



Disciplinary Policy

(May 2005)

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1 Introduction

- 1.1 It is vital that the London Ambulance Service NHS Trust is held in high regard by the community. It is the duty of all members of staff to maintain high standards of performance and integrity.
- 1.2 This Policy outlines the Trust's expected standards of conduct and performance for all employees and its approach to dealing with disciplinary matters when these standards are considered to have been breached.
- 1.3 The Disciplinary Policy is to help staff maintain and improve the levels of performance and conduct expected by the public. The primary function of the Policy is not to impose warnings but to ensure that all staff are dealt with fairly and constructively. Where appropriate, training and/or guidance should be used to help the employee achieve the required levels of conduct and performance.
- 1.4 It is intended to cover all cases of misconduct and those instances of poor work performance which do not result from a genuine lack of capability on the part of the employee. Where capability is an issue that needs addressing then the Managing Performance Capability Policy should be used.

2 Aim

- 2.1 To outline the standards of conduct and performance expected of all employees.
- 2.2 To detail the procedure to follow when these standards are considered breached.
- 2.3 To provide a means to decide when dismissal is justified. Dismissal is a last resort when all else has failed or when an employee's breach is a very serious one.

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Legal / statutory position

- 3.1 This policy is in line with the Employment Act 2002 (Dispute Resolution) Regulations 2004 and the related guidance included in the ACAS Code of Practice and Handbook.

4 Standards of conduct and performance

4.1 Context

- 4.2 The nature of the work of the London Ambulance Service NHS Trust is that most employees are either delivering an emergency service or directly supporting those delivering the service, or work in an area which requires equally high levels of patient care and support. Key objectives are both the saving of life, and preservation of the quality of individual's lives. Additionally the nature of the service is that it is both geographically spread and dependent on the autonomy of small teams and individuals – hence a high level of trust both between management and staff and between colleagues is essential. It is essential that individuals take personal responsibility for their conduct and performance.

- 4.3 Whilst most employees work in direct service provision to the public, many work in equally important support roles. This Policy, and the standards of conduct and performance it contains, applies throughout the Trust.

4.4 Vision and values

- 4.5 The LAS has a vision to be:

‘A world class ambulance service for London staffed by well trained, enthusiastic and proud people who are all recognised for contributing to the provision of high-quality patient care.’

- 4.6 This vision has a set of values that support it. The vision and values are communicated to staff in a number of ways. The values include:

Respect and courtesy – ‘We will value diversity and will treat everyone as they would wish to be treated, with respect and courtesy’.

Integrity – ‘We will observe high standards of behaviour and conduct, making sure we are honest, open and genuine at all times and ready to stand up for what is right’.

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Accept responsibility – ‘We will be responsible for our own actions and decisions as we strive to constantly improve.’

- 4.7 These values are communicated to all staff with an expectation that staff integrate the values into their working practices
- 4.8 Other standards of conduct and performance
- 4.9 Other standards of conduct and performance apply either service-wide or to specific staff groups and individuals. These include national standards of professionalism; LAS health and safety, drugs and alcohol, harassment and equal opportunities policies; codes of conduct, Statement of Duties, driving and care of service vehicle instructions, personal issue equipment policies, dress codes, job descriptions and job competencies.
- 4.10 Standards of conduct and performance are communicated both at the recruitment and induction stage and on an ongoing basis including via formal training and the issuing of the JRCALC clinical practice guidelines for use in UK Ambulance Services as well as appraisal systems, the Chief Executive’s Consultation Meetings and Managers’ and Team Leader conferences.
- 4.11 Protocols and publications including the operational Policy and Procedure Manual, General Instructions, Routine Information Bulletin, the Trust’s intranet site (The Pulse), and exceptional bulletins such as the Chief Executive’s Bulletin all support the communication of standards of conduct and performance.
- 4.12 Employees’ terms and conditions of service are provided in their contract of employment and associated paperwork. Alongside the standards expected of employees, this also details support and provisions available to staff. These are reinforced by the HR policies and procedures which are available on The Pulse. Wilful breaking of contractual rules and standards or abuse of contractual provisions may be a disciplinary offence.

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5 Principles

- 5.1 The following outlines some of the key principles around the Disciplinary Policy:
- 5.2 The Disciplinary policy outlines the standards of conduct and performance expected of all employees and details the procedure to follow where these standards may have been breached. The Policy is a means to help and encourage improvement amongst employees whose conduct or standard of work is regarded as unsatisfactory.
- 5.3 In aiming to modify behaviour, all staff should be dealt with fairly and constructively throughout the process.
- 5.4 All managers have a responsibility to advise, train and guide staff. The Disciplinary Policy does not replace this obligation.
- 5.5 It is expected that employees maintain high standards of performance and conduct and that managers address without delay any behaviour that could potentially lead to disciplinary action.
- 5.6 When appropriate, investigations will be carried out. These will be conducted in a timely and objective manner, with the aim, as far as possible, to establish facts.
- 5.7 Employees have the right to representation by a TU representative, colleague or nominated person throughout an investigation and any ensuing disciplinary action. The representative may present and/or amplify the employee's case, ask questions and provide advice to the employee.

