

# Epsom and St Helier University Hospitals NHS Trust

## Disciplinary Policy

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## **1. INTRODUCTION**

The users of the Trust's services have a right to expect a high quality healthcare service. The conduct and performance of the Trust's staff at all levels will play a major part in the quality of service provided to patients, clients, relatives, friends and visitors.

## **2. PURPOSE**

The purpose of this policy is designed to help and encourage all employees to achieve and maintain standards of care, conduct and attendance. It also provides for disciplinary matters to be dealt with quickly but thoroughly, and ensures that all employees are treated fairly consistently when dealing with unsatisfactory conduct in order to achieve the desired improvement. Managers should seek support and guidance from Human Resources when dealing with disciplinary matters.

This policy is designed to help and encourage employees to achieve and maintain high standards of conduct and to ensure that employees are treated fairly and consistently in all disciplinary matters.

The Trust has described some acts of misconduct, and gross misconduct (which may accord summary dismissal): these are referred to in Appendix D (the list in this appendix is not exhaustive)

## **3. SUMMARY**

Where a problem clearly exists, the Trust encourages informal discussions between staff and their managers/supervisors. The discussion is intended as a basis for advising staff. These informal discussions should be followed up with an improvement notice letter to the member of staff outlining the expectations that have been set, and that if these expectations are not met the formal disciplinary procedure will be followed. The formal disciplinary procedure will begin when this informal discussion and subsequent improvement notice has failed to achieve the desired effect or when an offense is serious enough to warrant formal action.

This policy should not be viewed primarily as a means of imposing punitive sanctions, but to emphasise and encourage improvements in individual conduct.

There is a separate Capability Procedure providing a framework for dealing with lack of capability related to an individual's competence to meet required standards of performance. If, however, it is suspected that there is a willful refusal by the employee to carry out their duties efficiently or effectively, the disciplinary policy should be used.

Issues causing concerns will not be addressed under both policies at the same time and it will be for the appropriate manager to decide which policy should be used.

A separate policy and procedure also exists for managing individual sickness absence.

Complaints relating to harassment and/or bullying will be dealt with under the Trust's Harassment and Bullying Policy

Issues relating to the Professional conduct and competence of medical and dental staff are dealt with under the Maintaining High Professional Standards in the Modern NHS Policy.

Trainee professional staff on training contracts whose employment depends on progress in training may be contracted to arrangements related to disciplinary procedures in addition to this policy. Therefore managers must be aware of procedures relating to trainees on placement with the Trust and should inform their employer should there be concerns regarding their progress or conduct.

Nothing in this policy shall infringe an individual's rights under the Public Interest Disclosure Act 1998, and the Enterprise Reform Act 2013.

No disciplinary action may be taken outside of this disciplinary policy or procedure.

## **4. DUTIES WITHIN THE ORGANISATION**

### **4.1 The Trust**

The Trust has a responsibility under corporate governance to produce policies and procedures.

### **4.2 Managers**

Managers have a responsibility to draw staff's attention to the Disciplinary Policy and to adhere to the procedures if there are issues that need to be addressed under this policy. Also, different work groups of disciplines

may have specific rules applied to them by the appropriate managers. Therefore, managers must ensure that such rules are drawn to the attention of staff, and the likely consequences of breaching the rules. Managers also have a responsibility to seek advice from Human Resources on the procedure to be followed.

#### **4.3 Individuals**

Individuals have a responsibility to adhere to all Trust Policies and Procedures and to report any concerns about any breaches of expected standards of care, conduct and attendance and non-adherence of the Trusts values and behaviours.

#### **4.4 Staffside Representatives**

Staffside representatives have a responsibility to follow the Trust's agreed disciplinary policy.

#### **4.5 Human Resources Department**

Human Resources are available to advise managers and staff on all aspects of this procedure. A People Business Manager/Adviser should be present at all disciplinary hearings

### **5. COMPLIANCE**

All employees must ensure that they are familiar with the disciplinary policy as referred to in their Terms and Conditions of Employment.

### **6. PRINCIPLES**

The People Business Manager/Advisor for the relevant service area should be contacted for advice and guidance on employment law and matters relating to the interpretation of this procedure at the earliest opportunity.

In the event of the manager or the Human Resource Representative requiring further interpretation concerning the application of Trust policy, employment law or matters of practice, or precedent advice should be sought from either the Head of Operational HR or the Deputy Director of HR.

In the event that a member of staff has concerns in relation to the care of a child/children, the procedure for managing allegations and concerns about people who work or volunteer with children must be followed. The

Director of Nursing or Clinical Governance Head for Safeguarding Children must be contacted.

In the event that a member of staff has concerns in relation to the care of adult at risk, the procedure for managing these allegations must be followed. The named person within the Trust with responsibility for the care of vulnerable adults should be contacted.

Where concerns are raised in relation to financial aspects such as possible fraud, corruption and bribery the Trust's Local Counter Fraud Specialist should be contacted on 0203 049 4071 or the national fraud and Corruption hotline on 0800 028 40 60. The Trust's Director of Finance should also be notified.

At every stage in the procedure the employee will be advised of the nature of the complaint against him/her and will be given the opportunity to state his/her case before any decision is made.

Managers designated to take disciplinary action are detailed in **Appendix C**.

If an employee resigns from the Trust during a disciplinary investigation the process will continue.

An employee will have the right of Appeal against a first written warning, a final written warning and dismissal.

