



**University Hospitals Dorset**  
NHS Foundation Trust

# **Managing Disciplinary Issues**

## **Policy**

**01 October 2020**

**If this document is printed – please check in the Policies, Procedures and Guidelines section of the intranet to ensure this is the most up to date version.**

**Out of date policy documents must not be relied upon.**

<b>A) EXECUTIVE SUMMARY POINTS</b>
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<b>B) ASSOCIATED DOCUMENTS</b>
Managing disciplinary procedure
Managing attendance policy and procedure
Managing performance policy and procedure
Secondary employment policy
Handling grievances policy and procedure
Whistleblowing/Freedom to speak up policy
Managing High Professional Standards (Medical Staff)
Staff Code of Conduct, expected standards of behaviour policy
ACAS
Legal frameworks – Equality Act, GDPR, H & S, Employee Relations Act

<b>C) DOCUMENT DETAILS</b>	
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<b>Directorate:</b>	Human Resources
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<b>Approving committee / group:</b>	Partnership Forum
<b>Chairperson:</b>	Karen Allman
<b>Review Date:</b>	01/10/2023

<b>D) VERSION CONTROL</b>						
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18.1.20	1.0	10/2023	New policy	9.12.20	Partnership Forum	Human Resources

<b>E) CONSULTATION PROCESS</b>			
Version No.	Review Date	Author	Level of Consultation
001	10/2023	HR	Managers and Staff Side representatives

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A - Levels of management who may give warnings and dismiss staff (excluding medical and dental)

B - Levels of management who may give warnings and dismiss staff, medical and dental staff

## **1. Introduction**

This policy applies to all staff employed by the University Hospitals Dorset NHS Foundation Trust (the Trust), permanent, temporary and bank staff. It does not apply to self-employed workers or private contractors working within the Trust.

The arrangements set out in the Trust's policy E01 'concerns and disciplinary procedure relating to the conduct and performance of doctors and dentists' concerning competence of medical and dental staff are not superseded by this policy.

## **2. Purpose/Policy Statement**

The principle of this disciplinary policy is to address issues related to conduct and/or conduct-related performance issues.

Where poor performance arises when an employee does not have the skills, knowledge or ability to achieve the required standard of work this is dealt with under the Trust's performance management policy and procedure (previously known as capability policy and procedure).

Health-related capability issues are addressed through the Trust's managing attendance policy and procedure.

The following guiding principles will apply when using this policy:

- Patient safety - the continued welfare and safety of patients will be considered at all times when dealing with staff disciplinary issues
- Informal discussion - in cases of minor misconduct or unacceptable behaviour, line managers should exhaust all other means of achieving the required standards before formal disciplinary action is taken. This may be an informal discussion or counselling and should include the setting of clearly defined objectives and standards, which will be monitored over a reasonable period of time. Where necessary additional coaching and training should be provided
- Staged actions – when there are concerns about conduct or behaviour an informal action has not resolved the concerns, action will be progressed through formal stages becoming more serious with each stage
- Joint responsibility for resolution - staff and line managers will work in partnership to achieve the resolution of any concerns; working together constructively and positively to identify solutions and to resolve problems
- Record keeping - concerns will be addressed with the employee directly and supporting evidence will be shared with them. Accurate records will be maintained throughout all stages of the procedure and a record kept on the individual's Human Resources (HR) file