6 Breaking disciplinary rules or failing to meet standards

- 6.1 Employees who break disciplinary rules or fail to meet performance standards (see Section 4) may, unless it is due to the employee's capability, be subject to disciplinary processes.
- 6.2 Gross Misconduct
- 6.3 Those issues that fall into potential gross misconduct and may lead to dismissal without notice include the following;
- Theft, fraud and deliberate falsification of records
 - Physical violence and serious verbal abuse
 - Bullying or harassment
 - Deliberate damage to property
 - Serious insubordination

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- Misuse of the Trust's property or name, including abuse of email or internet facilities – Prohibited use includes excessive personal use of email/the internet so that it affects the employee's work and viewing/downloading images or text including pornography that may be reasonably considered to be obscene or offensive.
- Bringing the Trust into serious disrepute
- Incapability on duty brought about by alcohol or drug misuse
- Serious negligence which causes or might cause unacceptable loss, damage or injury
- Serious infringement of health and safety rules
- Serious breach of trust or confidence (see paragraph 6.5)
- Avoidance of, or non response to, calls or not acting once a call has been accepted
- Breaches in patient confidentiality

6.4 The above list should not be regarded as exhaustive.

6.5 Whistleblowing

6.6 Employees should note that that they are encouraged to report concerns about malpractice, illegal actions or omissions at work and that this will not be considered a breach of confidence provided that the disclosure is made in good faith. Concerns need not necessarily be made via the Trust's Whistleblowing Policy but this Policy does provide further information and a framework to protect the employee.

6.7 Loss of driving licence

6.8 The ability to drive is a key part of many LAS jobs. Employees who are contractually required to drive as part of her/his job, and lose their driving licence may have their contract terminated on the grounds of capability.

7 Procedure

7.1 Introduction

7.2 Although the procedure sets out progressive stages, which may lead ultimately to dismissal, it can be commenced at any stage should the circumstances warrant. The procedure should be read alongside the Guidance notes appendix 1 – 9.

7.2 Disciplinary processes should proceed in the expectation that staff will offer reasonable co-operation both in their own interests and those of the Trust. If employees do not reasonably co-operate in investigations or hearings then decisions will continue to be made on the balance of information available. Similarly, if an employee does not attend a

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hearing and does not provide a good reason for her or his absence then the hearing will take place and a decision will be made in their absence.

7.4 Timescales

7.5 The procedure sets out timescales. It is in all party's interests that matters are dealt with promptly and it is recommended that these timescales are adhered to as far as possible.

7.6 Suggested timescales for matters subsequently detailed in this procedure are:

- Disciplinary investigations – completed and report done in 28 days (every effort should be made to bring the employee back from suspension as soon as possible if circumstances allow).
- Letter from Investigating Manager to be sent to employee on completion of investigation report
- Potential Chair of hearing to write to employee regarding outcome of investigation/next stage within 14 days of the above letter.
- Letter following hearing to be sent within 7 days of hearing date.
- Any appeal letter to be submitted within 14 days of receipt of disciplinary warning letter. N.B. This specific timescale is mandatory.
- Employee to be contacted with an appeal date within 14 days of receipt of appeal letter.

7.7 Intimidation related to the Disciplinary process

7.8 Any attempt to intimidate parties involved in the Disciplinary process will be regarded as a disciplinary offence and will be addressed in any subsequent disciplinary action. If a hearing is already taking place, the Chair may wish to call an adjournment to enable her/him to consider all disciplinary matters.

7.9 Witnesses from outside the Service

7.10 Particular care should be taken to protect witnesses from outside the Service from inconvenience or potential intimidation. It is often important for external witnesses to attend hearings to present their view of the facts and to be asked questions about them as necessary. However there will be situations when the facts of a matter are not in dispute and there is nothing that an individual can add to a written statement by appearing before a disciplinary hearing. In such cases an external witness should not be called.

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7.11 Confidentiality

7.12 All those involved in disciplinary matters should maintain confidentiality both during the investigation and hearing period and once any decision has been made. Clearly there may be circumstances where colleagues need to be briefed about a final decision, e.g. in dismissal cases, but this should be done formally and employees should not hear through rumour.

7.13 Anyone breaching confidences may be subject to disciplinary penalties themselves.

7.14 Fraud

7.15 If an employee is suspected of fraud at any stage in the procedure, whether at investigation or hearing stage, then the disciplinary procedure should be suspended immediately.

7.16 The matter should be referred to the Trust's Local Counter Fraud Specialist (LCFS). It is essential that no contact is made with the individual regarding the matter until the views of the LCFS have been sought.

7.17 It is the LCFS's role to ensure that, where appropriate, allegations of theft and fraud are pursued through the criminal courts. To this end it is vital that any evidence obtained during the course of the investigation is recovered in line with the necessary legal rules.

