

TRUST POLICY
DISCIPLINARY POLICY

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FOR USE BY:

This Policy is to be followed by all staff of Gloucestershire Hospitals NHS Trust and Gloucestershire Managed Services.

FAST FIND:

This policy should be used in conjunction with the following Action Cards

- [ACTION DCP04 – Informal Stages](#)
- [ACTION DCP05 – Formal Stages](#)
- [ACTION DCP06 – Appeal](#)
- [Manager's TOOLKIT](#)
- [Investigation Guidelines](#)
- [Suspension Guidelines](#)

1. INTRODUCTION

- 1.1 Gloucestershire Hospitals NHS Foundation Trust (GHNHST) is committed to providing a safe and healthy working environment where all employees are supported and encouraged to achieve and maintain standards of conduct which are acceptable to the Trust.
- 1.2 This procedure provides a standard framework to be used by managers to engage with their employees regarding these expectations and be able to deal with issues fairly, consistently and promptly when the required standard is not met.
- 1.3 It is Trust policy to ensure that this procedure is applied fairly to all staff irrespective of their race, colour, national or ethnic origin, religion or belief, gender, gender reassignment, sexual orientation, marital status, age, disability, social or cultural background, trade union membership, employment status or working pattern.

2. DEFINITIONS

Word/Term	Descriptor
Suspension	Temporary removal of an employee from the workplace pending investigations, OR action taken by a regulatory body to remove them from the working environment (and to temporarily suspend them from their practice register) pending a disciplinary hearing or outcome of a fitness to practice hearing
Misconduct	Conduct not conforming to expected standards, which may be intentional
Gross Misconduct	Wrongful, improper or unlawful conduct motivated by premeditated or intentional purpose, or purposeful disregard of the consequence of one's action
Summary Dismissal	Dismissal without any pay in lieu of notice, i.e. instant dismissal
Sanction	Penalty imposed as an outcome of a formal hearing under the Disciplinary Policy
Fair blame	Ensuring that human error is taken account of in a fair manner, but with the expectation that employees will take responsibility for their actions and learn from their mistakes
Balance of Probabilities	The panel's decision will be made on the basis of which circumstances they agree is more likely to be true.

Employee Representative	Person representing an employee during a disciplinary process, who may be either a union or staff organisation representative, or a colleague from the Trust acting in a non-legal capacity
Authorised officers	Members of the management of HR teams who are authorised to dismiss or issue warnings (see Authorised Officers – Disciplinary Action)

3. POLICY STATEMENT

- 3.1 The main purpose of the disciplinary procedure is to encourage all employees to achieve and maintain satisfactory standards of conduct (behaviours which are under the individual's control) and to ensure consistent and fair treatment for all.
- 3.2 Efforts should be made where possible to deal with problems informally and promptly as they arise through discussion with emphasis on issuing support, advice and guidance. Where informal discussions have failed or are not considered appropriate due to the seriousness of the allegations then consideration will be given to moving directly to the formal stages of the process.
- 3.3 This procedure applies to all employees of the Trust including bank staff. In cases involving professional competence or personal conduct of medical staff, this policy should be read in conjunction with the document [Maintaining High Professional Standards in the Modern NHS](#); a framework for the initial handling of concerns about doctors and dentists in the NHS. Separate processes for the suspension of clinical practitioners and disciplinary hearings are contained within action cards [DCP3](#) and [DCP5](#).