An employee has the right to be represented at all stages of the disciplinary procedure by a Trade Union Representative or Work Colleague not acting in a legal capacity.

Employees are not entitled to be legally represented during the Trust's internal disciplinary procedure.

Reasonable time off should be allowed for the employee to secure representation.

A member of staff may request assistance to attend disciplinary hearings or meetings if they have special needs.

## **7. MEDIATION**

Mediation may be used at any stage of the process. It is expected that employees will be open to this form of reconciliation and resolution.

## **8. OVERLAPPING DISCIPLINARY AND GRIEVANCE CASES**

Where an employee raises a grievance during a disciplinary process, a decision will be taken to either temporarily suspend the disciplinary process in order to deal with the grievance, or stay the grievance until the disciplinary process is concluded. Where the grievance and the disciplinary cases are related, it may be appropriate to deal with both issues concurrently.

## **9. COUNSELING**

All employees involved in any stage of the disciplinary process are advised that the Trust provides access to a free and confidential Staff Counseling Service. Details are available on the Trust's intranet.

## **10. REPRESENTATION**

All employees have the right to state their case at the disciplinary hearing and to be accompanied at the hearing, if they so wish. This may be an accredited representative of a recognised Union or a workplace colleague not acting in a legal capacity and employed by the Trust. No other external representative is permitted.

It is the responsibility of the individual employee to secure representation, and to inform their representative of any meeting and hearing dates. If their representative is unavailable, within a reasonable timescale an alternative representative should be sought by the employee.

The role of the recognised trade union/professional organisational representative or work colleague will be to advise and/or represent staff at any point in the formal procedure. They may not, however, answer questions on the employee's behalf.

## **11. TIME OFF FOR REPRESENTATIVES**

Representatives of trade unions and professional organisations, and employees, who require time away from their jobs under this procedure, in respect of matters relating to the Trust, shall seek the agreement of their immediate manager's and agreement shall not be unreasonably withheld.

## **12. RIGHTS OF ACCREDITED REPRESENTATIVE OF STAFF ORGANISATIONS**



Disciplinary action will not be undertaken against an accredited representative of a staff organisation recognised by the Trust until the circumstances of the case have been discussed with their full-time officer.

### 13. SUSPENSIONS

In certain circumstances, it may be necessary to suspend an employee from duty pending investigation into allegations made. Suspension should only take place where other alternatives such as transfer to another department or duties are not appropriate. Where practicable advice should always be taken from the People Business Manager/Adviser responsible for the area or another senior HR colleague before suspension takes place.

The act of suspension is not a disciplinary act nor does it imply that there is any suggestion of guilt. It is a neutral act enabling the individual to be released from their place of work, whilst receiving full pay, pending an investigation of allegations made.

The power to suspend rests with managers empowered to terminate employment (please refer to Appendix C). That manager will inform the employee of the reason for the suspension prior to sending written confirmation within 5 working days. In an emergency a line manager may authorise suspension from duty. All decisions to suspend will be notified at the earliest possible time to the appropriate Director/Manager.

Suspension should always be considered pending an investigation into allegations of serious or gross misconduct and pending an investigation, where it is considered that the employee's continued presence at work is a risk to other employees or patients, the effective business of the Trust or it is in their own interest not to remain at work.

Written confirmation will be sent to the employee within 5 working days.

Suspension should not continue for an unreasonable period of time and must be reviewed initially after ten working days to consider alternatives. A full investigation should be undertaken without delay and should be completed within 12 weeks. **(See Appendix B on Investigations).**

All staff must not undertake work of any kind (paid or unpaid) for any other organisation/s during their contracted hours with the Trust whilst on suspension. This constitutes both a disciplinary and criminal offence and will be dealt with in accordance with Trust's Counter Fraud and Corruption Policy.

## 14. CRIMINAL OFFENCES

In the event of an employee being arrested, cautioned or charged with an offence committed on or off duty, the Trust will consider whether or not the alleged offence has any implications for the employee's employment.

The Trust reserves the right to suspend the employee from duty on full pay pending the outcome of any proceedings or to take action before a hearing takes place, depending on the circumstances of the matter.

An employee convicted or cautioned of a criminal offence may be dismissed by the Trust, if in the considered opinion of the Trust, the conviction renders the person unsuitable for continued employment with the Trust. In appropriate circumstances, the employee may be offered an alternative post as an alternative to dismissal.

**Employees must notify their manager of any caution or prosecution which could have a bearing on their employment. It will then be considered as to whether the alleged offence or period of remand/imprisonment is likely to affect the performance of the employee's contract or the relationship of Trust and Confidence, and ultimately whether it would render the employee unsuitable for their post.**

## 15. UNAUTHORISED ABSENCE

If an employee fails to attend for duty at work a manager should make attempts to contact them on the first day to seek an explanation for the absence. The manager will need to establish if and when they intend to return to duty, inform them that they have a duty to keep their employers informed of their circumstances, and warn them of the likely consequences of continued absence.

If the manager does not receive any communication from the employee within 48 hours of the absence commencing a letter should be sent to the individual asking them to contact the manager within 5 days.

If the manager does not receive any communication from the employee they should write to the employee again informing them that they are now on unauthorised absence, and as such will be informing payroll to stop their pay. This letter should also state that the manager now has no alternative but to refer the matter to the General Manager/Head of Department, who may make the decision to instruct an investigation in accordance with this procedure in to the unauthorised absence of the employee.