7.18 The involvement of the LCFS is not intended to hinder the disciplinary process – the LCFS will work with the Trust to ensure that any disruption to internal processes are kept to a minimum.

7.19 Contact details for the LCFS are on the Pulse under Managing > Fraud.

7.20 Informal advice and guidance, coaching or counselling

7.21 Minor cases of misconduct and most cases of poor performance may best be initially dealt with through informal advice and guidance, coaching or counselling rather than through the disciplinary procedure. Managers should ensure that problems are discussed with the objective of encouraging employees to improve. This should be recorded in writing for both parties either in a letter or using the Advice and Guidance pro forma (Appendix 7).

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- 7.22 Employees need to understand what needs to be done, how performance or conduct will be improved and over what period. Employees also need to know what action will be taken if they fail to improve.
- 7.23 Performance issues that are perceived to be due to the capability of the employee, i.e. the member of staff “can’t” rather than “won’t” do something, should be addressed via the Managing Performance Capability Policy.
- 7.24 Informal advice and guidance, coaching or counselling does not form part of the formal disciplinary procedure and employees should be informed of this.
- 7.25 If, during informal advice and guidance, coaching or counselling, it becomes clear that the matter is more serious than first thought then the manager should adjourn the meeting and the member of staff told that the matter will be considered under the disciplinary procedure. The manager should also be clear that it is a disciplinary rather than a capability issue.
- 7.26 Investigations
- 7.27 Many cases of potential disciplinary action will require investigation to, as far as possible, establish facts. It is essential that this is carried out promptly as soon as possible after the incident.
- 7.28 Guidance notes on conducting an investigation are attached (Appendix 1).
- 7.29 It is recommended that, as far as possible, investigations should be carried out and written conclusions made within 28 days.
- 7.30 Following the investigation the Investigating Manager will make a recommendation to the potential Chair of any hearing. This may include:
- Advising that there is no case to answer
 - Advising that informal advice and guidance, coaching or counselling is necessary.
 - Advising that the matter be dealt with under the Disciplinary Procedure
- 7.31 The investigating manager should also do a short note to the person being investigated – see Appendix 3 – stating that the investigation is complete and that a recommendation is being made in relation to the allegations. This letter should not provide detail of the recommendation.

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7.32 Suspensions

7.33 In certain circumstances, for example in cases of alleged or suspected gross misconduct, a brief period of suspension with pay may be considered. Such a suspension should only be imposed after careful consideration and only after alternatives such as different duties or change in work location or shift pattern have been explored.

7.34 It should be made clear that the suspension is not considered as disciplinary action.

7.35 It is essential that any suspension is actively managed and that regular and frequent contact is maintained with the suspended employee. The suspension must not be unnecessarily protracted and should be reviewed by the employee's line manager every 14 days or sooner if appropriate.

7.36 Suspension will be on full pay (calculated in line with the rate for holiday pay).

7.37 The senior manager on site is able to stand an employee down for example to allow a 'cooling off' period for up to two working days.

7.38 For any longer periods the decision to suspend is limited to the Chief Executive, Director, ACAO (Head of CAC) or delegated manager who will be at Assistant Director level.

7.39 Decision on whether to hold a disciplinary hearing

7.40 If, on the advice of the Investigating Manager the Chair decides that a disciplinary hearing is deemed necessary, then a letter in the Chair's name, notifying the employee of the hearing date, will be sent out within 14 days of the end of the investigation (the date of the letter cited in paragraph 7.31).

7.41 If the Chair decides that a hearing is not necessary then the employee should be informed in writing advising that that there is no case to answer and/or depending on the circumstances, that informal advice and guidance, coaching or counselling is appropriate.

7.42 The Disciplinary Hearing

7.43 Disciplinary action will fall into one of the following categories:

- Verbal warning
- Written warning

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- Final written warning
 - Dismissal or other sanction
- 7.44 Depending on the seriousness of the alleged offence consideration should be given to the seniority of the Chair of the hearing. Guidance on relevant levels of authority is summarised in Appendix 8.
- 7.45 Chairing a disciplinary hearing
- 7.46 Consideration should be given to having a separate Chair and Investigating Manager, particularly in more serious disciplinary matters. However in some cases the manager may carry out both roles or there may be no need for an Investigating Manager, for example in cases of persistent lateness.
- 7.47 See Appendix 2 for full guidance on the hearing.
- 7.48 Verbal warning
- 7.49 In cases of minor misconduct such as failure to carry out duties satisfactorily or poor timekeeping, a verbal warning may be appropriate.
- 7.50 A verbal warning will usually be given by an employee's immediate manager N.B not Team Leader. In some cases the immediate manager may also have investigated the matter. A hearing should be arranged and the employee should be told that he or she has the right to have a representative present. An HR adviser should be at all hearings including those likely to result in a verbal warning.
- 7.51 The employee should be advised that this is the first stage of the disciplinary procedure.
- 7.52 The manager should clearly inform the employee of the improvement required, the period of improvement and monitor conduct and behaviour, and review as appropriate.
- 4.53 The manager administering the warning should keep a note of the reasons for the warning and date of the disciplinary interview and the advice given, using the pro forma provided for this purpose (see Appendix 6). Details of the right of appeal are included on this pro forma and should be explained to the employee by the manager. A copy of the pro forma should be given to the employee.
- 7.54 It is recommended that the warning should remain active on file for a period of 6 months.

