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Date	Version	Author	Comments
01/04/2015	1.1	D McAlister C Crutchley Regional Employment Law Team	Appendix 2 - Change in relation to level of panels for hearings and appeals as agreed regionally. Other minor changes which were agreed regionally.
20/09/2019	1.2		Awaiting regional input – review extended 1 year



Director of Human Resources & OD



Chief Executive

DISCIPLINARY PROCEDURE

Author	Regional HR Policy Group
Directorate responsible	Human Resources & Organisational Development
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1. INTRODUCTION

This procedure is designed to help and encourage all employees to achieve and maintain appropriate standards of conduct, performance and behaviour. The aim of the procedure is to ensure:

- The Trust can operate effectively as an organisation.
- Disciplinary action taken is fair, appropriate and consistent and all who are involved in the process are treated with dignity and respect
- Managers, employees and their representatives are aware of their rights and obligations in matters relating to disciplinary and appeals procedure.

This Procedure applies to all Trust staff. It should be noted that in relation to Medical and Dental staff issues of general/professional misconduct are dealt with under this procedure. Further relevant procedures are contained in circular HSS (TC8) 6/2005 "Maintaining High Professional Standards in the Modern HPSS – a framework for the handling of concerns about doctors and dentists employed in the HPSS".

This disciplinary procedure should be read in conjunction with the Trust's Disciplinary Rules, which are set out in Appendix 1 of this Procedure.

Issues of competence and job performance will be dealt with under the Trust's Capability Procedure.

2. GUIDANCE AND DEFINITIONS

"Trust Employee" is anyone employed by the Trust.

"Investigating Officer" is any person authorised to carry out an investigation into alleged breaches of discipline to establish the facts of the case.

"Presenting Officer" is usually the investigating officer and presents the evidence to the Disciplinary Panel

"Employee Representative" is any employee of the Trust who is an accredited representative of a trade union, professional organisation or staff organisation or a full time official of any of the above organisations or a fellow Trust employee. Legal Representation will not be permitted at any stage of this Disciplinary Procedure.

"Disciplinary Panel" is the person or persons authorised to take disciplinary action.

"Misconduct" is a breach of discipline which is considered potentially serious enough to warrant recourse to formal disciplinary action (please refer to Disciplinary Rules).

"Gross Misconduct" is a serious breach of discipline which effectively destroys the employment relationship, and/or confidence which the Trust must have in an employee or brings the Trust into disrepute (please refer to Disciplinary Rules).

3. PRINCIPLES

The following general principles are applicable to all disciplinary cases:

- a. Employees are directed by their contract of employment to ensure they familiarise themselves with these procedures and the consequences of breaching the Trust's Disciplinary Rules
- b. In cases where an investigation is necessary, disciplinary action will not be taken against an employee until such an investigation is completed. However, the Trust reserves the right to proceed with disciplinary action where an employee fails to co-operate with an investigation.
- c. Where a case is being investigated under this Disciplinary Procedure, the employee will be provided with a copy of this procedure as soon as possible. At every stage in the procedure the employee will be advised of the nature of the complaint, and will be given the opportunity to state their case before any decision is made.
- d. At all stages during the disciplinary procedure, the employee will have the right to be accompanied and/or represented by an employee representative.
- e. No employee will be dismissed for a first breach of discipline except in the case of gross misconduct where the disciplinary action may be summary dismissal.
- f. An employee will have the right to appeal against any disciplinary action imposed.
- g. In deciding upon appropriate disciplinary action, consideration will be given to the nature of the offence, any mitigating circumstances and previous good conduct.
- h. The Trust will collect information from relevant witnesses. Trust employees who are witnesses to alleged misconduct will be required to give evidence and may be required to attend disciplinary meetings and/or hearings.
- i. At all stages disciplinary proceedings will be completed as quickly as practicable.

- j. Any disciplinary action will be appropriate to the nature of the proven misconduct.

4. **ARRANGEMENTS FOR MEETINGS/HEARINGS**

Employees are expected to participate fully with the disciplinary process. If a Trust employee cannot attend a meeting/hearing through circumstances outside her/his control and unforeseeable at the time the meeting/hearing was arranged they must notify the HR Department and provide reasons. The Trust will arrange one further meeting/hearing. Failure to attend this rearranged meeting/hearing may result in the disciplinary process continuing in their absence based on the information available.