- Monitoring – HR will monitor any action to ensure it is consistent with other cases that have occurred within the Trust
- Timeliness - any concerns raised will be dealt with quickly and in a timely manner
- Confidentiality - at all stages both management and the member of staff concerned must ensure confidentiality of events and discussions. Sharing information, in confidence, with representatives is permitted. Any discussions with witnesses should be confined to the specific areas on which witnesses may have information. Any unreasonable breach of confidence may itself be treated as a disciplinary matter
- Line managers may contact their HR Advisor for advice at any stage of the procedure. Human Resources must always be consulted before a written warning or dismissal takes place
- The Trust respects and values the diversity of its patients, visitors and staff. Diversity and inclusion is a vital part of ensuring support for our staff. Being inclusive and respecting the value difference can bring, to ensure we can provide the best care for our patients and respect our colleagues
- The Trust expects all policies to be applied fairly, respectfully and in a non-judgemental manner regardless of the personal characteristics of the employee, which include those defined in the Equality Act 2010 (age, disability, sex, gender reassignment, pregnancy and maternity, race, sexual orientation, religion or belief, and marriage and civil partnership)
- The Trust wishes to promote a culture where our staff and/or representatives are able to raise concerns without fear of discrimination or harassment
- The Trust will continually seek to learn and improve on matters of staff discipline. Where a serious disciplinary incident occurs, the HR representative will co-ordinate a case review including the lessons that have been learnt from all those involved. This will be shared in an appropriate format at Clinical Care Group/Directorate Governance Committees and if appropriate across Clinical Care Groups/Directorates
- This policy can be provided in different languages or formats on request. If you require advice or clarification on any aspect of this policy, you should refer to your line manager or Human Resources

### 3. Definitions

**Misconduct** – is considered to be unacceptable or improper behaviour, particularly in the context of being a representative of the Trust and exhibiting

professional behaviour. It may also be wrongful, improper, or unlawful conduct motivated in a premeditated or intentional purpose or by indifference to the consequences of one's acts.

**LERN/DATIX** – the Trust's safety system for reporting and recording risk management including any incidents, adverse events and near misses.

**Disabled** – under the Equality Act 2010 a person is classified as 'disabled' if they have a "physical or mental impairment which has a substantial and long-term effect on the ability to carry out normal day-to-day activities".

**Underlying health condition** – an illness or injury that has the potential to influence daily living or attendance, but may be mitigated through medical treatment, adaptation, management by the individual and reasonable adjustment.

**Equality Act 2010** – the Equality Act 2010 harmonises and replaces previous equality legislation and ensures consistency in what employers need to do to provide a fair workplace environment. The Act offers protection to people with "protected characteristics" which include, amongst others, disability, gender reassignment and pregnancy/maternity. In the context of this policy, provision is made to specifically protect staff in these groups from discrimination.

**Reasonable adjustments** – The Equality Act states that employers have a duty to remove disabling barriers by making adjustments where it is 'reasonable' to do so. This duty applies where disabling barriers create a real and noticeable disadvantage for a person with an impairment compared with other people. However, it is good practice that support/reasonable adjustments are fully considered for all employees.

**Managers** – any Trust staff who have line management responsibilities. This includes both clinical and non-clinical staff and those who may have other job titles, e.g. Sister, Clinical Lead or Supervisor.

**Witness** – a person who has knowledge and/or information about an event or situation being discussed during a disciplinary investigation or hearing. This should have been witnessed personally.

**RIDDOR** – Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (as amended) – The Trust has a legal duty to formally notify the Health and Safety Executive (HSE) with details of accidents and incidents on Trust premises arising out of, or in connection with, work activities involving patients, all staff, visitors and contractors.

#### **4. Consultation**

This policy has been developed in consultation with Human Resources, managers and staff Side representatives, with final ratification being agreed at the Joint Partnership Forum.

## **5. Disciplinary procedure**

Please refer to the disciplinary procedure document that accompanies this policy.

## **6. Adverse incidents**

It is recognised that fear of reprisal, blame and/or disciplinary action may deter staff from reporting an incident (or potential incident). Therefore it is the policy of the Trust Board that unless there is clear evidence of flagrant malpractice, maliciousness, illegal behaviour or intent to harm, the disciplinary procedure will not be used in response to an incident investigation.

## **7. Authority to discipline**

Please refer to Appendix A of this policy for details of the levels of management who may give warnings and dismiss staff (for medical and dental staff please see Appendix B). Written warnings or dismissal of staff will always be the subject of consultation with a Human Resources representative.

## **8. Occupational Health**

Where a line manager suspects that the individual's physical or mental health may be a cause of the alleged misconduct, the individual must initially be referred to Occupational Health for assessment as soon as possible. Following the assessment and occupational health report, the line manager should decide (in consultation with Human Resources), whether to proceed with disciplinary action or to apply an alternative appropriate policy/procedure.

