

DISCIPLINARY POLICY AND PROCEDURE

SUMMARY

The Disciplinary Policy and Procedure sets out the guiding principles and procedures for ensuring that misconduct issues are dealt with in a fair, timely and consistent way across the Trust and employees are clear about the standards of conduct expected of them. The Procedure part of this document explains the arrangements for handling disciplinary issues and details the processes to be followed by managers when dealing with issues of misconduct, as well as the rights and responsibilities of managers, employees and representatives.

DISCIPLINARY POLICY

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1. INTRODUCTION AND POLICY STATEMENT

- 1.1 The Royal Marsden NHS Foundation Trust (hereinafter called the Trust) is committed to providing a fair and effective mechanism for handling misconduct issues.
- 1.2 For the avoidance of doubt this Policy is not intended and does not form part of any contract of employment. Instead it provides guidance on the procedure the Trust will use to address concerns or issues surrounding conduct. It may be amended from time to time.
- 1.3 This policy and procedure has been written in line with the current ACAS guide "Discipline and Grievances at Work".

2. PURPOSE

- 2.1 The purpose of the Disciplinary Policy and Procedure is to set out arrangements for handling disciplinary cases and addressing misconduct within the Trust. The overall aim of this policy is to maintain acceptable standards of conduct and behaviour. The policy sets out the rights and responsibilities of managers, employees and representatives. The Trust will encourage informal management where appropriate and ensure that misconduct is managed fairly and in a timely way.

3. SCOPE

- 3.1 The Disciplinary Policy and Procedure, and Disciplinary Offences (at Appendix 1), apply to all employees directly employed by the Trust, including medical staff. It does not apply to workers not directly employed by the Trust or staff employed by a third party e.g. bank staff, agency staff, honorary staff or contractors. The Disciplinary/Poor Performance Policy and Procedure for Bank Workers will be used for those who are contracted for work on a casual or 'bank' basis only.

In cases where patient complaints are initially investigated under the 'Concerns and Complaints Procedure' which identify potential misconduct by an individual employee, further investigation may be necessary under the Disciplinary Procedure. Depending upon the seriousness of the complaint and investigation findings this may result in moving to the Formal Stage of the Disciplinary Procedure.

- 3.2 Any disciplinary warnings issued to employees with more than one contract will normally apply to all concurrent employment unless there are exceptional circumstances. This includes casual bank worker assignments.

4. EQUALITY

- 4.1 The Trust believes in providing equity in its services, in treating people fairly, with respect and dignity and in valuing diversity as a provider of cancer care.
- 4.2 The Trust will undertake an appropriate Equality Impact Assessment of this policy.

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5. GENERAL PRINCIPLES

- 5.1 The Trust will seek to ensure that where an employee's behaviour or conduct falls below the required standard it is brought to their attention at the earliest opportunity.
- 5.2 Whenever possible and appropriate, initial concerns about poor behaviour or minor conduct offences will be handled and resolved through the informal stage of the procedure.
- 5.3 In more serious cases of misconduct or where gross misconduct is alleged, action may be taken at any stage of the procedure if this can be justified by the seriousness of the circumstances.
- 5.4 Managers will ensure that all action taken under this Policy and the Procedure is reasonable and fair.
- 5.5 Throughout the informal and formal stages of the procedure (except dismissal) an opportunity will be given for the employee to change and improve their behaviour.
- 5.6 Where an employee does not come up to the expected standard because of issues relating to lack of skill, aptitude or health the matter will be handled in line with the Trust's Managing Performance Policy or Managing Sickness Absence Policy. This does not preclude a move to the Disciplinary Procedure if it later becomes clear the unsatisfactory performance is a conduct matter.
- 5.7 It is acknowledged that a disciplinary process may be a difficult and stressful time. The Employee Relations team, Occupational Health and Staff Counsellors can provide information, support and advice to employees involved in the procedure. Further information is available in the Stress Management Policy which can be found on the Trust Intranet.