## **16. RIGHT OF APPEAL**

Employees wishing to appeal against disciplinary action taken may do so in accordance with the Trust's Appeal Procedure.

## **17. PRELIMINARY INVESTIGATION STAGE**

The Manager should seek HR advice and guidance when a potential disciplinary matter arises. If the Manager considers that an improvement notice is appropriate in the circumstances they should follow the process as outlined in Section 3 and 15 of this policy.

It is the responsibility of the Manager, with advice from Human Resources, to consider the allegations and judge what investigation is appropriate on the basis of the information available at that time.

## **18. IMPROVEMENT NOTICE**

Where a problem exists with regards to a member of staffs conduct a manager may have an informal discussion with the member of staff. This discussion is intended as a basis for advising staff on conduct concerns. The manager may have an informal meeting with the member of staff and this may be followed up with an informal improvement notice letter to the staff member advising them of the issue(s) discussed and the manager's expectations going forward. Any such letter will not form part of an employee's disciplinary records. The manager will arrange to meet with the member of staff at an agreed date to review, and if the required improvement has been achieved the notice will be removed.

Formal steps may be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation). An example of the letter to be sent to staff is in appendix F

## **19. INVESTIGATION**

Investigations will be initiated but not undertaken by the disciplining manager who will hear the formal disciplinary hearing. The disciplining manager will delegate responsibility for undertaking the investigation to the Trusts Investigations Team (or in some circumstances someone else of an appropriate level) who will provide the investigation report and present the findings if a disciplinary hearing takes place. **(see Appendix B Investigation).**

The disciplining manager will write and confirm the details of the allegation and inform them who has been appointed to carry out the investigation.

If, on completion of the investigation, the investigating officer holds a reasonable belief that there is substance to the allegation, a disciplinary hearing should be held as soon as is reasonably practicable and normally within 15 working days of completion of the investigation.

Where it is decided that no further formal action be taken, written confirmation to this effect should be provided to the employee concerned within 5 working days of the conclusion of the investigation by the Manager. Any documentation should be removed from the employee's file.

## **20. DISCIPLINARY PROCEDURE**

If after the investigation has been concluded, the manager empowered to act **(in accordance with Appendix C)** will make a decision in conjunction with HR if a hearing should be held which will then be convened by Human Resources and the employee notified in writing together with all relevant documents including copies of statements.

Reasonable time must be given for the employee to study the information provided and to prepare their case. Usually this will be no less than 10 working days before the hearing takes place.

However, if the representative or work colleague is reasonably unavailable at this time, the manager will postpone the hearing. An alternative time will be proposed which will take into account the needs of those involved, but should not be unnecessarily delayed.

A People Business Manager/Advisor must be present at all disciplinary hearings to give advice on the procedure. A member of the HR Department will also be asked to take notes of the Hearing.

The Disciplinary policy is a system of three sanctions, increasing in gravity from a first written warning to dismissal. The warnings can refer to repetition of the same or similar unsatisfactory conduct. The Trust reserves the right to commence proceedings at any point of this procedure.

At any stage of this formal Disciplinary Procedure, staff may be accompanied by a representative of a recognised Trade Union, Professional or Staff Association or a work colleague, not acting in a legal capacity. A work colleague will be permitted to address the Hearing but will not be allowed to answer questions on the employee's behalf.

As part of this procedure the employee will be:

- Given an account of the complaint/allegation

- Interviewed by the appropriate manager
- Given an opportunity to state his/her case before a decision is made regarding any disciplinary action
- Will have received in advance of a disciplinary hearing, written statements or documentary evidence attached to the management case that will be relied upon during the disciplinary hearing.

In normal circumstances the employee will be given the opportunity to call and question witnesses at the disciplinary hearing. The Trust reserves the right to make exceptions to this in particular cases where it deems this may not be appropriate. Where the Trust exercises this right, it will provide written justification for its reasons. Advice concerning this **must** be sought from the Director of People and Organisational Development, or designated deputy. Please see appendix x for the guidance on the conduct of Disciplinary Hearings

## **21. WARNINGS**

Warnings are regarded as having lapsed over the following periods:

- First written warning - 12 calendar months
- Final written warning - 12 calendar months (which may be extended to 24 calendar months at the discretion of the disciplining manager).

### **Stage One - First Written Warning**

If the infringement is regarded as more serious than warranting informal action i.e. an improvement notice, or if a further infringement occurs following informal discussions, a written warning may be given by the appropriate manager.

The warning will be confirmed in writing within 5 working days by the manager. The written warning will detail:

- The breach of discipline and any current disciplinary action
- The improvement required and the period allowed for improvement.
- The duration of the warning (12 calendar months)
- The consequences of failure to improve conduct to an acceptable standard.
- The right of appeal to the next level of management in writing within 10 working days of the date of the letter giving the warning, and will include a copy of the Appeals Policy.

A copy of the written warning will be kept on the personal file for a period of 12 months. At the end of this period it will be removed by the manager in the presence of the employee. The employee has the right to ensure that this is carried out, and to request to be present.

A copy of the letter will be sent to the Trade Union Representative.

### **Stage Two - Final Written Warning**

If unsatisfactory conduct persists, or if a first disciplinary offence is considered to be particularly serious so that it may warrant a final written warning, then a final written warning will be given by the disciplining manager. This warning will be for a period of 12 calendar months. In cases where the manager concludes that the case is sufficiently serious this period may be extended to 24 calendar months.

