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Cornwall and
Isles of Scilly

Disciplinary policy and procedure

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1. Introduction

NHS Cornwall and Isles of Scilly integrated care board (ICB) recognises that a positive and pleasant working environment contributes to the overall effectiveness of the organisation. This policy and procedure has been developed to ensure a fair, systematic and consistent approach is taken when a colleague's behaviour or action is in breach of workplace rules or falls short of the expected standards.

This policy has been developed in consultation with recognised trade unions and is in accordance with the ACAS Code of Practice on disciplinary and grievance procedures.

This procedure does not form part of any colleague's contract of employment, and it may be amended at any time following consultation. We may also vary application of this procedure, including any time scales for action, as appropriate.

2. Purpose

The disciplinary policy and procedure provide a framework to manage concerns about someone's conduct in a fair and timely way. It aims to help people achieve and maintain required standards of conduct.

This policy applies to all colleagues regardless of length of service including those colleagues on secondment from the organisation. For colleagues on secondment from another organisation, the responsibility lies with the substantive employer. However, The ICB will work in partnership or support the investigation process where appropriate. The policy does not apply to individuals on a contract for services, honorary contract, volunteers, or agency workers. In these circumstances, concerns with conduct will be addressed via the respective contract, policy, or guidance.

3. Responsibilities

It is the aim of The ICB to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. The fair treatment of staff supports a culture of fairness, openness and learning in the NHS by making staff feel confident to speak up when things go wrong, rather than fearing blame.

An objective and prompt examination of the issues and circumstances should be carried out to establish whether there are truly grounds for a formal investigation and/or formal action. Would training for the colleague, support, guidance or informal management be more appropriate and productive?

Disciplinary cases will be treated sensitively and confidentially. Information will only be shared with those who have a legitimate right to be informed in accordance with the Data Protection Act 2018 and the Common Law Duty of Confidentiality. Breaches of confidentiality by any party may result in disciplinary action.

Responsibilities of senior managers and line managers

Managers are responsible for ensuring their team is aware of the required standards of conduct and for bringing any concerns to the attention of colleagues at the earliest opportunity.

Managers should try to resolve minor matters of concern informally. If informal approaches do not bring about improvement, or if misconduct is sufficiently serious, formal stages of this procedure should be followed.

Managers will ensure that all action taken under this policy and procedure is reasonable and proportionate. At an early stage, colleagues will be told why disciplinary action is being considered and they will be given the opportunity to respond to allegations before decisions about formal sanctions are taken.

Colleagues can be accompanied and represented, at a formal disciplinary hearing by a work colleague, trade union representative or other companion from any background, not acting in a legal capacity.

All managers who oversee investigations or take part in hearing panels must have appropriate and up to date training before doing so. Managers should not take part in any disciplinary process without first undertaking the appropriate training or refresher training.

Responsibilities of people and organisational development

Managers should seek advice from people and organisational development (POD) if they feel that the required standards of conduct have not been met. POD can help to ensure that this policy is followed correctly and that any actions taken reflect the ACAS disciplinary code of practice, and just culture principles. Where a colleague's ability to do their job is affected by something other than conduct POD will advise on appropriate action, which may involve an ICB policy not related to disciplinary.

POD will source appropriate training for managers which is based on the principles of just culture and the ACAS disciplinary code of practice.

POD will help managers to carefully assess whether the matter can be managed informally where possible or whether there are grounds for further investigation and/or formal action.

Right to be accompanied

Colleagues have a right to be accompanied at any formal meeting, by a work colleague or trade union or professional body representative who is neither a family member (or in a personal relationship) nor working in a legal capacity at any formal disciplinary hearing.

It is the colleague's responsibility to arrange such representation. The colleague representative can:

- address the meeting or hearing (to put or sum up the colleague's case)
- respond on behalf of the colleague to views expressed at the meeting or hearing
- confer with the colleague during the meeting or hearing

The colleague representative cannot:

- answer direct questions on behalf of the colleague
- address the meeting or hearing if the colleague does not wish it

A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

If the colleague's companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards, the colleague may be asked to choose someone else .

4. Handling allegations of misconduct and investigating the facts

Fact finding

When concerns are raised the manager will always carry out some initial fact finding and, in most circumstances, it would be appropriate to meet the colleague to establish their version of events. The manager may also meet with other relevant individuals to get a good understanding about what has happened. The fact-finding exercise should review the whole of the event and establish dates and timing of the incident, individuals involved, or individuals who have potentially witnessed events. This should include taking accounts from individuals involved in the incident or concern. It may also include reviewing:

- rotas
- notes
- emails
- individual circumstances
- previous discussions with individuals.