6. DUTIES AND RESPONSIBILITIES

6.1 Managers are responsible for:

- Ensuring that all employees are familiar with and have access to the disciplinary policy and procedure
- Ensuring that employees are aware of the standards of conduct required both at a Trust and departmental level
- Ensuring that matters of potential misconduct are brought to the employee's attention as soon as possible and 'as and when' the incident has occurred
- Ensuring that corrective informal action is taken where appropriate
- Where an investigation is required, ensuring that this is undertaken in a fair and timely manner
- Contacting the Employee Relations team for advice and support when it is likely that action is required under the formal stages of the procedure
- Deciding the appropriate action to be taken in cases of misconduct
- Advising employees who are subject to formal action under the procedure that their pay progression may be affected.

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6.2 Human Resources are responsible for:

- Ensuring that new employees are made aware of this policy and how to access it
- Advising managers at each stage of the formal procedure - this will include supporting managers during formal investigations and at disciplinary hearings
- Supporting managers to consider options taking equality, precedence, risk, legal and practical considerations into account before the manager makes the final decision on appropriate action
- Ensure that the procedure is applied in a fair and consistent way across the Trust
- Monitoring and recording the outcomes of action taken under the formal stages of the procedure.

6.3 Employees are responsible for:

- Complying with any Trust and local departmental standards of conduct, standard operating procedures and professional codes of conduct
- Co-operating with any investigation, including being available for interview, providing a statement and/or documents or acting as a witness, including attendance at hearings.

7 DISCIPLINARY PROCESS

There are two stages to the process, an informal resolution stage and a formal stage.

8 INFORMAL RESOLUTION

8.1 The Trust recognises that cases of minor misconduct may be best managed quickly and informally. Managers are expected to bring any minor concerns they may have about the employee's conduct to their attention at the first opportunity and advise them of the standards required and to keep a record of this. This is part of every manager's role and if concerns are acted on promptly this will reduce the need to use the disciplinary procedure.

8.2 It may be appropriate to hold an advisory discussion and give an informal warning. For clarity this will be confirmed in writing but does not amount to a formal sanction and will not form part of a disciplinary record. It will be ignored for the purposes of reference requests and pay progression, however, the fact that an advisory discussion has already taken place on a particular issue may be considered by a subsequent investigating manager.

8.3 There is no right to representation at informal meetings and no right of appeal against an advisory discussion and informal warning.

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9. FORMAL STAGE

9.1 INITIAL FACT FINDING

- 9.1.1 When an incident occurs which suggests a concern about individual behaviour the manager should undertake a fact-finding investigation using an initial investigation checklist template. Initial fact-finding will help determine the circumstances and decide on the appropriate response to an incident quickly. Where appropriate incidents will be managed informally.
- 9.1.2 Where, following initial factfinding, the manager does not consider the circumstances to be appropriate for informal resolution a formal investigation will not be automatic but a Gateway review will be used. The Gateway review will be undertaken by two Trust Executives to sense check the initial fact-finding checklist evidence and decide whether or not there is a concern to take forward formally.

9.2 GATEWAY REVIEW AND INVESTIGATION

- 9.2.1 Where a Gateway review finds that attempts for informal resolution of minor misconduct have been unsuccessful, or where the factfinding has shown the allegation is of a more serious nature, the matter will be addressed under the formal stage of the procedure. An investigating manager will be assigned and their role will be to conduct an investigation to establish a fair and balanced view of the facts relating to any disciplinary allegations.
- 9.2.2. During the investigation the manager will be supported by a member of the Employee Relations Team. The investigating manager will usually write to any relevant witnesses requesting statements or specific information. Where it is considered appropriate to do so the investigating manager may interview some or all of the relevant witnesses and the employee who is the subject of an allegation. All employees are expected to cooperate by attending investigative interviews and providing statements or other information if asked. Investigation meetings are solely for the purposes of fact-finding and no disciplinary action will be taken until after a disciplinary hearing (if applicable) has been held.
- 9.2.3 During any investigation interview the employee may be accompanied by a Trade Union representative or work colleague ('a Companion'). A work colleague is any current Trust employee, the Companion will be expected to maintain the confidentiality of the process and may not discuss it with anyone outside of the process. It is important that issues are investigated promptly before recollections fade and the investigation shall not be unreasonably delayed due to the unavailability of the Companion. An investigatory meeting would normally be expected within five working days of the incident/allegation taking place. If the Companion is not available within this timescale the employee may be asked to choose someone else.
- 9.2.4 Where action involving an accredited employee representative is contemplated, then the case will be discussed with a senior Trade Union representative or full time officer before any action is taken.