4. ROLES AND RESPONSIBILITIES

Post/Group	Details
Director of People & Organisational Development	<ul style="list-style-type: none"> Implementation and review of disciplinary procedures Monitor disciplinary outcomes and appeals
Quality Committee on behalf of the Trust Board	<ul style="list-style-type: none"> Receive reports on the effectiveness of this procedure Receive HR monitoring information on employment tribunals and HR casework
Executive Directors/Chiefs of Service, Divisional/Specialty Managers	<ul style="list-style-type: none"> Ensure disciplinary procedures are appropriately enacted Monitor disciplinary outcomes Ensure line managers are appropriately trained
Responsible Officer (for professionally registered staff) – see Authorised Officers – Disciplinary Action and action card DCP 10	<ul style="list-style-type: none"> Ensure regulatory action is taken when necessary First point of contact with professional bodies Monitor compliance with professional body conditions, where appropriate Liases with professional bodies on fitness to practice issues
HR Advisory Team	<ul style="list-style-type: none"> Provide support and advice to managers and employees Provide logistical support to disciplinary processes Provide input into hearing decisions and sanctions Maintain HR data
Commissioning Manager	<ul style="list-style-type: none"> The decision to progress from an informal disciplinary process into the formal procedure will be made by the line manager. Once the decision has been made, the line manager will become the Commissioning Manager and seek an investigation into the issues. The line manager will appoint an Investigating Officer, unconnected with the case, to carry out an investigation under the Trust's Investigation Guidance Notes. In some cases the line manager may not be considered the most appropriate person to become the Commissioning Manager, in these cases a peer or more senior manager may take the role. HR advice should be sought. The Commissioning Manager will base their decision on how to proceed on the outcome and conclusions of the Investigation.
Investigating Officer (see action card DCP11)	<ul style="list-style-type: none"> Carry out investigations under this document and the Investigation Guidance Notes. Prepare investigation reports
Chair of Panel (see action card DCP10)	<ul style="list-style-type: none"> Leading hearings under this procedure Issuing hearing outcomes Hearing appeals
Line Managers	<ul style="list-style-type: none"> Participate in training Ensure staff are aware of conduct and behaviour requirements Appropriate informal management of disciplinary issues Maintain records

Post/Group	Details
Employee representatives (Accredited Union Representatives or Workplace Colleagues)	<ul style="list-style-type: none"> Support staff involved in investigation, disciplinary and appeal processes
Employees	<ul style="list-style-type: none"> Following this and associated policies/procedures

5. PRINCIPLES RELATING TO FORMAL ACTION

- 5.1 The Trust encourages managers and staff, wherever possible, to resolve conduct concerns as quickly and informally as possible.
- 5.2 It is recognised that because conduct is related to behaviours, staff may feel that managers are criticising them personally. Wherever possible managers and staff are encouraged to use established guidance on what constitutes good conduct within the Trust e.g. this policy, the [Trust Appraisal & Development frameworks](#) professional competency frameworks, as a basis for any discussion to establish a common understanding.
- 5.3 Should managers pursue formal disciplinary action they will ensure that staff are kept fully informed of the allegations against them, the progress of the investigation and the processes to be followed. The employee will always be given written confirmation of any allegations against them to ensure they are given the opportunity to state their case.
- 5.4 In the case of conduct issues relating to staff groups which require to be professionally registered, the Trust has in place a mechanism to ensure that relevant statutory regulatory bodies are informed, as appropriate, where such issues arise. Employees must be advised in advance of any such referral being made. Decisions in relation to ongoing professional registration as a result of such issues will be for the relevant body to determine. ([See DCP10](#))

6. OVERVIEW OF THE PROCEDURE

- 6.1 As already stated the Trust would encourage managers to resolve conduct issues informally wherever possible. There are times however when this is not possible and the policy provides an overview of the process to be followed to ensure a fair and transparent process for issuing sanctions where conduct is found to warrant this. The associated Action cards ([DCP04](#), [DCP05](#), [DCP06](#)) will provide more detail about how the process is conducted.
- 6.2 There are three main stages to the disciplinary procedure:
 - Informal Stage** – Informal counselling – (Action card [DCP04](#))
 - Formal Stage** - Formal Warnings up to and including dismissal – (Action card [DCP05](#))
 - Appeal** – Against Formal Warnings and dismissal – (Action card [DCP06](#))

7. INFORMAL STAGE – Informal Counselling

- 7.1 Managers are encouraged to deal with cases of minor misconduct informally. Such counselling is not disciplinary action under the terms of the policy; it is a positive means whereby managers can advise, guide and correct members of staff with the aim of improving, supporting and maintaining acceptable standards of conduct. Often talking about the problem, before entering a formal process, can frequently bring about a speedy resolution. Action Card [DCP04](#) details the process to be followed.
- 7.2 At the informal stage, managers are expected to meet with the employee and discuss the issues with them in private and ascertain how, or in what way, the expected standard of conduct is not being met. The aim of the meeting should be to agree joint standards and plan improvement over an agreed timescale where appropriate, whilst being clear on the expected conduct for the future and any potential consequences.
- 7.3 The manager should give the employee an opportunity to offer an explanation and should also try and find out if there is any underlying difficulty, such as a domestic (including domestic violence) or health problem, affecting the individual.

