
2. The panel hearing the matter and the presenting officer(s) shall be entitled to question the employee, their representative and any witnesses called in relation to their evidence.
3. The presenting officer shall state the management case and call any witnesses.
4. The panel hearing the matter and the employee or employee's representative shall be entitled to question the presenting officer, and witnesses, in relation to their evidence.
5. The presenting officer may re-examine their witnesses on any matter referred to in the examination by the panel hearing the matter, the employee or employee's representative.
6. The employee or employee's representative may re-examine their witnesses on any matters referred to in the examination by the panel hearing the matter or the presenting officer.
7. The presenting officer and the employee or their representative may sum up their cases if they so wish. No new matter or evidence may be introduced at this stage.
8. Nothing in the foregoing procedure shall prevent the panel hearing the matter from inviting the representative of either party to elucidate or amplify any statement they may have made; or from asking them questions as may be necessary.
9. The panel hearing the matter may at their discretion adjourn a hearing in order that further evidence may be produced by either party, or to allow for a more appropriate panel to be assembled.
10. Having heard the matter in full, the panel shall consider the merits of the case and make their decision in private. The decision of this panel will be made known at the earliest opportunity, to be confirmed in writing within 5 working days or as soon as possible thereafter.