The warning will be confirmed in writing within 5 working days by the manager issuing the warning. The letter will state:

- That a final written warning has been issued.
- Duration of the warning (12 months or 24 months depending on the facts of the case). The reasons of the disciplinary action together with a summary of the alleged facts on which the action is based.
- That repetition of the offence or similar offences may lead to dismissal or some other action short of dismissal.
- Where appropriate, references to other previous warnings. – If applicable
- The right of appeal to the Director of People and Organisational Development in writing within 10 working days from the date of the letter concerning the warning., and will include a copy of the Appeals Policy.

A copy of the letter will be kept on the personal file and deleted after a period of 12 or 24 months. At the end of this period it will be removed by the manager in the presence of the employee. The employee has the right to be present to ensure that this is carried out.

A copy of the letter will be sent to the Trade Union Representative.

## **22. ALTERNATIVE ACTION TO DISMISSAL**

In exceptional cases, where it has been concluded that the employee is guilty of an offence for which dismissal either with or without notice is the appropriate sanction, consideration in exceptional circumstances may be given the option of an to alternative lesser disciplinary action.

For example:

- Transfer to another post, which may be on a different service area.
- Demotion to another suitable post which may be in a different service area without protection of pay.

If this is considered an option, prior consultation must be undertaken with the Director of People and Organisational Development.

If a disciplinary penalty is given as an alternative to dismissal, then a final written warning will be issued in respect of the disciplinary offence.

Employees will have the right of appeal against the decision that gross misconduct has occurred, in accordance with the Trust's Appeal Procedure.

The employee will be given 5 working days to consider the offer of alternative action to dismissal. In the event that the employee writes within 5 working days objecting to a lesser disciplinary penalty, then the dismissal will take effect from the date of the original decision.

## **23. DISMISSAL (WITH NOTICE)**

Dismissal may occur where the Disciplinary Policy has failed to bring about acceptable standards of conduct from employee.

The employee will be notified in writing by the appropriate manager that the subsequent Disciplinary Hearing may result in termination of the employment.

If following the Disciplinary Hearing the manager decides that employment should be terminated, this will be confirmed in writing within 5 working days by the manager terminating the employment. The letter will state:

- That employment has been terminated.
- The reasons for the termination together with a summary of the facts on which the action is based.
- Reference to any other previous current warnings. If applicable.
- The length of notice and whether the employee is to work the notice or be paid in lieu of notice.
- The right of appeal to the Director of People and Organisational Development within 15 working days of the date of the written confirmation of the dismissal, and will include a copy of the Appeals Policy.

A copy of the letter will be sent to the Trade Union Representative, and a second copy of the letter will be sent to the People Business Manager.

## **24. DISMISSAL – WITHOUT NOTICE (SUMMARY DISMISSAL)**

If on completion of the investigation and full Disciplinary Hearing, the Trust is satisfied that gross misconduct has occurred, the result will be summary dismissal without notice.

Summary dismissal will not take place without prior consultation with the Chief Executive or his/her designated deputy for this purpose.

The dismissal will be confirmed in writing within 5 working days, by the person carrying out the dismissal.

The letter will state:

- That the employee has been terminated without notice
- The reasons for the termination together with a summary of the facts on which the action is based.
- Reference to any other previous current warnings.
- The right of appeal to the Director of People and Organisational Development within 15 working days of the date of the written confirmation of dismissal and will include a copy of the Appeals Policy.

A copy of the letter will be sent to the Representative and a second copy will be sent to the People Business Manager.

## **25. REFERRALS TO RELEVANT PROFESSIONAL BODY**

In all cases involving dismissal of professional staff, the Trust will inform the relevant professional body. It will then be a matter for them to consider if further action is required.

Where disciplinary action by a professional body results in a member of staff's name being erased by the appropriate professional register, then this will provide sufficient reason for termination of his/her contract, irrespective of any previous disciplinary action or decision taken by the Trust.

## **26. REFERRALS TO THE DISCLOSURE AND BARRING SERVICE (DBS)**

The Safeguarding Vulnerable Groups Act (SVGA) 2006, place a duty on employers of people working with children or vulnerable adults to make a referral to the DBS in certain circumstances. This is when an employer has dismissed or removed a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned etc.)



If an employee has or may have engaged in an activity that causes concerns for the safeguarding of children or vulnerable adults, the Trust has a legal duty to refer the case to the DBS. For further details on how to make a referral to the DBS please contact the People Business Manager for your directorate for advice.

## **27. TRAINING**

Training is available to all Trust managers on the Disciplinary Policy and managers are expected to ensure that they attend the training offered.

## **28. MONITORING AND REVIEW**

It is important that the Trust's Disciplinary Policy is applied both fairly and consistently across the Trust. Therefore, the Human Resources Team will undertake an audit of actions quarterly taken in relation to each stage of this formal disciplinary procedure. This information will be reported to the People and Organisational Development Committee, and the Partnership Forum on a Quarterly basis.

This information will also be available as a reference point for decision in future disciplinary cases.

People Business Managers/Advisors will also ensure that any disciplinary action is recorded in the Vital Connections database for the Trust.

Managers who are responsible for taking disciplinary action (**Appendix C**), will be required to undertake the Trust's approved disciplinary training or refresher course before they are able to act in this capacity.

## **29. EQUALITY IMPACT ASSESSMENT**

The Equality Impact Assessment of this policy can be found in Appendix E.