- 7.4 The manager may decide that simply speaking to the employee about the problem will be sufficient to get the message across and make a file note of the conversation which will be placed on the personal file (P-File). A copy of the notes of the meeting/letter and agreed Action Plan must be given to the employee.
- 7.5 Whilst, at this informal stage, there is no right to representation for the member of staff, the line manager may wish to consider their involvement to facilitate an open and honest dialogue. This should not however be allowed to unnecessarily delay the informal process.
- 7.6 Where the informal procedure fails to resolve the issue or is not deemed appropriate due to the level of seriousness, it will be appropriate to follow the formal disciplinary procedure.

8. FORMAL Stages – First and Final Level Warnings up to and including dismissal

8.1 INVESTIGATION

Formal disciplinary action will not normally be taken against an employee until the issue(s) of concern have been investigated under the Trust's Investigation process – see [Trust's Investigation Guidance Notes](#). Where an employee fully admits to an act of misconduct following the preliminary investigation, the matter will be referred, where necessary, directly to a disciplinary hearing where mitigation will be considered and an appropriate sanction given. There will be no requirement for any further investigation. In this instance, the manager should write a management statement summarising the case.

- The decision to progress from an informal Disciplinary process into the formal procedure will be made by the line manager, having sought appropriate advice from HR. Once the decision has been made the line manager will become the Commissioning Manager and seek an investigation into the issues of poor conduct. They will appoint an Investigating Officer, unconnected with the case, to carry out an investigation in line with the see [Trust's Investigation Guidance Notes](#).
- In some cases the line manager may not be considered the most appropriate person to become the Commissioning Manager, in these circumstances a peer or more senior manager may take the role. HR advice should be sought.
- The Commissioning Manager will base their decision on how to proceed on the outcome and conclusions of the investigation.

8.2 REPRESENTATION

- Employees have the right to be represented by an accredited trade union representative or by a workplace colleague, at all formal stages of this process.
- Employees are responsible for finding their own representation and must ensure that reps are informed of meeting/hearing arrangements.
- HR will ensure that representatives are informed of any meeting arrangements if the employee gives permission.
- Representatives may not be legal executives/solicitors or individuals from outside the organisation, including family members.
- If an accredited union rep is subject to disciplinary action, they are entitled to representation from a full-time officer – consult with the union's regional office as soon as possible in these cases.

8.3 SUSPENSION

Suspension from duty is a neutral act and is not regarded as a disciplinary sanction, and is not a presumption of guilt. It is intended to protect the interests of patients, other staff, the employee and/or to assist the investigative process. It is in the interests of all concerned to ensure that exclusion from work is not seen as the only course of action and alternative ways of managing risk should be considered e.g. close supervision, restricted duties or a temporary move to another area should also be carefully considered

Advice from HR must always be sought before action is taken to suspend an employee.

Suspending an employee from work for a short period to allow an investigation to take place may/is likely to be appropriate where:

- The employee's conduct would be sufficiently serious to be grounds for summary dismissal, for example if they were suspected of theft, bribery or serious assault.
- The employer has grounds to believe that the employee might deliberately cause damage if allowed to remain at the workplace, for example damage to the employer's network.
- The employee's continuing presence at work might prejudice the investigation in some way.
- The employee has acted in a violent way or threatened violence.
- The employee has been accused of bullying or harassment (e.g. repeated, sexual, etc)
- The matter under review is of a highly sensitive nature.
- There is a genuine belief that allowing the employee to remain at work presents a risk to patients, staff or the employee.
- Details of the suspension process are available on action card [DCP2](#).
- If suspension is being considered for a member of medical or dental staff, refer to action card [DCP3](#).
- Employees will receive average weekly gross earning calculated over thirteen weeks prior to the date of suspension.
- Suspension with full pay will be the normal course of action. Suspension without pay may be used in exceptional circumstances for serious gross misconduct. This will be at the discretion of the HR Director or Deputy.