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- 7.55 The employee should be informed that further instances of misconduct in the period of warning will lead to consideration of further action.
- 7.56 The pro forma recording the verbal warning should be removed from the employee's personnel file at the end of the warning period.
- 7.57 Written warning
- 7.58 A Written Warning may be given in cases of more serious misconduct, or where there has been repetition of misconduct, and may be given by the immediate manager. In some instances the immediate manager may also have investigated the matter.
- 7.59 A formal hearing with the employee and representative will be arranged See Appendix 2 on the preparation for and conducting of disciplinary hearings.
- 7.60 The manager considering the matter will be accompanied by a member of the Human Resources Directorate.
- 7.61 Following the hearing and if the manager considering the matter deems it to be appropriate, the employee will be advised that a Written Warning has been given.
- 7.62 The Written Warning should specify:
- The nature of the misconduct
 - The reasons for the decision made
 - The period of time given for improvement and the improvement expected
 - The disciplinary penalty and for how long it will last
 - The likely consequences of further misconduct/poor performance.
 - The timescale for lodging an appeal and how it should be made.
- 7.63 The warning letter should be sent within 7 days of the hearing.
- 7.64 It is recommended that this warning should remain active for 9 -12 months. The employee should be informed that the written warning will be kept on file but will be disregarded for escalating the disciplinary matter after the specified period of the warning.
- 7.65 The employee should be sent two copies of the disciplinary letter. One should be signed and returned to the manager confirming that it has been received, read and understood. If a response is not forthcoming the manager should satisfy her/himself that the employee has received the letter and a note is included on the employee's file to this effect.

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7.66 Final written warning

- 7.67 A Final Written Warning will be given by a more senior manager in instances where misconduct is deemed to be most serious but to fall short of warranting dismissal, or where earlier warnings have not resulted in improved performance/conduct etc.
- 7.68 Examples of the behaviour or conduct which may directly lead to a Final Written Warning are - wilful or negligent acts or omissions, or breaches of the rules, which may compromise or have the potential to harm the health and safety or well-being of patients or staff; persistent misconduct or persistent poor performance (not due to an employee's capability).
- 7.69 A formal disciplinary hearing will be arranged. This should be Chaired by a more senior line manager accompanied by a representative of the Human Resources Directorate. See appendix 2 on the preparation for and conducting of disciplinary hearings.
- 7.70 If, having considered the information presented to her/him, the Chair is of the opinion that the alleged serious misconduct occurred or that conduct has failed to improve sufficiently, then the employee will be given a Final Written Warning.
- 7.71 This will state:
- The nature of the misconduct
 - The reasons for the decision made
 - The period of time given for improvement and the improvement expected
 - The disciplinary penalty and for how long it will last
 - The likely consequences of further misconduct
 - The timescale for lodging an appeal and how it should be made
- 7.72 The Final Written warning will be sent within 7 days of the hearing.
- 7.73 It will clearly advise the employee that further instances of misconduct will normally lead to dismissal from the Service.
- 7.74 The letter of confirmation must specify the length of time that the warning will remain on the employee's record. It is recommended that the warning remain active on file for a period of between 12 and 18 months. This letter must also include details of the right of appeal.
- 7.75 The employee should be informed that the final written warning will be kept but will be disregarded for disciplinary purposes after the period that the warning is in force has elapsed.

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- 7.76 The employee should be sent two copies of the disciplinary letter. One should be signed and returned to the manager confirming that it has been received, read and understood. If a response is not forthcoming, the manager should satisfy her/himself that the employee has received the letter and a note is included on the employee's file to this effect.
- 7.77 Dismissal or other sanction
- 7.78 Dismissal is the extreme sanction that can be used by the employer against an employee. Proper application of this procedure should prevent the need for action in most cases by providing the advice, support and encouragement to enable staff to modify their behaviour or work performance in accordance with the needs of the Trust.
- 7.79 Dismissal may, however, be the remaining option in cases of gross misconduct or when earlier warnings may have failed to bring about the desired improvement. Dismissal must be reasonable in all circumstances of the case.
- 7.80 In all cases where dismissal is a potential consideration, this will be made clear to the employee in the letter confirming details of the complaint against them.
- 7.81 A formal disciplinary hearing will be arranged, and the matter considered by the panel. (See Appendix 2 on the preparation for and conducting of disciplinary hearings.)
- 7.82 The panel should consist of a Director, the ACAO for Central Ambulance Control or the Chief Executive - as the right to dismiss is restricted to these persons, together with a senior member of the Human Resources Directorate.
- 7.83 Depending on the outcome of the Disciplinary hearing, the Chair may or may not decide that the allegations are upheld. Further, he or she should decide whether dismissal is appropriate.
- 7.84 Dismissal with notice
- 7.85 Unless the employee is being dismissed for reasons of gross misconduct, he or she should receive the appropriate period of notice or payment in lieu of notice.
- 7.86 If the employee appeals against dismissal then every effort should be made to hear the appeal during the notice period. If, through no fault of the employee, the appeal hearing is delayed beyond this point then pay will be reinstated until the date of appeal.