This is not a formal investigation and will be informal, open and transparent.

Informal management

The organisation recognises that cases of minor misconduct may be best dealt with informally and quickly. A 1 to 1 discussion may be all that is needed, supported by the offer of additional training, coaching and advice if appropriate. Managers should talk to

the person in private as soon as possible, normally within a few days. This will be a 2-way discussion, aimed at talking through shortcomings and encouraging improvement.

Feedback should be constructive with an emphasis on finding ways to improve. The manager will make sure the colleague understands the standards expected and will explain how their conduct will be monitored and set a clear timescale for improvement. Managers should keep brief notes of any informal action for reference purposes.

Where appropriate, managers may also summarise concerns and expectations in writing, a copy of which will be placed on the personal file.

If informal action does not bring about the required improvement, or the misconduct is too serious to be classed as minor, formal disciplinary action may be considered. Examples of misconduct are identified in appendix 1.

Suspension

In most cases, suspension from work will not be necessary and the colleague will be able to continue doing their normal job while matters are investigated. Any decision to suspend or exclude an individual should never be taken by 1 person alone or by anyone who has an identified or perceived conflict of interest. Levels of authority to suspend are defined in appendix 3.

Suspension should only be considered where immediate safety, safeguarding concerns or security issues prevail and any decision to suspend or exclude should be a measure of last resort that is proportionate, time bound and only applied when there is full justification for doing so.

Temporary redeployment to an alternative role, restrictions on practice or increased supervision should be considered and, if appropriate, put in place for the duration of the investigation as an alternative to suspension.

The suspension risk assessment tool must be used prior to any decision being taken about whether to suspend or redeploy or amend the duties of any colleague.

Where alternative action to suspension is implemented, this does not prejudice the right to suspend at a later stage if it is considered necessary, or a decision to dismiss following a formal disciplinary hearing.

Suspension is not an assumption of guilt and is not a disciplinary sanction.

Every effort will be made for the manager to meet with the colleague to inform them of the decision to suspend. This will be followed up in writing within 3 working days. The manager communicating the decision to suspend should:

- explain the reasons for suspension and how long it is expected to last
- explain the colleague's responsibilities during their suspension

- provide a point of contact
- agree how they will keep in regular contact with the colleague throughout
- give details about support from EAP, OH or staff assistance helpline

If it is necessary to explain the colleague's absence, the manager should also discuss with the colleague how they would like it to be explained to colleagues and/or external contacts.

Suspension is on full pay except for colleagues with zero-hour contracts for which suspension will be unpaid. However, in the case of a worker on zero-hours contract, this should be reviewed by the director of POD.

Suspension will be for the minimum time necessary and will be kept under review reviewed and lifted when the reason for suspension no longer exists.

Most investigations should be concluded as soon as possible and in any event within 2 weeks of suspension. Where this is not possible, people should be informed that they remain suspended and told when the investigation is likely to be completed. This should be followed up in writing. Managers should make themselves available to meet colleagues to discuss the progress of the investigation.

If the colleague wants to go on holiday during their suspension, they must still make a request to take annual leave.

5. Formal action

Investigation

Where the fact-finding exercise has identified alleged misconduct or gross misconduct, or where expectations have been clarified and there has been a failure to improve conduct and/or behaviour concerns, a formal investigation will be instigated.

A disciplinary case manager (DCM) will be appointed, who will identify an investigating officer. The investigating officer should not be someone who is directly responsible for the colleague who is being investigated, nor be directly or indirectly involved in the incident. It should also be noted that an investigating officer cannot subsequently be a member of the disciplinary panel in the event a formal hearing is required.

The case manager will write to the colleague who is the subject of an investigation within 7 working days of being informed of the concerns, outlining the nature of the allegation being investigated.

The investigating officer will be responsible for ascertaining the full facts of the case and for providing a report to the case manager. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. In cases where an incident involves, or was witnessed by a number of colleagues, this may involve obtaining statements from each individual colleague. The investigating officer should

keep the colleague under investigation updated with regards to timescales of the investigation.

The investigating officer will submit a report including all evidence collected to the case manager, outlining the full facts and circumstances of the case based on the evidence collected. The case manager will review the report and with the advice of POD, decide regarding whether a formal disciplinary hearing should be convened.