9. FORMAL HEARING

If it is decided that a complaint of misconduct is justified following an investigation or where an employee admits an allegation of misconduct following a preliminary investigation, a disciplinary hearing will be arranged in accordance with action card [DCP5](#).

9.1 Documents shared prior to hearing

- Employees will be given fair notice of meetings/hearings. (at least 7 days, and 14 days for cases where dismissal is being considered).
- The employee will be provided with all relevant documentation to assist them in preparing their case prior to the hearing.
- A disciplinary hearing panel will consist of a manager of appropriate seniority and authority, who will chair the hearing. The Chair must have had no previous connection with the case.
- No information can be presented in a hearing that has not already been seen by both sides in advance, unless mutually agreed.

9.2 Witnesses

Witness evidence may be used to support either a management or employee case. Witness statements should be dated and signed, and witnesses may be called by either side to attend a disciplinary hearing, and should attend in most circumstances unless:

- There is agreement by both parties that attendance is not required, such as where it would cause significant distress (e.g. a sexual harassment case); seek advice from HR and Staff Side Chair.
- The witness is too unwell to attend.
- The statement is provided by a patient or member of the public who cannot be compelled to attend.

The witness's manager should ensure that they are able to attend on the date and time stated. Witnesses must be allowed to claim time off in lieu or be paid for attending a disciplinary hearing or appeal. Any appropriate travel expenses will be paid in line with Trust policy.

9.3 Failure to Attend the Hearing

When an employee is notified of the date of the hearing, they will be required to confirm their attendance. All correspondence will be either issued to the employee at work in person or sent

recorded delivery to the employee's home address as detailed on the payroll system. If deemed appropriate, correspondence may be emailed to the employees Trust or personal email address. Employees have a responsibility to ensure that their personal details are up to date and to notify their manager, or update their details on the Electronic Staff Records in respect of any change of address and phone numbers.

Should the employee or their representative be unable to attend the set date, then one additional date will be offered. If at the second attempt the employee is unable to attend, the panel will decide whether a decision will be made in their absence.

If the employee fails to confirm their attendance and subsequently does not attend the hearing, then attempts will be made to contact the employee on the day of the hearing using their most up to date contact details. If the employee does not respond, then the panel may wish to proceed with hearing the management case in their absence.

10. OUTCOMES OF DISCIPLINARY HEARINGS

10.1 NO FORMAL WARNING

If the case is found to be unsubstantiated, or because of exceptional mitigating circumstances the panel may decide to take no action. If this is the case then all records of the hearing and investigation will be removed from the employee's personal file

10.2 FIRST WRITTEN WARNING

- The panel may apply a **first written warning** in cases of misconduct, which would normally remain on record for 6 months – 12 months.

10.3 FINAL WRITTEN WARNING

The panel may apply a **final written warning** in the following circumstances:

- where there has been a failure to improve or change behaviour following a first written warning
- where the offence is sufficiently serious

A final written warning will normally remain on record for 12 – 24 months.

10.4 DISMISSAL

A panel may take the decision to dismiss an employee in the following circumstances:

- if a manager with authority (or delegated authority) to dismiss is a member of the panel, usually the Chair.
- if all options including measures short of dismissal have been considered but are deemed inappropriate.
- if an act of gross misconduct has been committed.
- Where there has been repetition of offences/behaviour which are already the subject of current warnings (a final written warning will already have been issued).
- Following advice from HR/professional advisors.

The employee will normally be dismissed with pay in lieu of notice, except in cases of summary dismissal. Pay for any outstanding annual leave up to the statutory amount, up to the date of dismissal will also be paid.

However, if a panel feels that dismissal is too harsh a penalty, yet a final warning is not appropriate, then they may consider a final warning with measures short of dismissal. (See section 10.6).

10.5 SUMMARY DISMISSAL

Summary dismissal will be considered when an act of gross misconduct causes an irretrievable breakdown of trust and confidence in the employee, and will necessarily only happen in exceptional circumstances. No pay in lieu of notice will be made.