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- 7.87 All appeals, as with all disciplinary hearings (see Appendix 2) allow either side to request one postponement. In circumstances where an employee requests a postponement resulting in the notice period being overrun, then consideration may be given to reinstating pay to the date of appeal. Particular consideration should be given to employees with a short period of notice.
- 7.88 Dismissal without notice
- 7.89 Matters which may be considered gross misconduct are outlined in paragraph 6.2. This list is not exhaustive.
- 7.90 A finding of gross misconduct will lead to dismissal without notice. Such action in repudiating the contract of employment and dismissing without observing the appropriate period of notice or payment in lieu of notice reflects the absolute breakdown in trust between the Service and the staff member. As with all disciplinary matters, this must be the subject of a full and thorough investigation.
- 7.91 In such cases, the rights of the employee under this procedure are unaffected but should the dismissal be subject to appeal, then payment will be re-instated only upon the success of that appeal.

8 Other matters

- 8.1 Involvement of Police
- 8.2 In cases where the actions of an employee are the subject of Police investigation, it may be expedient to suspend with pay the employee concerned, during which time the matter will be investigated thoroughly and quickly by the LAS, a decision reached and actioned. Whilst due regard must be given to the police investigation, it is not a requirement to await its conclusion before deciding on disciplinary action.
- 8.3 Criminal charges or convictions outside employment will not be treated as automatic reasons for dismissal. Managers, having considered the facts, will need to consider whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure. Employees should not be dismissed solely because a charge against them is pending or because they are absent as a result of being remanded in custody.

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- 8.4 Appeals
- 8.5 Employees have the right to one appeal against the management decision at any stage of the disciplinary procedure. N.B Informal Advice and Guidance, Coaching and Counselling falls outside the procedure.
- 8.6 A manager more senior than the manager who issued the original warning will consider any appeal.
- 8.7 The employee or her/his representative must notify in writing the intention to appeal against a disciplinary warning, and the grounds for that appeal, within 14 days of receiving written confirmation of the warning.
- 8.8 Grounds for appeal may include:
- The perceived unfairness of the judgement
 - The severity of the penalty
 - New evidence coming to light
 - Procedural irregularities
- 8.9 The letter of appeal should be submitted to the manager next-in-line to the person who made the initial decision. In the case of an appeal against dismissal the letter should be submitted to the Director of Human Resources.
- 8.10 In cases where an appeal is raised, the employee should be contacted, within 14 days of receipt of the appeal letter with an appeal date.
- 8.11 Appeals will not normally involve a re-hearing of the case but should focus on the grounds of appeal.
- 8.12 In cases of dismissal, the appeal will be to the Trust Board, which will arrange for an appeal panel to consider the matter. The appeal panel will consist of an external advisor (agreed by management and staff side) a Non-Executive member of the Trust Board and the Director of Human Resources or other nominated senior HR manager.
- 8.13 Trade union stewards, health and safety representatives and workplace learning advisors
- 8.14 Normal disciplinary standards should apply to those properly accredited in the above roles, in their conduct as employees. However action under the disciplinary procedure should not take place without a full time official or her/his designate from the recognised trade union concerned, being advised of the circumstances and being given

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reasonable opportunity to make representations on behalf of the individual.

8.15 Grievances

- 8.16 In the course of the disciplinary process, an employee may raise a grievance that is related to the case. If this occurs then the manager should consider suspending the process for a short period whilst the grievance is dealt with.
- 8.17 Grievances may only be raised in relation to the Disciplinary Policy in the following circumstances:
- The employee believes that he/she is being unlawfully discriminated against,
 - The employee believes that the true reason for the disciplinary process is not the reason given by the manager.
- 8.18 It is expected that in most cases the grievance should be dealt with at appeal meetings within the disciplinary process. If such 'dual purpose' meetings take place, then additional care should be taken to properly hear and consider the grievance, and to document the discussions and any outcome. For further advice, please consult the Trust's Grievance Policy and/or consult HR.
- 8.19 Grievances are not allowed in relation to the Disciplinary Policy when the action taken or contemplated is dismissal.

8.20 Records

8.21 Records should be kept detailing investigations leading up to hearings and of any hearings and appeals. These records should be kept in line with the Data Protection Act 1998 and should be made available to the employee at their request. The service retains the right to withhold records in exceptional circumstances, for example to protect the personal details of a witness.