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- 9.2.5 Where it is not possible to interview a witness within an acceptable or available timeframe set for the completion of the investigation, a report of the findings and conclusions may be made based upon the information and evidence available.
- 9.2.6 Notes will be made of investigative meetings which may also be recorded. A copy of the digital recording will be provided to the employee. Any covert or unauthorised recording may be treated as misconduct. If at the end of the investigation the investigating manager finds that there is evidence of misconduct and believes there are grounds for disciplinary action, a disciplinary hearing will be arranged as soon as is reasonably practical on completion of the investigation.
- 9.2.7 The investigating manager will make a report of findings to the manager who commissioned the investigation. Where the investigation finds there is evidence to support the allegation the commissioning manager will decide whether the case should be considered at a disciplinary hearing. An Investigation Report Decision Making Matrix can be used by the commissioning manager to help make a decision.

Fraud

- 9.2.8 In the event of an allegation of **fraud**, the employees concerned **must not be informed** of the allegations. In such instances the manager must inform the Chief Financial Officer and the Director of Workforce. The ER Team will inform the NHS Anti-Fraud who will advise appropriately in accordance with the Counter Fraud Policy. In cases of alleged theft the Local Security Management specialist must be contacted.

Safeguarding

- 9.2.9 Where an allegation is made against an employee who works with children the relevant Local Safeguarding Children Board (LSCB) procedure for managing allegations and concerns about people who work or volunteer with children must be followed. Please refer to intranet for relevant contact details.
- 9.2.10 Where an allegation is made against an employee who works with adults the Trust's safeguarding adults lead must be contacted for further support and guidance.
- 9.2.11 For further information and advice on the process please refer to the Managing Allegations Against Staff That May Harm Children Vulnerable Adults policy and the Child protection and Safeguarding policy which are both available on the intranet or contact the Employee Relations team.

9.3 SUSPENSION

- 9.3.1 In some cases suspension of the employee from duty shall be considered examples include
- When the action complained of requires the immediate removal of the employee from their workplace for their safety or the safety of patients, employees or others.
 - When the alleged incident requires investigation and the continued presence of the employee may hinder or compromise that investigation.
 - To prevent further potential misconduct or gross misconduct.

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- 9.3.2 Suspension will be on full pay or whatever level of pay would otherwise apply in accordance with the individual's terms and conditions of service. In certain exceptional circumstances where it would be illegal to continue employing an individual the suspension will be without pay.
- 9.3.3 Suspension is a neutral act, not a disciplinary sanction, and is initiated without prejudice to the employee or the outcome of any subsequent hearing. Before suspending an employee consideration, when appropriate, should be given to the alternatives, for example redeploying the employee to another area of work or making other adjustments to normal duties.
- 9.3.4 It is acknowledged that suspension is stressful and will only be used where other measures have been considered but are not appropriate. Support will be made available to employees on suspension if required through Occupational Health and staff support services. Information about staff support services is available on the intranet.
- 9.3.5 Suspensions must always be authorised by a Divisional Director, or manager of equivalent or higher seniority, and after taking advice from HR. Outside of office working hours there may be occasions where it is necessary to suspend an employee and it is not possible to refer to HR. In such cases the on-call manager should be contacted.
- 9.3.6 An employee does not have the right to be represented at a meeting where suspension is to take place but may be accompanied at the discretion of the suspending manager by a Companion.

Suspensions and the reasons for the decision must always be confirmed in writing to the employee by the suspending Director/Manager, normally within 72 hours of the suspension taking place.

- 9.3.7 Suspension will be for no longer than is necessary to investigate any allegations of misconduct against the employee or so long as it is otherwise reasonable while any disciplinary procedure against the employee is outstanding. Suspension will initially be for up to two calendar weeks and will be reviewed thereafter, every four weeks. The employee will receive a letter prior to the end of each period of suspension informing them whether it will continue. However, suspension will not be rendered invalid by the failure of the Trust to provide a review letter.
- 9.3.8 During suspension from work, an employee should not enter Trust premises without the prior agreement of their manager, unless entering as a patient or as a carer of a patient, attending an Occupational Health or Staff Support appointment.
- 9.3.9 During suspension from work, an employee must not undertake work for another organisation during the hours for which their Trust contract applies. For avoidance of doubt, this applies to the whole contract with the Trust. They should also keep themselves available to attend any meetings which may be required to assist with the investigation and must notify their manager of any period when they will not be contactable at their home address. They should also comply with sickness reporting procedures as though they were at work.