5. **ACTION IN PARTICULAR CASES**

- a. **Disciplinary action in the case of an employee representative, who is an accredited representative of a Trade Union, Professional Organisation or Staff Organisation.**

Although normal disciplinary standards apply to the conduct of an employee representative, no disciplinary action beyond the informal stage should be taken until the matter has been discussed with a full-time official of the employee's trade union, professional organisation or staff association.

- b. **Police enquiries, legal proceedings, cautions and criminal convictions not related to employment**

Police enquiries, legal proceedings, caution or a conviction relating to a criminal charge shall not be regarded as necessarily constituting either a reason for disciplinary action or a reason for not pursuing disciplinary action. Consideration must be given as to the extent to which the offence alleged or committed is connected with or is likely to adversely affect the employee's performance of duties, calls into question the ability or fitness of the employee to perform his or her duties or where it is considered that it could bring the Trust into disrepute. In situations where a criminal case is pending or completed the Trust reserves its right to take internal disciplinary action.

- c. **Trust's duty to make referrals**

The Trust is required, where appropriate under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, to make a referral if a person working with children or vulnerable adults has been dismissed, would have been dismissed, or considered for dismissal had he/she not resigned, or has been suspended, or transferred from a Child Care or vulnerable adults position.

Further, the Trust has a duty to make referrals to relevant professional bodies e.g. NMC, GMC, NI Social Care Council, HPC and also to the Police Service of Northern Ireland (PSNI) in appropriate cases and share relevant information.

In cases of alleged theft, fraud or misappropriation of funds, action should include consultation with the Director of Finance, DHSSPS and the PSNI as appropriate.

d. **Suspension from Work**

Management reserves the right to immediately suspend an employee with pay. Precautionary suspension must be authorised by the appropriate senior manager or suitable deputy.

The reason for suspension should be made clear to the employee and confirmed in writing. When the reason for suspension is being conveyed to the employee, where possible, he or she should be accompanied by an employee/trade union representative. Suspension is not disciplinary action, and as a consequence carries no right of appeal. The appropriate senior manager should consider other alternatives, for example transfer of employee, restricted or alternative duties if considered feasible and appropriate.

Any decision to precautionary suspend from work, restrict practice, or transfer temporarily to other duties must be for the minimum necessary period of time. The decision must be reviewed, by the appropriate senior manager, every 4 weeks.

6. **DISCIPLINARY PROCEDURE**

This section sets out the steps which may be taken following a breach of the Trust's Disciplinary Rules

6.1 **COUNSELLING AND INFORMAL WARNINGS**

- a. The manager has the discretion to address minor issues through either counselling or the issue of an informal warning. At this informal stage matters are best resolved directly by the employee and line manager concerned.
- b. Counselling does not constitute formal disciplinary action. Counselling should be conducted in a fair and reasonable manner and the line manager should ensure that confidentiality is maintained. This should take the form of pointing out any shortcomings of conduct or performance and encouraging improvement and may include an agreed training or development plan. It is the line manager's responsibility to ensure that notes of the counselling meeting are shared with the employee, are stored securely and that the situation is monitored. This counselling does not in any way prevent the line manager from instigating formal disciplinary

action if appropriate. If the faults are repeated, or the conduct does not improve, the formal disciplinary procedure may be instigated

- c. The line manager has the discretion to issue an informal warning. If this is applicable, the manager will follow these steps:
 - Manager investigates matter
 - Manager meets with employee
 - Manager issues informal warning
 - Informal warning is confirmed to employee in writing and is deleted from their record after 6 months
 - Employee has right to appeal to the next line manager
 - Appeal request should be submitted within 7 working days
- d. The right to be accompanied by an employee representative will apply throughout the informal process.
- e. In the event that issues cannot be resolved with counselling or informal warnings the Formal Disciplinary Procedure should be invoked.