## **30. REFERENCES**

References – Legislation

- Employment Act 2002

References

- ACAS (2009) Code of Practice 1 – Disciplinary and Grievance Procedures. Available at [www.ACAS.org.uk](http://www.ACAS.org.uk)
- ACAS (2011) Disciplinary and Grievances at work: the ACAS Guide. Available at [www.ACAS.org.uk](http://www.ACAS.org.uk)
- ACAS (2009) Getting it right factsheet. Discipline at work. Available at [www.ACAS.org.uk](http://www.ACAS.org.uk).

### **31. RELATED POLICIES AND PROCEDURES.**

Appeal Policy

Capability Policy

Procedure for managing allegations and concerns about people who work or volunteer with children and vulnerable adults.

Child Protection Policy

Safeguarding Adults at Risk

## APPENDIX A

### EPSOM & ST HELIER UNIVERSITY HOSPITALS NHS TRUST

#### DISCIPLINARY PROCEDURE

##### WITNESSES

1. Employees are required to report any inappropriate behaviours or suspected misconduct by members of staff to the appropriate manager.
2. In such cases, or where a manager has reason to believe that a member of staff may have relevant information concerning an incident (e.g. working in close proximity to where an alleged breach of discipline has taken place) the manager will require a written statement to be produced within 7 working days of the request.
3. **The Trust will not tolerate intimidation or victimisation of witnesses by any member of staff. Any such incident may be regarded as gross misconduct warranting summary dismissal.**
4. Any witness who requires the support of a colleague or Trade Union representative may have that person at any stage of the investigation process. In exceptional circumstances a witness may request support when giving evidence at the hearing. That person will be present to provide support to the witness but may not answer questions on the witnesses behalf. The colleague or Trade Union representative will be required to keep details of the proceedings confidential.
5. If in considering a case a manager has reason to believe that a witness has been intimidated or in any way persuaded to change their evidence it will be for that manager to decide which of the statements they believe to be the truth. The manager will also, in coming to a decision in a case, take into account any evidence that a witness has been improperly approached. It should be noted that such evidence:
  - May have the effect of adding to the reasonable ground to believe that a person is guilty of the offence being investigated.
  - And will be taken into account when deciding the level of the disciplinary action.
6. Employees who report suspected breaches of discipline by colleagues who, are subsequently found to be malicious, will themselves be dealt with under the Disciplinary Procedure.

## APPENDIX A

7. All staff are required to assist management fully in the investigation of Incidents by supplying signed written statements and where appropriate acting as a witness. (Trust staff will be given time off with pay to attend Hearings/Appeals). Failure to attend as a witness at a hearing may result in disciplinary proceedings being invoked against the witness for failure to carry out reasonable management instruction?
8. There may be occasions when a witness has left the employment of the Trust prior to the investigation/hearing. Although the Trust has no powers to insist witnesses attend, it will take all reasonable steps to ensure availability if this is possible.
9. Witness anonymity cannot be guaranteed by the Trust, as staff who have allegedly committed a disciplinary offence must have the opportunity to question witnesses and ask about statements given. However, consideration may be given for witness anonymity in very exceptional circumstances. Advice should be sought from the Director of People and Organisational Development.
10. Details of any additional witnesses the employee believes are relevant to the investigation must be notified to the investigation team or manager conducting the investigation interview by the employee or his/her representative.
11. It is the responsibility of the parties concerned to arrange for the attendance of their witnesses. The management Statement of Case will give details of witnesses to be called by the management in the event of a Hearing. Through this, the employee's representative will be aware of witnesses who will be available and called by management.
12. Managers for all relevant service areas will release staff required to be witnesses for the employee.
13. Individual witnesses involved in a particular case must not discuss their evidence with other witnesses prior to, during or after disciplinary proceedings and management should bring this to the attention of witnesses.

## APPENDIX B

### EPSOM AND ST. HELIER UNIVERSITY HOSPITALS NHS TRUST

#### DISCIPLINARY INVESTIGATION

1. When an allegation of misconduct is received an investigation should be initiated. The investigation will be commissioned, but not undertaken by the disciplining manager who will hear the formal disciplinary hearing and take the appropriate action. (**See Appendix C for levels of disciplinary authority**). The disciplining manager will delegate responsibility for undertaking the investigation to the Investigations Manager, or someone else who is of an appropriate level and not directly involved in the circumstances surrounding the allegation. That person will provide the investigation report and present the findings if a disciplinary hearing should take place.
2. Consideration should be given to the seriousness of the allegations and whether the employee should be moved or suspended. The decision to suspend should be made by a manager with the authority to dismiss (**see Appendix C**).
3. The investigating officer should carry out an investigation to ascertain the details of the alleged offence. This should be done quickly to ensure that recollections do not fade and should be completed as soon as is reasonable practicable.
4. If the member of staff is suspended, a review meeting will take place after 10 working days to ascertain whether or not the member of staff should remain on suspension or whether they should be brought back to work. If the investigation is to continue a letter should be sent to the member of staff explaining that the investigation is continuing. They will be contacted again after a further 4 weeks if there is a further delay explaining the reason why, and every 4 weeks as necessary thereafter.
5. Statements should be requested from all employees associated with the allegation and/or witnesses may be interviewed as appropriate, where it is not possible to obtain a written statement or clarification is needed. Witnesses have a right to be represented when being interviewed.
6. Patients and/or visitors may not be called to disciplinary hearings so interviews with them should be conducted with another person present to take comprehensive notes and corroborate the statement.
7. In conducting the investigation the Manager should ascertain:

