

Policy on Disciplinary

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RELATED POLICIES AND LEGISLATION

Policy Reference Number	Policy Title
-	Registration of Interests of staff with authority to commit NHS expenditure
-	Standards of Business Conduct : Receipt of Gifts and Hospitality

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1. **INTRODUCTION**

This disciplinary procedure will apply to all members of staff employed by the Yorkshire and the Humber Strategic Health Authority (SHA).

It should be read in conjunction with the disciplinary guidelines.

Both this procedure and the guidelines take account of the advice issued by the Advisory, Conciliation and Arbitration Service (ACAS). Whilst the arrangements will be applied firmly, it must be clearly understood that disciplinary action in most cases is intended to encourage improvement in standards and behaviour. The overall aim of this procedure is to ensure reasonableness and consistency in the treatment of staff involved in disciplinary matters.

2. **PRINCIPLES OF POLICY**

No disciplinary action will be taken against any member of staff in the absence of firm information following examination of all the circumstances and without a formal hearing.

Such an examination may take the form of a preliminary investigation prior to the disciplinary hearing, or it may be an integral part of the hearing depending upon the circumstances.

At every stage of the procedure the member of staff concerned will:-

- be made aware of the nature of what has been alleged;
- have the right to be represented by a friend or colleague not acting in a legal capacity or a trade union representative if he/she so wishes;
- be given adequate opportunity to state his/her case before any decision is reached.

No member of staff will be dismissed for a first offence, except where the offence is considered to be so serious as to render continued employment with the Authority impossible, and then only following a proper disciplinary hearing. Where appropriate, a member of staff may be suspended whilst the allegations are investigated. Such suspension will always be on full pay and should not be viewed as disciplinary action. The power to suspend an employee rests with the appropriate Director or Manager, or their Representative to whom such power has been delegated.

The procedural steps set out below need not be followed in every case. The point at which the procedure is entered will depend entirely upon the perceived seriousness of the allegations.

A member of staff will have the right to appeal, only against the disciplinary action, which results in a final written warning being issued or dismissal.

3. **ACTION TO BE TAKEN BY MANAGERS, PRIOR TO ENTERING INTO THE DISCIPLINARY PROCEDURE**

Very minor shortcomings in respect of behaviour or performance will normally be dealt with informally by the Manager, and will be considered to be part of his/her day to day management role. The member of staff may have had additional supervision or support from the manager, or may have been referred to a Counsellor, this will not be deemed to be part of the disciplinary procedure. If, however, there is no improvement, despite the Managers attempts to improve performance or behaviour, the matter will be dealt with under the formal procedure.

4. **FORMAL PROCEDURAL STAGES**

Without exception, the member of staff should be given appropriate notice of the hearing interview by his/her Manager and any other Manager/Supervisor involved and given the option of being accompanied by a trade union representative or a friend - not acting in a legal capacity.

NB This formal hearing must take place before a decision is reached on the penalty to be issued to a member of staff. These are:-

4.1 **Verbal Warning (First Stage of the Procedure)**

A verbal warning would normally be given where general behaviour, conduct or work standards are deemed to be below acceptable standards, possibly but not necessarily following earlier discussions. The member of staff will be advised of the reason for the warning; that it is the first stage of the procedure; the consequences in the event of there being no improvement; and that a brief note of the circumstances and the outcome will be retained on the person's personal file for a period of six months. At this stage of the procedure the member of staff will have no right of appeal.

4.2 **Written Warning(s)**

If the offence or misconduct is sufficiently serious to warrant a written warning or if there has been a repetition of previous offences and/or no improvement following previous warnings, a written warning will be given to the person concerned. This will clearly indicate, as a minimum, the nature of the problem; the sort of improvement required and the time within which such improvement is expected to be achieved; the consequences in the event of there being no improvement; any other comments in respect of, for example, special training needs, periodic review or additional supervision. A copy of the original warning will be retained on the personal file for a period of 8 months. At this stage of the procedure the member of staff will have no right of appeal.