FORMAL DISCIPLINARY PROCEDURE

6.2 INVESTIGATION

- a. The Investigating Officer is responsible for establishing the facts of the case. The investigation will be conducted as quickly as is reasonable taking account of the extent and seriousness of the allegations. The Investigating Officer should meet with the employee who may be accompanied and/or represented by an employee representative and ensure that they are given a copy of the procedure. The Investigating Officer should explain the alleged misconduct to the employee. The Investigating Officer should ensure that any witnesses are interviewed and that all relevant documentation is examined before a decision is made on the appropriate course of action.
- b. It should be noted that, if an issue has already been investigated under another agreed investigatory procedure and disciplinary action has been recommended, then there is no requirement to reinvestigate under this Disciplinary Procedure.

6.3 HEARING

- a. If it is considered that there is a case to be answered, the employee should be called to attend a disciplinary hearing before the appropriate Disciplinary Panel. A copy of this Disciplinary Procedure should accompany the letter advising of the hearing. The

employee should be informed in writing of the allegation and the right to be represented. Any documentation intended for use by either party at the Disciplinary Hearing should be exchanged no later than five working days prior to the hearing.

- b. The Disciplinary Panel is made up of 2 managers at an appropriate level - Appendix 2 outlines the minimum level.
- c. Where an employee's professional competence/conduct is in question the Disciplinary Panel may, if needed, invite a suitably qualified experienced person from the same profession to attend the Hearing as an expert adviser. The adviser does not have a decision-making role.
- d. In cases of professional misconduct involving medical or dental staff, the Disciplinary Panel must include a member who is medically qualified (in the case of doctors) or dentally qualified (in the case of dentists) who is not currently employed by the Trust (see Maintaining High Professional Standards in the Modern HPSS (Nov 2005) Section III Para 1). The advice of the appropriate local representative body should be sought.
- e. The employee shall normally be present during the hearing of all the evidence put before the Panel; however the employee may choose not to attend the hearing. It should be made clear that the hearing will proceed in his or her absence. Any submission by the employee in writing or by his or her representative will be considered. The Trust reserves the right to proceed to hear a disciplinary case in the absence of the employee where no adequate explanation is provided for the employee's absence.
- f. Any witnesses required to attend the hearing should be granted the appropriate time off from their work. The employee representative cannot be a witness or potential witness to the disciplinary process.
- g. At the Hearing, the case against the employee and the evidence should be detailed by the presenting officer and the employee should set out his/her case and answer the allegations.
- h. Witnesses may be called by either party and can be questioned by the other party and/or by the Disciplinary Panel. The presenting officer and the employee/representative will have the opportunity to make a final submission to the Disciplinary Panel at the end of the Hearing with the presenting officer going first. The Disciplinary Panel has the right to recall any witnesses but both sides and their representatives have the right to be present.

6.4 DISCIPLINARY DECISION

- a. The Disciplinary Panel will review all the evidence presented before taking its decision. The Disciplinary Panel will determine on a balance of probability whether the allegations were or were not proven. Before deciding on the appropriate disciplinary action, the Disciplinary Panel should consider any mitigating circumstances put forward at the hearing and take account of the employee's record.
- b. The decision should be communicated in writing to the employee normally within 7 working days of the date of the hearing or as soon as reasonably practicable. In the case of formal or final written warnings, the timescale of any sanction should be specified. The employee should be advised of the consequences of further breaches of discipline and informed of the right and method of appealing the decision.
- c. In the case of dismissal, the employee should be advised that the decision of the Disciplinary Panel will be fully implemented pending appeal.
- d. The appeal hearing should be organised in a timescale which allows proper representation to occur, consistent with principles of natural justice. In all circumstances an appeal hearing shall be organised within 12 weeks of the original hearing.
- e. Pay pending appeal will only be paid in circumstances where management alone have failed to convene an appeal hearing within the aforementioned timescale. In this circumstance payment will be recommenced from the point in time that the notice period ends.
- f. Pay pending appeal will not apply in circumstances where the employee was summarily dismissed.

6.5 DISCIPLINARY ACTION

The Disciplinary Panel may impose one or more of the following disciplinary sanctions / actions

- a. **Formal Warning** - a formal warning may be given following misconduct or where misconduct is repeated after informal action has been taken. A formal warning will remain on the employee's record for a period of one year. The warning should be accompanied by advice to the employee on the consequence of any repetition or continuance of the misconduct that has given rise to the disciplinary sanction / action.
- b. **Final Warning** - a final warning may be given when the misconduct is considered more serious or where there is a continuation of misconduct which has led to previous warnings and/or informal action. A final warning will remain on the

employee's record for a period of 2 years. The warning should be accompanied by advice to the employee on the consequence of any repetition or continuance of the misconduct that has given rise to the disciplinary sanction/action.