## APPENDIX B

- How the alleged breach in discipline occurred
  - Who was involved
  - Where it happened
  - When it happened
  - Who else was present
  - And why did this happen
8. All witness statements and interviews should be completed before meeting with the employee involved in the allegation, so that all the issues can be put to them and they can be given the opportunity to respond.
  9. If during the investigation other allegations or fresh information, which are related to the allegations already made emerge, the disciplining manager will be informed. The disciplining manager will then write to the member of staff concerned and this will be included in the investigatory report.
  10. The employee must be kept advised of the progress of the investigation at all times.
  12. It is important that the Investigating Manager keeps an open mind and remains objective at all times. The purpose of the investigation is to establish the facts and **not** to justify the allegations.
  13. If there is no case to answer the Disciplining Manager and the People Business Adviser/Manager, should meet with the employee and their representative within 5 working days and advise them of the outcome of the investigation. If the employee is suspended the suspension should be lifted and arrangements made for the employee to return to work.
  14. Should the Investigating Manager consider that there is a case to answer the information should be put into a Management Statement of Case, including all documentation and sent to the Disciplining Manager, who will determine if a hearing should be convened.
  16. Where it is decided that the matter should progress to a hearing this will be convened by the Human Resources Department, where possible within 15 working days.

## APPENDIX C

### EPSOM AND ST HELIER UNIVERSITY HOSPITALS NHS TRUST

#### LEVELS OF DISCIPLINARY AUTHORITY

##### **First Written Warning**

Line Manager or above

##### **Final Written Warning and below**

Line Manager or above

##### **Dismissal and below**

Chief Executive

Executive Director

Director

Clinical Director

General Managers

Heads of Nursing

Heads of Department

Deputy/Assistant/ Associate Directors

**EPSOM AND ST. HELIER UNIVERSITY HOSPITALS NHS TRUST**

**EXAMPLES OF MISCONDUCT AND GROSS MISCONDUCT**

**Gross Misconduct**

1. Gross misconduct is behaviour of such nature that the Trust loses confidence and trust in the employee to the extent that it can no longer tolerate the continued employment of the individual. Such conduct will warrant summary dismissal i.e. without notice.

The following are examples of behaviour that may, in the light of circumstances, be regarded as gross misconduct. It is not an exhaustive or exclusive list.

- Theft
- Fraud, Corruption or deliberate fabrication of records
- Accepting, offering, or promising a bribe
- Deliberate or willful ill-treatment of patients
- Fighting
- Assault or threatened physical violence against patients, staff or others
- Serious bullying or harassment
- Malicious allegations
- Serious negligence which causes unacceptable loss, damage or injury
- Deliberate damage to Trust property
- Incapability through alcohol or drugs
- Unauthorised possession or administration of drugs
- Interference with or misuse of anything provided in the interest of patients', staff or visitors' health and safety
- Discrimination or harassment on the grounds of race, national or ethnic origin, colour, sex, sexual orientation, marital status, disability, Trade Union membership or activities or religious beliefs.
- Wilful vandalism
- Offences resulting in a sentence of imprisonment
- Misrepresentation of details required on application for employment with the Trust, with special reference to failure to disclose a conviction or caution as required under the Rehabilitation of Offenders Act 1964 (Exceptions) Order 1975
- Failure to declare a conviction or caution that is issued during your employment with the Trust.
- Intimidation of witnesses during any formal investigations undertaken by the Trust
- Deliberate falsification of qualifications, experience, professional registration, immigration status or other information



## APPENDIX D

- Offences under the Mental Health Acts
- Professional misconduct and incompetence
- Inappropriate or unauthorised use of the Trust's internet/email/Telephone systems.
- Unauthorised use or disclosure of confidential information gained through employment with the Trust e.g. via email, social media or verbally, or failure to protect such information

### Misconduct

2. The following are examples of behaviour that may, in the light of circumstances, be regarded as misconduct. It is not exhaustive or exclusive.
- Disobeying instructions, omitting or neglecting to carry out reasonable orders or failing to observe operational regulations, policies or procedures.
  - Disrespectful behaviour such as sarcasm, mockery or mimicry, which cause personal offence.
  - Abuse of status or position when dealing with other staff or the public
  - Absence from duty, lateness or leaving work without permission, without sufficient cause
  - Inappropriate use of Trust time eg excessive use of time for personal conversations, correspondence, telephone calls, email/internet use etc
  - Failure to perform responsibilities satisfactorily due to a willful act or neglect (as opposed to non-performance due to capability reasons). This may include causing loss or damage, failure to report matters, fail to keep appropriate records or accounts etc.
  - Adverse effect of employment outside the Trust upon performance or availability for employment within the Trust
  - Shouting and swearing
  - Failure to adhere to the Trusts Values and Behaviours
  - Failure to ensure Statutory and Mandatory training is up to date

## **GUIDANCE FOR THE CONDUCT OF DISCIPLINARY HEARINGS**

### **1. Disciplining Manager**

The Manager hearing the case/Chair of the hearing will:

- Introduce those present
- Confirm that the purpose of the hearing is to consider the allegations as outlined in the notification of disciplinary hearing letter.
- Confirm everyone has a copy of the Investigatory Report
- Confirm the witnesses to be called by both parties
- Outline procedure for hearing.