4.3 Final Written Warning

If the offence, misbehaviour or misconduct is sufficiently serious to warrant only one written warning, or there has been a deterioration or no improvement following previous formal warnings over a reasonable period of time, but the circumstances overall are not considered sufficient to warrant dismissal, a final written warning will be issued. The letter will indicate, at a minimum, the nature and seriousness with which the matter is being viewed; the sort of improvements required and the time within which such improvement is expected to be achieved; the consequences in the event of there being no improvement to the required level including dismissal; and other comments regarding, for example, additional supervision, periodic review, training needs; the right of appeal within 10 days from the date of the letter; and that the final written warning will be retained on the person's personal file for a period of 12 months.

4.4 Dismissal

In the case of some senior officers, employment can be terminated only by a decision of the full employing authority and power of dismissal will not be delegated to any officer. In all other cases dismissal may only be authorised by the relevant Director or Manager or their representative to whom such power has been delegated.

The contract of employment for the new staff member will state which officer has the power to dismiss him/her.

The decision to dismiss will be taken only after careful consideration of all the circumstances, normally in conjunction with the appropriate Personnel Manager following a disciplinary hearing. Dismissal will result in the event of an offence or misconduct being deemed to be so serious as to make continued employment impossible (see Disciplinary Guidelines) or where there has been a deterioration or no improvement in behaviour, conduct or performance following previous formal warnings. Termination of employment, depending upon the circumstances, may be instant with or without payment in lieu of notice or with notice. In the event of instant dismissal, due to gross misconduct, there will be no payment in lieu of notice.

Within three days of the effective date of termination, the person concerned will receive a letter clearly stating the reasons for dismissal; the effective termination date; and the right of appeal within 10 days from the date of the dismissal letter.

5. ACCREDITED UNION REPRESENTATIVES

Normal work, behaviour and conduct standards apply to accredited union representatives. Where disciplinary action is being contemplated against an accredited union lay representative the matter will be discussed with a full time

officer of the union concerned as soon as possible, bearing in mind the wishes of the person concerned.

Regarding suspension in the context of this procedure, such action in respect of a trade union representative will not be delayed in circumstances where it would otherwise have been applied without hesitation.

6. APPEALS TO THE AUTHORITY (SECTION 40 OF GWC)

6.1 Any member of staff who is aggrieved by disciplinary action taken against him/her which results in a final written warning or dismissal has the right of appeal to their employing Authority, who will, from its members provide a sub-committee of not less than three and not more than five members to hear the appeal. The members appointed to such a committee should not have been involved in the events leading to the disciplinary action. If possible, at least one member of the committee should have special knowledge of the field of work of the employee.

Where this is not possible in the case of an appeal against dismissal, the sub-committee will at the request of the employee or his representative appoint an assessor experienced in the particular discipline of the employee and not directly involved in the circumstances leading to the disciplinary action.

The assessor may only advise the Committee on any matter arising during the course of the hearing which she/he feels may be related to the professional conduct or professional competence of the employee.

No officer who has been directly involved in the circumstances which appeared to indicate the need for disciplinary action shall be present at the appeal except as a witness or as a representative of the employing authority. Where an appeal against dismissal is upheld, reinstatement should be dated from the effective date of dismissal and may therefore result in backdating of pay.

6.2 An appeal should be lodged in writing by a member of staff within ten working days of being notified of the disciplinary action. Appeals should be heard within twenty working days of their receipt, although in exceptional circumstances employing authorities may be entitled to extend this period.

6.3 The member of staff shall be given notice in writing at least ten working days in advance of the time and place of the hearing, shall be allowed to be accompanied by a representative of their trade union, professional organisation or staff association, and shall be enabled to call witnesses and produce documents relevant to their defence at the hearing.

S/he may elect to be legally represented but if so will be responsible for such costs they may incur and in these circumstances the employing authority may elect to be legally represented.