Summary dismissal may only be enacted by a manager with authority to dismiss, and following discussion with HR.

The employee may opt not to be present at the disciplinary hearing, which will be convened in the unusual way. In these cases, the modified two-step process may be used ([see RD4](#)).

In cases where there is a risk of violence/aggression or damage to Trust property or premises following a summary dismissal, the panel may opt to ensure that the employee is escorted off the premises.

10.6 MEASURES SHORT OF DISMISSAL

The panel may apply measures short of dismissal in the following circumstances:

- where dismissal could be justified, but may be inappropriate in the circumstances
- where the employee and their representative agree with management that this is an appropriate action to save the employee from the dismissal.

Measures short of dismissal may include demotion, disciplinary transfer or loss of seniority. The terms and conditions relevant to the alternative post will apply and the employee will not be entitled to any protection of pay or conditions. The alternative post be voluntarily accepted by the employee within 7 days of the written offer.

A final written warning will accompany the measures short of dismissal, which will remain on record for 12 months.

If measures short of dismissal are rejected by the employee, the employee will be dismissed.

11 GENERAL GUIDELINES

11.1 GRIEVANCES

If a grievance is lodged related to an ongoing disciplinary matter, advice should be sought from HR. The raising of a grievance should not normally delay ongoing proceedings and the expectation is that this would be dealt with after the conclusion of a disciplinary hearing, or at least to run concurrently with it. Human Resources advice must be sought in all cases, who will refer the issue to a staff side representative for further discussion, if appropriate. However, it is accepted that if a grievance is upheld, any disciplinary action taken may need to be reviewed in the light of this decision.

If the grievance relates to a matter of potential discrimination, it may be appropriate for the panel to consider the issue at a separate hearing prior to the disciplinary/appeal hearing.

If a grievance is raised during a disciplinary hearing related to the process itself, the chair of the panel may take the following actions:

- consider suspending the process for a short period whilst the issue is dealt with according to the Trust Grievance Procedure
- hear the grievance after the disciplinary or appeal hearing has taken place

Vexatious grievances, if proven ([see the Trust Grievance Policy](#)) may lead to separate disciplinary action.

11.2 RESIGNATION

If an individual chooses to resign from the Trust and refuses to engage during the Disciplinary process there may be occasions e.g. professional registration/code of conduct/safeguarding concerns where the case may continue and be heard in their absence. If the case is found against the former member of staff the Trust will be obliged to refer the case to the relevant professional body. We therefore encourage staff to maintain their engagement with the process wherever possible.

Where there is a legal responsibility to the Trust to refer the case to an external body (e.g. NMC), the case would be reviewed and a referral made where necessary.

11.3 **Special Circumstances**

Special arrangements might be required for handling disciplinary matters among staff on night or weekend shifts, employees in isolated areas of the Trust, or staff with special needs. The Trust will provide time in lieu for attending meetings outside normal working hours. This policy and associated procedures must be followed at all times.

11.4 **Fraudulent Practices**

Where there is a reasonable belief that fraud has been committed, or when fraud is proven or admitted during the course of a disciplinary case, the Director of HR reserves the right to refer the case to the Local Counter Fraud Service (LCFS) and NHS Protect, who will make their own investigations alongside or following any disciplinary process. The Local Counter Fraud Service make independent decisions on whether or not to pursue a case.

Where there is reasonable belief that bribery has occurred, the case will be referred to the Police and LCFS for investigation in accordance with Trust's response to Bribery Act 2010.

11.5 **Health Issues Raised During Disciplinary Processes**

If an employee puts forward a case that disciplinary proceedings should be delayed or terminated on the grounds of his/her health, the Trust will ensure that they are referred to Occupational Health as soon as possible. Following receipt of the Occupational Health advice, the Trust will then make a decision on whether to continue the Disciplinary process. However, if an employee refuses to co-operate with this process, for no justifiable reason this may give separate grounds for pursuing disciplinary action.

11.6 **Expenses incurred during disciplinary processes**

The Trust does not pay an employee's out-of-pocket expenses incurred during investigatory or disciplinary processes.