8.22 Duration of warnings and retention of records

8.23 A disciplinary warning will cover the period from the date the warning is issued. Disciplinary action should be disregarded for any further disciplinary purposes once the warning period is expired.

8.24 In general, warnings should be valid for the following period

- Verbal warning 6 months
- Written warning 9 - 12 months
- Final written warning 12 – 18 months.

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8.25 Disciplinary warnings will continue to be held on an employee's file but disregarded for escalating a disciplinary matter following the expiry of the warning period. The reasons for this are recorded in Appendix 9.

8.26 Managing employees during periods of warning

8.27 Particular care should be taken to actively manage employees during any warning periods set under the disciplinary policy. Additional levels of support, advice and guidance may be required to ensure an improvement in the employee's conduct.

8.28 The role of Human Resources

8.29 HR are available to provide advice regarding the Disciplinary Policy in general and throughout the procedural section specifically. This will include providing advice and support as necessary to the investigating manager during investigations and providing advice and support to the Chair in any hearings or appeals. HR will also provide advice and support to the presenting manager when they have been part of the decision making panel at an earlier stage of a particular case.

8.30 Specific responsibilities will include ensuring fairness and consistency ensuring that decisions follow good practice and the relevant legislation.

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Guidance note - Investigations.

1. Investigations into a disciplinary matter involving an employee will normally be conducted by her/his manager/supervisor. The Investigating Manager may be accompanied/supported by a member of the Human Resources Directorate.
2. The Investigating Manager should ensure that all relevant information is gathered, including all appropriate Service forms and documents and any recordings or transcripts.
3. Investigations should, as far as possible, be completed within 28 days but thoroughness should also be a key consideration.
4. The Investigating Manager should establish all relevant details and facts surrounding the matter. This should involve interviewing witnesses and obtaining statements as necessary as well as interviewing the employee.
5. The Investigating Manager should advise the employee(s) alleged or suspected of the wrongdoing that he/she is required to attend an interview in relation to a preliminary investigation into a potential disciplinary matter and that they may be accompanied by a Trade Union representative or colleague. He/she should also be advised that, depending on the outcome of the investigation, disciplinary action may follow.
6. The Investigating Manager should question the employee on all aspects of the matter, note down and confirm any statements given. If additional information is given that will require further investigation, the manager should agree a date for a further meeting.
7. Once the investigation, including all interviews with witnesses, is complete, the Investigating Manager should record his/her findings and conclusions as appropriate. All formal notes from interviews should also be kept.
8. The Investigating Manager should also do a short note (see Appendix 3) to the person being investigated stating that the investigation is complete and that a recommendation is being made regarding whether or not to hold a disciplinary hearing to consider the allegations. This letter should not provide detail of the recommendation.

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9. If the Disciplinary procedure is to be progressed then the Investigating Manager will be responsible for arranging the attendance of her/his witness(es).

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Guidance note – Disciplinary Hearings

Before a Disciplinary Hearing

1. Any employee who is the subject of an allegation and is required to attend a formal Disciplinary Hearing will receive a letter from the Chair setting out the reason(s) for the hearing. In instances where dismissal is a potential consideration, this will be clearly stated in the letter.
2. The letter will include the date, time and venue of the hearing, and confirm arrangements for any witnesses to be called.
3. The letter will advise the individual of the right to representation and the employee will be given the opportunity to consult with her/his representative before the hearing.
4. At least seven calendar days' notice of the hearing will be given.
5. All relevant documentation and names of any witnesses will be circulated by both sides at least 7 days in advance of the hearing. This will include, where appropriate, such items as service forms, any letter of complaint, recording transcripts, witness statements and any summary report of the findings and recommendations of the Investigating Manager. If CCTV recordings exist of any alleged incidents, then the employee and her/his representative should be given an opportunity to also view these in advance of the hearing.
6. If circumstances necessitate, the employee can request one postponement of up to seven calendar days, or more by mutual agreement. All hearings should be held as soon as practicably possible. Disciplinary issues should not be unreasonably delayed due to the non-availability of a specific representative.
7. The individual or representative should formally respond by accepting the date of the hearing or giving a reason for a requested postponement. This response should also include details of any witnesses he/she wishes to call, and copies of any documents to be presented. It is the responsibility of the employee to approach her/his own witnesses. If another employee is to be called, he/she should formally request release to attend if otherwise rostered to work.
8. Once the papers are exchanged, neither side shall seek to re-investigate the disclosed findings. However, in the interests of equity, all parties reserve the right to investigate new information of relevance

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prior to the completion of the hearing. Where the hearing has already begun, this may require an adjournment.

9. If either side wish to submit new paperwork or call new witnesses any later than 7 days prior to the hearing, then, provided that both sides agree, the hearing should proceed as planned. If either side disagree with the submission of new paperwork or additional witnesses then the hearing will be deferred to allow for a minimum of seven days notice.