7. EQUALITY IMPACT ASSESSMENT

At this time an Equality Impact Assessment (EIA) has not been carried out on this policy. However, an EIA will be carried out as soon as possible and by no later than 6 months of the issue date stated on the policy cover sheet.

8. APPENDICES

Appendix 1 - Disciplinary Code of Practice

DISCIPLINARY CODE OF PRACTICE

1. INTRODUCTION

This document is applicable to Yorkshire and the Humber SHA and will be used in conjunction with the Disciplinary Procedure. It is applicable to all members of staff employed by Yorkshire and the Humber SHA.

The ACAS code advises that employers should prepare a set of disciplinary guidelines which clearly establish the standards of conduct, performance and behaviour expected of members of staff and the type of offences and misconduct which are considered to be of a sufficiently serious nature to warrant disciplinary action being taken, including dismissal. Quite apart from being recommended by ACAS, disciplinary guidelines are considered necessary by the Authority in order to ensure consistency, equity and reasonableness in the treatment of individuals involved in disciplinary matters.

It is emphasised that no set of guidelines can ever be exhaustive in terms of covering all circumstances and the following are, therefore, typical examples. Future interpretation will depend on the circumstances applicable in individual cases.

2. ATTENDANCE

2.1 Every member of staff is expected to give punctual and regular attendance except during periods of authorised leave or sickness. Staff should not absent themselves from work without prior permission, except in the cases of emergency or sickness and in these events, the appropriate line manager should be notified as quickly as practicable.

2.2 Repeated short absences, including repeated short periods of uncertified sick leave or abuse of the sick pay provisions, will be investigated and may lead to disciplinary action being taken.

3. STANDARDS OF CONDUCT, PERFORMANCE AND DRESS

3.1 All staff are expected to combine the need to provide prompt and efficient service with a concern and understanding for the feelings of others. If the performance or conduct of a member of staff is considered to fall short of the standard required, he or she will first be advised by his or her manager of any shortcomings and be given the opportunity to improve. In the event of the unsatisfactory performance or conduct continuing, action will be taken under the disciplinary procedure.

3.2 Members of staff are required to carry out the reasonable and lawful instructions of their supervisors or managers quickly and efficiently.

- 3.3 All members of staff will have access to a range of information in the course of their normal work. Such information is to be regarded as confidential and should not be discussed with any unauthorised person. Depending on the circumstances, any such breach of confidentiality will always be investigated and may lead to action being taken within the disciplinary procedure.
- 3.4 Members of staff should dress themselves in a manner which is acceptable to the authority and, in particular, any protective clothing or other items which are provided for their safety, should be worn as directed.
- 3.5 A member of staff should inform the Head of Human Resources (HR) if he/she becomes aware that he/she has any pecuniary interest in a contract which the Authority has entered into or proposes to enter into, whether or not he/she is personally party to the contract. (See policy on the registration of interests of staff with authority to commit NHS expenditure)
- 3.6 Any act of a staff member which seriously offends the propriety of another member of staff or a member of the public, including wilful contravention of the requirements of the Race Relations Act (1975) and the associated Codes of Practice, will be liable to action within the disciplinary procedure.
- 3.7 A member of staff who is arrested on any charge or served with a Summons on a criminal charge must inform his/her manager as soon as possible.

All managers must report to the Head of Human Resources any circumstances, which involve, or are likely to involve, criminal proceedings. The Authority may decide to immediately suspend the member of staff from duty pending the outcome of the proceedings. In the event of a member of staff being the subject of a criminal charge and where it is clearly within the competence and jurisdiction of the Authority to investigate the circumstances leading up to the Summons, the matter may be determined by the Authority based upon established facts. In such cases, however, action will only be taken after a careful and thorough investigation.