- c. **Transfer and/or Downgrading** - the Disciplinary Panel may decide that the most appropriate course of action should be either transfer, downgrading or both. These disciplinary actions may be imposed in addition to either a formal warning or a final warning as appropriate.
- d. **Dismissal** – Dismissal will apply in situations where previous warnings issued have not produced the required improvement in standards or in some cases of Gross Misconduct.
- e. **Summary Dismissal** – in some cases where Gross Misconduct has been established, an employee may be summarily dismissed i.e. without payment of contractual or statutory notice.

NOTE: If the misconduct is proven the Disciplinary Panel may recommend that any associated financial loss should be recouped from the employee. This should be referred to the Director of Finance for further consideration.

7. **DISCIPLINARY APPEALS**

- a. An employee wishing to appeal disciplinary action should write to the Director of Human Resources stating the grounds of their appeal within 7 working days of receipt of the letter containing the disciplinary decision. The appeal hearing will be arranged as early as practicable and the employee will have the right to be represented. The employee will normally receive 7 working days notice of the date of the appeal hearing.
- b. The Appeal Panel, will comprise 2 managers from the Trust who have had no previous involvement in the case and who are normally at a more senior level than the Disciplinary Panel. In professional misconduct appeals involving medical staff and/or dentists, the Appeal Panel will comprise one additional medically/dentally qualified panel member who is not employed by the Trust or has not been previously involved in the disciplinary case. Where the employee's professional competence/conduct is in question, the Appeal Panel may invite a suitably qualified and experienced senior officer in the same profession from the trust or outside the Trust to attend the hearing as an assessor. The assessor has no decision making role. The Appeal Panel will permit additional evidence not available or provided at the Disciplinary Hearing to be considered only if it is considered relevant to the original allegation.
- c. The Appeal hearing will be a full rehearing of the case.

- d. The Appeal Panel will have the authority to confirm, set aside, or reduce the decision of the Disciplinary Panel. It will not have the right to increase the decision of the Disciplinary Panel. Where the decision of the Appeal Panel involves a variation of the original disciplinary decision, it should state the reasons and any operative date. The decision of the Appeal Panel is final and will be conveyed in writing to the appellant within seven working after the hearing. In the event of delay a written explanation will be provided.
- e. In the event of reinstatement following an appeal the appropriate back payment will be made.

8. REVIEW OF THE PROCEDURE

This procedure should be reviewed periodically in consultation with recognised staff side representatives via the HSC (NI) Joint Negotiation Forum.

Signed on behalf of Trade Union Side

Signed on behalf of Management

[Redacted Signature]

[Redacted Signature]

Joint Secretary

Damian McAlister

Director of Human Resources & OD

This procedure is effective from 1st April 2015

APPENDIX 1 TRUST DISCIPLINARY RULES

In accordance with paragraph 1 of the Trust's Disciplinary Procedure, Disciplinary Rules are set out below. Conduct is categorised under the headings of "**Misconduct**" and "**Gross Misconduct**". This list should not be regarded as exhaustive or exclusive but used simply as a guide.

In determining the appropriate heading, managers are required to carefully consider the circumstances and seriousness of the case.

MISCONDUCT

Listed below are examples of offences of misconduct, other than gross misconduct, which may result in disciplinary action and/or counselling/informal warning in the light of the circumstances of each case. Where misconduct is repeated this may lead to dismissal.