Conducting a Disciplinary Hearing

1. Disciplinary panels will comprise a manager of appropriate seniority, who will chair the hearing, supported and accompanied by a member of the Human Resources Directorate.
2. The presenting manager, who will normally be the investigating manager, will outline the details of the allegation.
3. The Chair will ensure that the hearing takes place in a fair and orderly way. Whilst by nature many disciplinary matters are contentious, the Chair should ensure that all participants behave in a responsible and non-intimidatory manner.
4. The Chair should open the Hearing by confirming those present and their respective roles. The Chair should then ask the employee concerned whether the allegation is accepted or denied.
5. When a complaint against a member of staff is accepted it may be possible to carry out an accelerated form of hearing that may not involve the attendance of witnesses etc. If the employee accepts the complaint then it is recommended that this is communicated to the Chair of the hearing in advance of the hearing date. This accelerated hearing will allow for the employee and/or representative to put forward mitigation and for the Chair to consider this mitigation in deciding the appropriate warning.
6. Whether or not the employee accepts the complaint the Chair may decide to carry out a full hearing. This course of action (i.e. carrying out a full hearing) is recommended when the matter being is particularly serious.
7. If the allegation is denied, the Chair will invite the presenting manager to make the management presentation, calling and questioning witnesses as appropriate. The employee and/or representative may also question the witnesses.

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- 8 The employee, or the representative on behalf of the employee, will then make a presentation calling and questioning witnesses if appropriate. The presenting manager will have the opportunity to ask questions of the employee and of any witnesses.
- 9 The panel members may question the presenting manager, witnesses and/or employee at any time.
- 10 The presenting manager will be invited to make a final submission – this should summarise the key points and not raise any new matters.
- 11 The employee and/or representative will be invited to make a final submission – this should summarise the key points and not raise any new matters.
- 12 The employee, representative and the presenting manager will be asked to withdraw to allow the Chair time for reflection and proper consideration. If new facts have emerged during the hearing it may be appropriate to reconvene.
- 13 When deciding whether a disciplinary penalty is appropriate and what form it should take, the Chair should bear in mind the need to act reasonably in all the circumstances. Factors which might be relevant include the extent to which standards have been breached, action in similar cases, the employee's general record, position, length of service and special circumstances that might make it appropriate to adjust the severity of the penalty. The HR advisor will provide guidance as necessary.
- 14 The Chair will consider all aspects of the case and decide whether the allegation is upheld. The HR advisor will provide guidance as necessary.
- 15 The employee, representative and the presenting manager will be recalled and advised of the decision of the Chair, along with the right of appeal if necessary.
- 14 Follow up action to actively manage employees during warning periods should be taken (see paragraph 8.21).

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Model letter for completion of investigation

Dear Mr//Ms

Investigation under the Disciplinary Policy

I am writing to you to inform you that my investigation into the allegation that is now complete.

I will be reporting my findings to

Mr/Ms... will be contacting you in due course to inform you as to what he/she proposes will be the next course of action

Yours faithfully,

Investigating Manager

cc: ...

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Cases of alleged bullying or harassment

1 Introduction

- 1.1 The Trust's Policy on Bullying and Harassment sets out the approach to dealing with alleged incidences of this kind. Employees are advised to consult this in the first instance.
- 1.2 There are many definitions of bullying and harassment. Bullying may be characterised as offensive, intimidating, malicious, or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.
- 1.3 Harassment, in general terms, is unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, gender, race, disability, religion or belief, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. The key is that the actions or comments are viewed by the recipient as demeaning and unacceptable.
- 1.4 There may be times when following investigation into cases of bullying and harassment that it is decided to consider the matter at a disciplinary hearing.

2 Amendments to Disciplinary Policy

- 2.1 In cases where harassment is claimed, the following modifications to the disciplinary procedure should be made:
 - If the immediate manager is the person accused of harassment an alternative Investigating Manager and/or Chair will be appointed.
 - If, following investigation, the matter is to be considered at a disciplinary hearing, then it is essential that at least one panel member should have an understanding and knowledge of the issues of discrimination and harassment. Consideration should be given to have a panel that is reflective of the diversity of the organisation and of any specialist knowledge that can be brought to the matter.
 - It is essential, as far as possible, in cases of alleged bullying or harassment, that the time-frames as set out in the Disciplinary Policy are met.

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- A contact point for the complainant should be established at the start of the process and that the person must be kept informed throughout.

3 Subsequent action following any disciplinary hearing

- 3.1 If a complaint of harassment/discrimination is upheld but falls short of a dismissal, the responsible manager should ensure that the harassment/discrimination has ceased and that there is no victimisation of the complainant. In such cases, the decision of the Disciplinary hearing may include the relocation of the harasser or other measures such as counselling and/or training for the harasser.
- 3.2 If the complaint of harassment/discrimination is not upheld, the manager may wish to consider mediation.
- 3.3 Counselling and/or training for the victim and/or the harasser could be offered. Counselling may be arranged through the Trust's Occupational Health Service.