4. SERIOUS/GROSS MISCONDUCT

The disciplinary procedure provides that, under normal circumstances, no member of staff will be dismissed unless he or she has previously been given a final written warning. However, certain offences and/or conduct are so grave that they may merit immediate suspension from duty on full pay to enable enquiries to be made. If, under these circumstances, the allegations are confirmed after investigation, immediate dismissal may follow. Such action will be taken irrespective of whether a warning has already been given.

Examples of offences which are regarded as extremely serious or gross misconduct are as follows:-

4.1 Theft

Any instance of theft from the Authority, another member of staff, or from a member of the public.

4.2 Fraud

Any deliberate and wilful attempt to defraud the Authority, other staff or a member of the public including abuse of the sick pay provisions and making fraudulent expenses claims.

4.3 Assault

Any serious assault upon a member of the public or another employee whilst on Authority premises or on Authority duties elsewhere.

4.4 Negligence

Any actions, which seriously threaten the health and safety of patients, staff or members of the public.

4.5 Wilful and Malicious Damage

Any deliberate or wilful damage to any health service property, the property of others on NHS premises or property belonging to another member of staff.

4.6 Corruption

Any receipt of money, goods, favours or excessive hospitality in respect of services rendered is expressly forbidden. (See policy on standards of business conduct : receipt of gifts and hospitality)

4.7 Refusing to Obey Reasonable and Lawful Instructions

Wilful refusal to comply with a proper, lawful and reasonable instruction from a person authorised to give such an instruction whether verbal or written.

4.8 Intoxicants

Being unfit for duty due to alcohol or the misuse of drugs.

4.9 Criminal Offences

Any criminal offence within or outside employment which is deemed to render the member of staff unsuitable for employment within the

Authority. A criminal offence will not be treated as an automatic reason for dismissal regardless of whether the offence has any relevance to the duties of the individual as an employee or not. The main considerations will be whether the offence is one which makes the member of staff unsuitable for work within the Authority, which includes being unacceptable to other members of staff. Whilst a person will not be dismissed solely because a charge is pending or because he or she is absent through having been remanded in custody, it should be clearly understood that the Authority is entitled to investigate the circumstances and take action as appropriate, including dismissal.

5. STAFF INVOLVED IN THEFT OF HEALTH SERVICE PROPERTY

It is important that all staff should be aware of the manner in which cases of theft of Health Service property are likely to be dealt with and that such matters will always be treated as extremely serious. The invocation of the procedures at the Authority under these circumstances will always be a matter for the Line Manager/Director in consultation with the Head of Human Resources.

5.1 Where, in the case of loss of Health Service property, there is:

- prima facie evidence of theft by a member of staff of the Authority, or
- an allegation of theft against a member of staff of the Authority, or
- reasonable grounds of suspicion that a theft has taken place,

The person(s) concerned will be immediately suspended and the police may be requested to investigate the circumstances. However, the latter course will be at the Authority's discretion in the light of all the circumstances.

5.2 Where a member of staff;

- admits to having stolen Health Service property; or
- is found guilty on such a charge

This will be classed as gross misconduct and dealt with accordingly.

5.3 Where there is a serious allegation of theft against a member of staff but the charge is denied and police investigations are taking place, the member of staff concerned will normally be suspended from duty with pay until the matter is resolved.

5.4 There are circumstances where superannuation contributions can be affected and a recommendation may be made by the Authority to withhold contributions or benefits. Any such recommendation will be a matter for the Authority to determine.

- 5.5 Where theft of property other than Health Service property is involved, consideration will be given to invoking the procedures at 5.1 to 5.4 above in the light of the circumstances. However, there will in these cases be a special need to take into consideration the views of the person or persons to whom the property belongs.

It must, however, be appreciated that future difficulties can arise in certain circumstances when a known thief continues to be employed.

- 5.6 Where theft of property occurs outside the work place when the member of staff is off duty and is of a serious nature, perhaps involving a term of imprisonment, then consideration will need to be given to whether or not that member of staff is a suitable person to be employed in the Health Service. As in "Criminal Offences" above, it must again be appreciated that difficulties arise when a known thief continues to be employed.