11.7 **Fair Blame Culture**

The Trust is committed to a culture of "Fair Blame" following a critical incident or event and will liaise with the Trust's Safety Department for guidance on how to apply a fair blame approach. See also the NPSA Incident Decision Tree and Incidents, Accidents and Fair Blame.

The fair blame culture makes the assumption that employees will use their own judgement in the workplace, but are required to take responsibility for their own actions and learn from mistakes made.

The Trust aims to not blame employees unfairly for human error in the spirit of encouraging the reporting of errors and system failures. Implementing Human Factors in Healthcare is a helpful reference document on this topic.

However, the Trust has a right to by-pass this process step where it is in the interests of patients, staff, public, visitors, or any other person or party, where there is potentially or actually an issue of detriment.

Action Card [DCP9](#) gives specific guidance on the issue of drug errors.

11.8 **Disclosure and barring**

- All employees have a duty to inform the Trust if they are cautioned, charged or convicted of a crime in a timely manner, regardless to whether or not they are considered spent.
- Line managers are responsible for liaising with HR for advice on what actions are appropriate if they receive this type of information from an employee. Any action taken would be on a case-by-case basis

- Any employee making an intentionally wrongful declaration of their criminal conviction status is liable to action under this policy
- Guidance on [How a Conviction Becomes Spent](#) is available from Liberty (the Trust is not responsible for the content of external websites)
- Police forces have a duty to inform employers of cautions, reprimands, final warnings and recordable offences where the employee is in a position of “public trust”. See information on the [Notifiable Occupations Scheme](#) for further details.

11.9 **Link to Incremental Pay Progression**

A formal warning issued under the Trust’s Disciplinary Procedure may result in incremental pay being withheld, in line with the Pay Progression Policy.

The relevant panel will make an individual assessment of how the disciplinary issue has impacted on the achievement of appraisal objectives, performance or Trust values. Where there is evidence that there has been an impact on the achievement of appraisal objectives, performance or Trust values, incremental progression will be withheld. The panel will normally advise the individual of this decision at the time of the hearing.

12. **APPEAL**

The member of staff has the right to appeal against decisions made at each of the formal stages. See Appeal Action Card [DCP06](#)

13 **ACTION IN THE EVENT OF POLICE ENQUIRIES OR LEGAL PROCEEDINGS**

All details of this process are contained in action card [DCP7](#)

14. **TRAINING**

See separate training needs analysis and the Trust Mandatory Training Policy

15. **MONITORING OF COMPLIANCE**

Do the systems or processes in this document have to be monitored in line with national, regional or Trust requirements?	YES
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Monitoring requirements and methodology	Frequency	Further actions
• Consistency review of disciplinary cases and appeals by HR	• Annually	• Reported to HR team for escalation where concerns are identified.
• Review of casework and outcomes against HR metrics	• Annually	• Reported to HR team for escalation where concerns are identified.

16. **REFERENCES**

Ministry of Justice (2010). The Bribery Act 2010. London: Her Majesty’s Stationery Office.
 ACAS Code of Practice on Disciplinary and Grievance Procedures – TSO 2015
 Cornwall Partnership NHS Foundation Trust, Disciplinary Policy & Procedure, 4 June 2018
 The Queen Elizabeth Hospital NHS Foundation Trust, King’s Lynn, Disciplinary Policy & Procedure, July 2015

DISCIPLINARY POLICY

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DISSEMINATION DETAILS	Upload to Policy Site; global email; cascaded via divisions
KEYWORDS	Discipline, conduct, sanction, exclusion, appeal, investigation
RELATED TRUST DOCUMENTS	Investigation Guidance Notes Capability Policy Grievance and Disputes Incidents - Managing, Reporting and Reviewing of Incidents Accidents, including Serious Incidents Disciplinary procedure action cards
OTHER RELEVANT DOCUMENTS	Occupational Health Service Assessment Forms
EXTERNAL COMPLIANCE STANDARDS AND/OR LEGISLATION	ACAS Code of Practice 1 - Disciplinary and Grievance Procedures Code of Conduct for NHS Managers Maintaining High Professional Standards