4 Support available

- 4.1 Support which employees wish to access includes:
- A contact who is identified for the complainant at the start of the process who will keep the individual informed of what is happening.
 - The Trust's Employee Assistance Programme on Freephone 0800 5878116. The EAP can offer confidential and impartial support and advice on any problem.
 - Counselling via the Trust's Occupational Health Service – this can be arranged by HR or through self referral on 020 7346 4918.
 - Trades union or group such as LABEL – The Trust's black and ethnic minority network group – contact details available via HR.
 - A pilot peer support network LINC is available to staff – details on The Pulse.

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Complaints

1 Introduction

- 1.1 This appendix outlines the process when a complaint raised via the Trust’s Complaints Procedure leads to investigation under the Disciplinary Policy.
- 1.2 Whilst the Trust’s Complaints Procedure is separate from the Disciplinary Policy, it is important that, when a complaint requires disciplinary investigation and/or disciplinary action, this is carried out efficiently and that the complainant is kept apprised of any progress in dealing with her/his complaint.

2 Definition and responsibilities

- 2.1 A complaint is defined as ‘an expression of dissatisfaction which requires a response’.
- 2.2 The Professional Standards Unit (PSU) manages the investigation and resolution of complaints from patients, patient representatives and the public.
- 2.3 Complaints from other members of staff are not generally managed by the PSU. Such complaints may or may not be dealt with via the disciplinary procedure depending on the nature of the complaint. Managers are advised to seek advice from HR in such instances.

3 The procedure

- 3.1 If an Investigations Officer (IO), working on behalf of the Professional Standards Unit, decides, on the basis of her/his investigations into a complaint, that disciplinary investigation and/or action may be required, then they will advise the employee’s senior manager to this effect.
- 3.1 The same process will be followed should the Professional Standards Unit identify repeated complaints about the same or similar behaviour by an employee.
- 3.2 If it is agreed that the matter should be dealt with under the Disciplinary Policy then the employee should be informed of this and investigations and or hearings should be arranged in line with the Disciplinary Policy.

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3.3 The IO will be the Investigating/Presenting Manager (as defined in the Disciplinary Policy) and will present her/his findings at any hearing as necessary. This role will be carried out in line with the requirements of the Disciplinary Policy.

3.4 If the complainant is asked to attend any Disciplinary hearing, then particular care should be taken by the Chair to ensure that the person is not subject to unreasonable questioning or cross-examination.

3.5 The IO will be responsible throughout any Disciplinary processes for managing all liaison and other matters relating to the complaint

4 Outcomes

4.1 If disciplinary action is one of the eventual outcomes of a complaint then the Trust reserves the right to report this outcome to the complainant.

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Verbal warning – pro forma

Record of a disciplinary interview held at: _____

Between:

Manager _____ Job title _____

Employee _____ Job title _____

Representative (if present) _____

T.U.Status (if any) _____

Details of Employee

Date commenced service _____

Place of employment _____

Reason for interview

Conclusion

Proposed action/Advice

Signed _____ (Manager) date _____

_____ (Employee) _____

The warning is for a period of _____ months. It may be taken into consideration for any further action under the disciplinary procedure should further misconduct/poor performance occur within this period.

Appeal

The employee should be advised of his/her right of appeal. Any appeal must be lodged by the employee or representative in writing within 14 days of receipt of the letter, stating both the intention to appeal and the grounds, and should be submitted to the Human Resources Directorate representative.

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Advice and guidance, coaching or counselling -pro-forma

Record of advice and guidance given to an employee.

Manager _____ Job title _____

Employee _____ Job title _____

Representative (if present) _____

T.U.Status (if any) _____

1. Reason for meeting
2. Summary of advice given
3. Any follow up action required and timescales

Signed _____ (Manager) date _____

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Levels of authority

Because of the size and varied nature of the Trust, specific levels of responsibility or job titles for dealing with disciplinary matters are not listed. The person who deals with a matter should be at the level most appropriate for dealing with the management of the particular employee. The potential seriousness of a matter will also affect the decision on who should chair a hearing. Guidance is included within the Policy.

There are however clear levels of authority for suspension and dismissal.

Suspension

The senior manager on site is able to stand an employee down for example to allow a 'cooling off' period for up to two working days.

For any longer periods, the decision to suspend is limited to the Chief Executive, Director, ACAO (Head of CAC) or a delegated manager who will be at Assistant Director level.

Dismissal

The right to dismiss is restricted to the ACAO (Head of CAC), a Director or Chief Executive. If a hearing may potentially lead to dismissal then the above named should chair that hearing.

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Reasons for keeping records

- Patterns of misconduct - There may be circumstances where an employee's conduct is satisfactory throughout the period when the warning is in force, only for it to lapse soon after. Where a pattern emerges and there is evidence of abuse, the employee's disciplinary record should be borne in mind in deciding how long a warning should last.
- Assessing the credibility of an explanation – To be able to identify whether or not an employee has been warned previously regarding misconduct.
- Assessing the appropriate penalty. Previous good conduct may be cited as a consideration to a chair in disciplinary cases. Retained records will help with the objectivity in such situations.

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