## **9. Conduct outside of employment**

An employee's conduct outside of their employment with the Trust may be subject to action under this policy and procedure if considered by the Trust to be relevant to their employment, or liable to bring the Trust into disrepute. The fact that an employee has been arrested, charged or remanded in custody or convicted of an offence outside of employment will not be regarded as an automatic reason for dismissal or other disciplinary action. However, employees have a duty to notify their manager of any such matter. If the circumstances of the alleged offence make the individual unsuitable for continued employment, or bring the Trust into disrepute, appropriate enquiries will be conducted where possible. Disciplinary action may be taken based on the evidence available, irrespective of the course of other proceedings.

## **10. Allegations of fraud, corruption and/or theft**

If an employee is suspected of fraud, bribery or corruption at any stage in the procedure, whether at investigation or hearing stage, then the Trust's Local Counter Fraud Specialist (LCFS) should be contacted immediately for advice, in accordance with the Trust's Fraud Response Plan. Similarly if a suspicion of theft arises the Trust's Local Security Management Specialist (LSMS)

should be contacted. The disciplinary process should be suspended until such advice is obtained.

The LCFS / LSMS will advise if they intend to conduct an investigation in relation to the suspected fraud or theft. The employee should not be advised of the allegation at this stage unless the LCFS / LSMS advise the matter is not suitable for investigation by them.

It is the role of the LCFS/LSMS to undertake a criminal investigation into any alleged fraud, bribery, corruption or theft, as this process is separate from any disciplinary investigation.

The Trust has an agreed protocol with the LCFS detailing how the disciplinary and counter fraud investigation processes can operate in tandem.

### **11. Police Investigation**

In some cases, the police may be investigating the same and/or related allegations as those that will be the subject of a disciplinary investigation. In this event, the police may request that the Trust suspends the disciplinary investigation to ensure that their own investigation is not jeopardised in any way. In these circumstances the investigating manager should consult Human Resources.

### **12. Resignation during disciplinary procedure**

Where an employee chooses to resign rather than go through the disciplinary procedure, the manager with support from their HR advisor will record the facts of the case. This information will remain on the personal file and may be used should the employee ask for a reference or apply to be re-employed. Where appropriate referral should be made to the employee's regulatory body and/or the Disclosure and Barring Service.

### **13. Grievances**

In the course of the disciplinary process, an employee may raise a grievance. If this occurs then the manager should consider suspending the process for a short period whilst the grievance is dealt with.

Where the grievance and disciplinary cases are related it is usually appropriate to deal with both issues concurrently.

When addressing grievances in these circumstances either within or separate to a disciplinary hearing, then it is essential that the following stages are followed:

- (a) the member of staff provides management with a copy of the grievance in writing;
- (b) the member of staff is invited to a hearing to discuss the grievance, where the right to be accompanied will apply;
- (c) the hearing manager should notify the employee of the outcome; and



(d) the member of staff is given the right to an appeal hearing if they feel that the grievance has not been satisfactorily resolved and be notified of the final decision.

#### **14. Whistleblowing/Freedom to speak up**

Employees 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.

#### **15. Training**

Training on the application of this policy and accompanying procedure will be offered on a regular basis by Human Resources and can be booked via on-line ESR self-service.

#### **16. Monitoring Compliance and Effectiveness of the Document**

The HR Directorate will maintain statistics of all formal staff disciplinary actions and monitor trends to reflect the diversity of the workforce. This will be reported quarterly to the Workforce Strategy Committee.

The Staff Partnership Forum will monitor the implementation of this procedure as part of its formal arrangements.

The effectiveness of staff discipline will form part of the system of performance management. This will cascade through Clinical Care Groups, directorates, and departments and to individuals in their personal objectives and development plans.

#### **17. Supporting Documents & References**

This policy should be read in conjunction with the following documents:

- Disciplinary procedure
- Managing attendance policy and procedure
- Capability policy
- Secondary employment policy
- Grievance policy
- Whistleblowing/Freedom to speak up policy
- Managing High Professional Standards (Medical Staff)
- Staff Code of Conduct, expected standards of behaviour policy

#### **18. Dissemination**

This policy will be disseminated via the Trust intranet site. It is also available upon request from the Human Resources and Occupational Health Departments.