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10. THE DISCIPLINARY HEARING

- 10.1 The employee will normally be given 7 working day's written notice of the hearing. They will also be informed of the purpose of the hearing and of the nature of the allegations and their right to be represented by a Companion. Where it is possible that the disciplinary hearing might lead to dismissal, the employee must be warned of that risk in advance of the hearing.

The hearing panel will be chaired by a manager not previously involved in the investigation and they will be supported by another manager and a member of the HR team so that decisions are reviewed from multiple perspectives. Notes will be taken of the hearing which may also be recorded. If it is recorded a copy of the digital recording will be provided to the employee following a request.

- 10.2 If the employee is unable to attend the date arranged because of circumstances beyond their control, they must inform their line manager or HR as soon as possible and may request a postponement. A postponement of up to a week (5 working days) will be allowed or longer in exceptional circumstances. Efforts will be made when arranging dates to accommodate the availability of the Companion. If there is an unacceptable delay because of the non-availability of the chosen companion, the employee will normally be expected to arrange for an alternative trade union representative or work colleague to attend.
- 10.3 If there is a failure to attend without any request for postponement, or any explanation given, or if the employee is persistently unable or unwilling to attend without good cause, then the hearing/meeting may be conducted in the employee's absence and a decision made on the evidence available. The employee's representative may attend in such circumstances and make representation on their behalf. The employee may also submit a written statement for consideration in their absence.
- 10.4 The employee and their representative will normally receive the management statement of case 5 working days before the hearing. The statement of case will outline the allegations, evidence from the investigation and any supporting witness statements, if applicable. If the employee wishes to submit a written response or to refer to written evidence at the hearing they should submit documentation to the HR representative at least 2 working days before the hearing.
- 10.5 The Companion will be allowed to address the hearing to put the employee's case and to sum up the case on the employee's behalf. The companion may not answer questions on the employee's behalf or suggest answers to questions to the employee.

Both management and staff side will have the right to call witnesses and these should be notified in advance of the meeting. The employee and their representative are responsible for ensuring both the availability and attendance of their witnesses at the hearing.

- 10.6 Where the issue concerns professional or technical matters the manager chairing the disciplinary hearing may seek additional advice from an appropriate person with

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specialist and professional knowledge. This person should have had no direct involvement in the case previously. The manager conducting the disciplinary hearing shall ensure that any disciplinary action taken is fair and reasonable in view of all the circumstances and evidence put forward. A Disciplinary Hearing Decision-Making Matrix template can be used by the hearing manager to help make a decision.

- 10.7 Wherever possible employees should be verbally informed of the outcome of the hearing on the day, or as soon as is reasonably practical, and this should be confirmed in writing normally within 5 working days.
- 10.8 Written non-verbatim notes of the disciplinary hearing, which capture the main points of discussion, will be kept and will be given to the employee if requested. Hearings may be recorded by the Trust to ensure accuracy but covert recording will not be allowed and may be treated as gross misconduct.

11. LEVELS OF SANCTION WITHIN THE PROCEDURE

- Written warning valid for 12 months
- Final written warning valid for 18 months
- Dismissal with notice
- Summary dismissal without notice

12. WARNINGS

Where a warning has been given, the letter will detail the nature of the misconduct, the rationale for action taken. A copy will be sent to the employee's trade union representative. The letter will also confirm that any further acts of misconduct could result in further disciplinary action being taken and the employee will also be informed of their right of appeal.

Employees who have been issued with a formal written warning may not receive an increment, in accordance with the Trust Pay and Progression Policy and Procedure, if applicable.

13. FURTHER MISCONDUCT

- 13.1 Following an advisory discussion under the informal stage the line manager will expect an immediate change in the employee's behaviour. If there is evidence of further misconduct further action may be taken under the formal stage of the disciplinary procedure. The final decision as to whether conduct has changed and improved sufficiently following an advisory discussion under the informal resolution stage will rest with the manager.
- 13.2 Following a hearing where a formal warning is issued an immediate and sustained change and improvement in behaviour will be expected. If further misconduct occurs whilst a formal warning is live further action may be taken which may result in a higher level warning or dismissal.