- **Inappropriate or unacceptable conduct or behaviour towards employees, patients, residents, clients, relatives or members of the public.**
- **Abuse of employment position and/or authority.**
- **Absenteeism**
- **Unauthorised Absence**
- **Insubordination.**
- **Poor Time-keeping.**
- **Dishonesty.**
- **Unsatisfactory Performance and Conduct.**
- **Failure to adhere to contract of employment.**
- **Failure to comply with the responsibilities and duties of employment position.**
- **Failure to comply with Trust Rules and Procedures, Policies and Practices.**
- **Failure to declare outside Employment/Activities** – Failure to declare any outside activity which would impact on the full performance of contract of employment.
- **Failure to conform with safety, hygiene, security rules and regulations**
- **Misuse of Trust Resources**- internet, e-mail, telephone etc (see Trust policies)
- **Misuse of Trust Property**-neglect, damage, or loss of property, equipment or records belonging to the Trust, clients, patients, residents or employees
- **Use of foul language.**
- **Gambling on Trust Premises**
- **Dangerous horseplay.**
- **Discrimination, victimisation, harassment or bullying on any grounds**
- **Breach of confidentiality.**
- **Alcohol/Drugs misuse.**
- **Being an accessory to a disciplinary offence**

GROSS MISCONDUCT

The following are examples of Gross Misconduct offences which are serious breaches of contractual terms which effectively destroy the employment relationship, and/or the confidence which the Trust must have in an employee. Gross misconduct may warrant summary dismissal without previous warnings.

- **Theft** - Theft from the Trust, its employees, patients, clients, residents or the public including other offences of dishonesty.
- **Fraud** - Falsification of documentation or records pertaining to patients, clients, staff, or other persons. Misrepresentation which results, or could result in financial gain (e.g. applications for posts, pre-employment medical forms, time-sheets, clock- cards, subsistence and expenses claims etc.)
- **Being under the influence or misuse of Alcohol or Drugs** – Being under the influence of alcohol, unauthorised consumption while on duty or during working hours. Reporting for duty smelling of alcohol. Misuse of drugs e.g. through misappropriation or being under the influence of drugs.
- **Breaches of safety, hygiene, security rules and regulations endangering one's own or another's physical well-being or safety.**
- **Issues of probity.**
- **Physical violence / assault or other exceptionally offensive behaviour.**
- **Criminal Conduct**- including failure to notify the Trust of a criminal offence either at work or outside of work. Consideration will be taken of criminal conduct/convictions and relevance to the employee's position.
- **Breaches of Confidentiality.**
- **Discrimination, victimisation, harassment or bullying on any grounds**
- **Serious Breaches of Trust Rules, Policies, Procedures and Practices**
- **Malicious or vexatious allegations or intimidation against another employee.**
- **Serious Insubordination.**
- **Ill-treatment or wilful neglect of patients, clients, residents.**
- **Negligence.**
- **Breaches of contract of employment and/or Professional Codes of Conduct.**
- **Some outside Employment/Activities**-Engaging in outside employment/activities that would prevent the efficient performance of duties, adversely affect health, bring into question loyalty and reliability or in any way weaken confidence in the Trust's business. Engaging in outside employment when contracted to work for the Trust unless otherwise agreed or where outside work is undertaken in competition with the Trust.
- **Abuse of sick pay provisions.**
- **Bringing the Trust into Disrepute.**
- **Misuse or unauthorised use of Property.** - Unauthorised use or removal of Trust property. Damage caused maliciously or recklessly to property, equipment or records belonging to the Trust, clients, patients, residents or employees
- **Misuse of Trust resources, including IT resources (see IT policies), or misuse of Trust name.**
- **Serious professional misconduct or negligence**
- **Unauthorised sleeping on duty**

APPENDIX 2 – PANELS FOR HEARINGS AND APPEALS

Misconduct		
	Hearing	Appeal
Staff below 5 th level	Level 5	Level 4
Staff at 5 th Level	Level 4	Level 3
Staff at 4 th Level	Level 3	Level 2
Staff at 3 rd Level	Level 2	Level 2
Staff at 2 nd Level	Level 1 / Level 2	Chair / Level 1 / Level 2
Gross Misconduct		
	Hearing	Appeal
Staff below 5 th level	Level 5	Level 4
Staff at 5 th Level	Level 4	Level 3
Staff at 4 th Level	Level 3	Level 2
Staff at 3 rd Level	Level 2	Level 2
Staff at 2 nd Level	Level 1 / Level 2	Chair / Level 1 / Level 2

- Level 1 – Chief Executive
- Level 2 – Director
- Level 3 – Assistant / Co-Director
- Level 4 – Senior Manager
- Level 5 – Service Manager