## 19. Approval and Ratification

This policy will be taken to the Trust's Partnership sub-group for discussion and approval.

The Staff Partnership Forum are responsible for ratification.

## 20. Review

This policy will be reviewed on a three yearly basis in partnership with managers and staff side representatives.

## 21. Equality Impact Assessment

1. Title of document	<b>Managing Disciplinary Issues Policy and Procedure</b>	
2. Date of EIA	October 2020	
3. Date for review	October 2023	
4. Directorate/Specialty	Human Resources	
5. Does the document/service affect one group less or more favorably than another on the basis of:		
	<b>Yes/No</b>	<b>Rationale</b>
• Age – where this is referred to, it refers to a person belonging to a particular age or range of ages	No	The policy applies to all staff working for the Trust
• Disability – a person has a disability if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal daily activities	Yes	When managing staff disciplinary issues consideration is given to those with a disability which may impact on their behaviour. Policy notes its obligations under the Equality Act 2010
• Gender reassignment – the process of transitioning from one gender to another	No	Policy refers to all those employed by the Trust
• Marriage and civil partnership – marriage can include a union between a man and a woman and a marriage between a same-sex couple	No	Policy refers to all those employed by the Trust
• Pregnancy and maternity – pregnancy is	No	Policy refers to all

the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavorably because she is breastfeeding		those employed by the Trust
<ul style="list-style-type: none"> <li>Race – refers to the protected characteristic of Race. It refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins</li> </ul>	No	Policy refers to all those employed by the Trust. Policy is available in an alternative languages upon request
<ul style="list-style-type: none"> <li>Religion and belief – religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (such as Atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition</li> </ul>	No	Policy refers to all those employed by the Trust. When arranging meetings it is noted in procedure to be mindful of religious holidays
<ul style="list-style-type: none"> <li>Sex – a man or a woman.</li> </ul>	No	Policy refers to all those employed by the Trust
<ul style="list-style-type: none"> <li>Sexual orientation – whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.</li> </ul>	No	Policy refers to all those employed by the Trust
7. If you have identified potential discrimination, are the exceptions valid, legal and/or justified?	Yes	
8. If the answers to any of the above questions is 'yes' then:	<b>Yes</b>	<b>Rationale</b>
Demonstrate that such a disadvantage or advantage can be justified or is valid.	Disability	Legal obligations relating to conduct at work
Adjust the policy to remove disadvantage identified or better promote equality.	N/A	

## LEVELS OF MANAGEMENT WHO MAY GIVE WARNINGS AND DISMISS STAFF

(For Medical and Dental Staff see Appendix B)

The levels of management at which warnings will be given and staff dismissed will be as follows: -

### 1. Warnings

Level of Management	Level of Warning
1.1 Immediate Manager/Supervisor	Stage one warning (Verbal)
1.2 Head of Department/Manager	Stage two warning (First Written)
1.3 Head of Department/Manager	Stage three (Final Written)

These levels of management will need clarification within Directorates and Departments. In a Department with few levels of management, the Head of Department/Manager may be involved in giving both second level and final warnings.

### 2. Dismissal

Level of Management empowered to dismiss	Level of Staff who dismissing officer can dismiss
2.1 Chairman, Chief Executive	Executive Director Managers who are members of the Trust Management Board
2.2 Executive Director	Managers at the level immediately below Executive Director
2.3 Executive Director Director/Member of the Trust Management Board/Group Director of Operations	All other staff

Normally, the Executive Directors and Members of the Trust Management Board will only be present when a senior member of their staff is being

dismissed. No dismissal will take place without the appropriate Executive or delegated authority to a Head of Department/Senior Manager.

**MEDICAL AND DENTAL STAFF**

The following Senior Medical staff will be involved in the issue of warnings and/or dismissals.

<b>Disciplinary Action</b>	<b>Level of staff being disciplined</b>	<b>Level of Management applying disciplinary action</b>
Warning	Consultant	Medical Director
	Junior Staff	Consultant
Dismissal	Consultant	Chief Executive and Medical Director
	Junior Staff	Medical Director and Clinical Director