### **2. Investigating Officer**

- Presents his/her Investigation report
- The disciplining manager, employee and/or their representative, and HR representative have the opportunity to question the investigation officer.
- The investigations manager then calls witnesses if appropriate.
- The disciplining manager, employee and/or representative, and HR Representative have the opportunity to ask the witnesses questions.

### **3. Employee/Representative/Work Colleague**

- Employee and/or representative/work colleague presents their case.
- The Disciplining Manager/Chair and HR Representative, investigating officer have the opportunity ask questions of the employee. Whilst assisted by your representative, you will be expected to answer directly any questions put to you. Your representative will not be permitted to answer questions on your behalf.
- Employee and/or representative/work colleague calls any witnesses if appropriate.
- The disciplining manager, HR Representative, and investigations officer have the opportunity to question the witnesses.

### **4. Summing up**

- Both parties have the opportunity to sum up their case.
- The employee and/or representative/work colleague have the right to speak last.
- No new evidence can be presented at this stage.

### **5. Summary and outcome**

- The Disciplining Manager/Chair may either, adjourn the hearing and reconvene to inform the employee of the outcome of the hearing or, in exceptional circumstances may write to the employee the outcome of the hearing within 5 working days from a decision being reached, without reconvening the hearing.

## **GUIDANCE FOR THE CONDUCT OF DISCIPLINARY HEARINGS (Doctors)**

The constitution of the disciplinary panel involving cases of professional conduct must include a member who is medically qualified and not currently employed by the organisation.

### **1. Chair**

The Manager hearing the case/Chair of the hearing will:

- Introduce those present
- Confirm that the purpose of the hearing is to consider the allegations as outlined in the notification of disciplinary hearing letter.
- Confirm everyone has a copy of the Investigatory Report
- Confirm the witnesses to be called by both parties
- Outline procedure for hearing.

### **2. Case Investigator**

- Presents his/her Investigation report
- The panel, employee and/or their representative, and HR representative have the opportunity to question the CI.
- The CI then calls witnesses if appropriate.
- The panel, employee and/or representative, and HR Representative have the opportunity to ask the witnesses questions.

### **3. Employee/Representative/Work Colleague**

- Employee and/or representative/work colleague presents their case.
- The panel and HR Representative, CI have the opportunity to ask questions of the employee. Whilst assisted by a representative, the employee will be expected to answer directly any questions put to them. The representative will not be permitted to answer questions on their behalf.
- Employee and/or representative/work colleague calls any witnesses if appropriate.
- The panel, HR Representative, and CI have the opportunity to question the witnesses.

### **4. Summing up**

- Both parties have the opportunity to sum up their case.
- The employee and/or representative/work colleague have the right to speak last.
- No new evidence can be presented at this stage.

### **5. Summary and outcome**

- The Chair may either, adjourn the hearing and reconvene to inform the employee of the outcome of the hearing or, in exceptional circumstances may write to the employee the outcome of the hearing within 5 working days from a decision being reached, without reconvening the hearing.

**EQUALITY IMPACT ASSESSMENT SCREENING FORM**

**In order to carry out an effective impact assessment it is important to examine all available data and research so that any adverse impact on equality can be properly assessed.**

1. Name of function, strategy, project or policy	<b>Disciplinary Policy</b>
2. Name, job title, department, and the telephone number of staff completing the assessment form	<b>Human Resources Department</b>
3. What is the main purpose and outcomes of the function, strategy, project or policy.	<b>To is to provide a formal framework to ensure consistent and fair and prompt treatment for all employees when dealing with unsatisfactory conduct in order to achieve the desired improvement.</b>
4. Associated frameworks e.g. national targets	
5. List the main activities of the function, project/policy (for strategies list the main policy areas)	<b>Encourages employees to achieve and maintain high standards of conduct and ensures that employees are treated fairly and consistently in all disciplinary matters.</b>
6. Who could be affected by the strategy/project/policy	<b>All staff groups.</b>
<b>7. What consultation with relevant users on this project/policy/service has taken place</b>	<b>N/A</b>
<b>8a) Have you involved your staff in taking forward this impact assessment?</b>  <b>8b) How have you involved the staff</b>	<b>N/A</b>
9. What aspects of the policy, including how it is delivered, or accessed, could contribute to inequality?	<b>N/A</b>

10. What different needs, experiences or attitudes are particular communities or groups likely to have in relation to this policy?	N/A
11. If there are gaps in your consultation and research, are there any experts/relevant groups that can be contacted to get further views or evidence on the issues. Please list them and explain how you will obtain their views.	This procedure has been circulated to the HR Team for further views before it goes to Partnership Forum
12. In the light of all the information detailed in this form; what practical actions would you take to reduce or remove any adverse/negative impact.	Ensure that employees, management and the trade unions are fully aware of the policy and that managers are encouraged to seek advice from HR when dealing with disciplinary issues.

**Please now assess the impact on all of the protected groups**

Complete the screening assessment grid below for protected groups listed within the Equality Act (2010) and highlight the evidence underlying your assessment.