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14. DISMISSAL**14.1 DISMISSAL WITH NOTICE**

Dismissal may be appropriate if the manager hearing the case finds that there is sufficient evidence of further misconduct despite previous disciplinary action. It may also be appropriate in cases of serious misconduct. Written confirmation of the decision to dismiss, giving reasons, will be provided following a full disciplinary hearing as described above and dismissal, except for summary dismissal, will be with full contractual notice or payment in lieu of notice. Payment in lieu of notice can only be paid if the employee has the relevant express 'PILON' clause in their contract of employment. Contact Employee Relations for further information.

14.2 SUMMARY DISMISSAL WITHOUT NOTICE

An employee may be summarily dismissed if it is established, after an investigation and full disciplinary hearing, that there has been an act of gross misconduct. Dismissal will be without notice or payment in lieu of notice.

15. ALTERNATIVES TO DISMISSAL

In some cases the Trust may at its discretion consider alternatives to dismissal. These may be authorised by a senior manager i.e. Divisional Director or Deputy or equivalent, and will usually be accompanied by a final written warning. Examples include:

- a) demotion (where dismissal would otherwise have occurred)
- b) Transfer to another department or job
- c) Loss of seniority

This is not an exhaustive list.

16. AUTHORITY TO TAKE DISCIPLINARY ACTION

- | | | |
|------|-----------------------|--|
| 16.1 | Advisory discussion | Line manager/supervisor |
| 16.2 | Written warning | Next most senior manager or at least one level removed from the employee's immediate manager |
| 16.3 | Final written warning | Next most senior manager or at least one level removed from the employee's immediate manager |
| 16.4 | Dismissal | A Senior Manager within the Division or Directorate at grade 8c or above. |

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17. APPEAL

17.1 If the employee wishes to appeal the outcome of the original hearing decision, they may appeal in writing to the Director of Workforce, within five working days of receipt of the outcome letter. Appeals can only be submitted under the following grounds:

- New evidence
- Improper process and/or procedural failings
- The unreasonableness of the decision

17.2 Appeals should be heard without unreasonable delay. If the employee asks for a postponement of the hearing only one may be granted, and the hearing is usually rearranged within 5 working days except in exceptional circumstances.

17.3 The appeal should be heard by an appropriate senior manager who has not previously been involved in the case. Employees have the right to be accompanied at appeal hearings by a Trade Union Representative or by a workplace colleague who is a current employee of the Trust, not acting in a legal capacity.

Employees should be informed in writing of the results of the appeal hearing as soon as possible usually within 5 working days.

There will be no further right of appeal and the decision at the appeal hearing will be final.

18. NOTIFICATION TO PROFESSIONAL BODIES

18.1 In serious cases of misconduct or gross misconduct the Trust may report the matter to the appropriate statutory/professional body.

19. CRIMINAL OFFENCES

19.1 Where an employee is involved in criminal proceedings or police investigation for an offence committed off duty, the Trust reserves the right to conduct its own investigation in line with the Disciplinary Policy, Procedure and Conduct Rules to consider if the employee's conduct warrants disciplinary action because of its employment implications. Employees are responsible for informing the Trust of any criminal proceedings being taken against them during their employment, including the subsequent issue of cautions, convictions and any other action taken by a court. The Trust will assess whether or not the nature of the proceedings and outcome have a bearing on the employee's employment before deciding whether any disciplinary action is appropriate.

20. REVIEW

20.1 Overall responsibility for this policy and procedure rests with the Director of Workforce. This policy and any associated procedure(s) will be reviewed at the date stated and may be subject to change at that time, or at an earlier date if necessary, subject to consultation with employee representatives recognised for that purpose.

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21. LINKED TRUST POLICIES AND PROCEDURES

21.1 This procedure should not be used in a way that breaches any of the Trust's other policies. This includes, but is not limited to, the following policies and procedures:

- [Dignity at Work Policy and Procedure](#)
- [Workplace Concerns and Grievance Resolution Policy and Procedure](#)
- [Equality and Diversity Policy](#)
- [Whistleblowing Policy and Procedure](#)
- [Pay and Progression Policy and Procedure](#)

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