Do you think the function/strategy/project/policy could have a positive, neutral or negative impact on:

Equality group	Positive impact	Neutral impact	Negative impact	Rationale for outcome of assessment of impact and evidence used to support assessment
Age		x		There is no anticipated positive or negative impact based on age. Should any positive or negative impact be identified as part of monitoring the use of this policy this will be reviewed
Disability		x		There is no anticipated positive or negative impact based on Disability. Should any positive or negative impact be identified as part of monitoring the use of this policy this will be reviewed as part of consultation this will be reviewed
Gender Reassignment		x		There is no anticipated positive or negative impact based on Gender Reassignment. Should any positive or negative impact be identified as part of monitoring the use of this policy this will be reviewed as part of consultation this will be reviewed
Marriage or civil partnership		x		There is no anticipated positive or negative impact based on Marriage or Civil Partnership. Should any positive or negative impact be identified as part of monitoring the use of this policy this will be reviewed as part of consultation this will be reviewed
Pregnancy or maternity		x		There is no anticipated positive or negative impact based on Pregnancy or Maternity. Should any positive or negative impact be identified as part of monitoring the use of this policy this will be reviewed as part of consultation this will be reviewed
Race		x		There is no anticipated positive or negative impact based on Race. Should any positive or negative

				impact be identified as part of monitoring the use of this policy this will be reviewed as part of consultation this will be reviewed. However, we are aware that national statistics show a higher proportion of staff from BME groups are disciplined and we will continue to monitor.
Religion/belief (including lack of belief)		x		There is no anticipated positive or negative impact based on Religion/Belief (including lack of belief). Should any positive or negative impact be identified as part of monitoring the use of this policy this will be reviewed
Sex (i.e. gender)		x		There is no anticipated positive or negative impact based on Sex (i.e. gender). Should any positive or negative impact be identified as part of monitoring the use of this policy this will be reviewed. However, we are aware that national statistics show a higher proportion of males are disciplined and we will continue to monitor.
Sexual Orientation		x		There is no anticipated positive or negative impact based on Sexual Orientation. Should any positive or negative impact be identified as part of monitoring the use of this policy this will be reviewed
Human Rights Act (1998)		x		There is no anticipated positive or negative impact based on the Human Rights Act (1998). Should any positive or negative impact be identified as part of monitoring the use of this policy this will be reviewed

**The following may help you to better understand any impact on Human Rights (1998)**

**Human Rights Act (1998) considerations**

The Human Rights Act contains 15 rights, all of which NHS organisations have a duty to act compatibly with and to respect, protect and fulfill. The 6 rights that are particularly relevant to healthcare are listed below. Depending on the Policy you are considering, you may find the examples below helpful in relation to the Articles.

	Yes	No
<b>Consider whether the policy, strategy or function is relevant to:</b>		
Article 2: The right to life e.g. the protection and promotion of the safety and welfare of patients and staff; issues of patient restraint and control; imposing 'Do not resuscitate' decisions without first discussing them with patients with capacity or family members and/or carers		<b>x</b>
Article 3: The right not to be tortured or treated in an inhuman or degrading way e.g. Issues of dignity and privacy; the protection and promotion of the safety and welfare of patients and staff; the treatment of vulnerable groups or groups that may experience social exclusion, e.g. gypsies and travellers, the homeless, sex workers; issues of patient restraint and control		<b>x</b>
Article 5: The right to liberty e.g. Issues of patient choice, control, empowerment and independence; issues of patient restraint and control		<b>x</b>
Article 6: The right to a fair trial e.g. issues of patient choice, control, empowerment and independence; staff right to fair treatment		<b>x</b>
Article 8: The right to respect for private and family life, home and correspondence e.g. issues of dignity and privacy; the protection and promotion of the safety and welfare of patients; the treatment of vulnerable groups or groups that may experience social exclusion; the right of a patient or employee to enjoy their family and/or private life		<b>x</b>
Article 11: The right to freedom of thought, conscience and religion e.g. protection and promotion of the safety and welfare of patients and staff		<b>x</b>

If you have stated a negative impact for any of the equality groups, you must complete a detailed impact assessment form with an action plan on how you will address the negative impact.

Note: Any consultation detailed in the impact assessment must be undertaken within a 3 month period so that your action plan can address this specific function/ policy. Also it is your responsibility to ensure that feedback is provided to individuals/groups you have consulted with and update them on any actions which you may take to address the negative impact. If there is a negative impact that cannot be resolved you will need to complete a Trust Risk Assessment Form assessing the risks involved.

**To be signed by the manager completing this form.**

Signed..... Date .....



Following the screening stage of the impact assessment, I have decided that a full impact assessment is/is not necessary. The rationale for this decision is: (please outline)

Date completed:

Signature:

**Please email your completed screening assessment to the Lead for Equalities:**  
julie.alderon@esth.nhs.uk

NOT CONTROLLED IF PRINTED

## Appendix F

Epsom and St. Helier   
University Hospitals  
NHS Trust

St. Helier Hospital  
Wrythe Lane  
Carshalton  
Surrey SM5 1AA

Dear

**Re: Improvement Notice issued on x**

I am writing further to our informal meeting held on:

**Date:**

**Time:**

**Venue:**

At this meeting I explained that I was concerned that you had **(add in issue here)**

I asked you if you had any comments in relation to this matter you said **(add in comments from individual)**

We agreed that going forward **(add here what was agreed / the manager's expectations regarding future improvement of issue)**

Should there be no improvement and further issues of this nature occur again, formal action may be taken under the Trust's Disciplinary Policy . The purpose of raising this with you informally and issuing this informal notice is to ensure that you have been provided with the opportunity to improve, and therefore I hope that any future formal disciplinary action will not be necessary.

A copy of this notice will be kept on your personnel file. However, it does not form part of your disciplinary records.

Do not hesitate to contact me if you have any further queries regarding this matter.

Yours sincerely

**Name**  
**Designation**