If a disciplinary hearing is deemed not appropriate the case manager should meet with the colleague at the earliest opportunity to discuss the findings of the report and agree a way forward. A letter confirming the outcome of this meeting should be sent to the colleague within 7 working days of the meeting.

Time periods may be varied but any extended timescale must have a clear completion date and be communicated to the individual by the DCM.

Investigation interviews are solely for purpose of fact finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.

Procedure for medical staff

Where applicable for investigations regarding clinical practice, the investigation procedures for medical staff are covered by the Department of Health's MHPS.

Disciplinary hearing

Following any investigation, if there are grounds for disciplinary action, the colleague will be required to attend a disciplinary hearing. The purpose of a disciplinary hearing is to establish the facts of the case and determine what, if any, disciplinary action should be taken.

Prior to any disciplinary meeting, the colleague should be informed in writing of the allegations against them, the basis for those allegations, and what the range of consequences will be if it is decided at the hearing that the allegations are true. The following will also be included where appropriate:

- summary of relevant information gathered during the investigation
- copy of any relevant documents which will be used at the disciplinary hearing
- copy of any relevant witness statements when they are not confidential

Where witness statements are to be kept confidential as much information as possible will be provided while maintaining confidentiality.

The DCM will be responsible for ensuring that all the arrangements for the hearing are made and that the colleague receives the appropriate paperwork and notice of the hearing.

5 working days written notice of the date, time and place of the disciplinary hearing will be given to provide the colleague with a reasonable amount of time to prepare their case based on the information that they have been provided with. The hearing will be arranged as soon as is practicably possible.

If the colleague wishes to be accompanied at the hearing, they are responsible for notifying their representative of the date, time and location of the hearing and should forward any documents they wish to present to the hearing, together with the names of any witnesses they wish to call, to the chair of the panel at least 2 working days before the hearing. The colleague should inform the manager chairing the hearing of the details of their companion within a reasonable time period of the hearing taking place.

If the colleague and/or their companion cannot attend the hearing they should inform the DCM immediately and consideration will be given to arranging an alternative time. Colleagues must make every effort to attend the hearing and failure to attend without good reason may be treated as misconduct. Failure to attend without good reason, or persistent inability to do so (for example for health reasons), may lead to a decision being taken based on the available evidence.

If the colleague chooses not to attend the hearing, (or is unable to) they may choose to send a written statement for consideration at the hearing or their trade union representative (or work colleague) may attend on their behalf.

A colleague may ask relevant witnesses to appear at the hearing, provided the colleague gives sufficient advance notice to arrange their attendance. The colleague will be given the opportunity to respond to any information given by a witness. However, the colleague will not normally be permitted to cross examine witnesses unless, in exceptional circumstances, we decide that a fair hearing could not be held otherwise.

The format for a disciplinary hearing is available at appendix 2.

The hearing will be chaired by a manager not previously involved in the investigation process. There will be a minimum of 2 independent managers on the panel. The investigating officer will also normally attend to present the investigation and a note taker may also be in attendance and a recording device can be used. The colleague will be informed about who will attend the hearing and who will have access to the minutes. This will include all colleagues including managers involved, the POD team and any staff providing administrative assistance.

Outcomes available at a disciplinary hearing are:

- a warning or dismissal with or without notice
- action short of dismissal
- no case to answer and no further action
- further review of issues raised
- referral of the case back to an informal process

Stages of disciplinary hearing warnings

Other than in circumstances of serious or gross misconduct (where the matter can be progressed directly to a higher stage) the following would normally be sequential.

First written warning

A first written warning may be given for any issue of misconduct which will remain on a colleague's personnel record for 6 months.

Final written warning

If there is a further issue of misconduct (whilst under a previous warning) or a failure to improve then a final written warning may be issued. Alternatively, if a colleague's first misconduct is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the colleague's actions have had, or are liable to have, a serious or harmful impact. A final written warning will be issued which will remain on a colleague's personnel record for 12 months (unless the sanction is defined as an action short of dismissal where the sanction may be for 24 months).

The effect of warnings

Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the consequences of further misconduct in that active period.

The conduct will be reviewed at the end of a warning's active period and if it has not improved sufficiently the active period may be extended.

Expiry of warnings

Any formal warnings recorded on a colleague's file will be disregarded for determining further disciplinary action once expired. The expired warning cannot be used as a reason for further disciplinary action, but the nature of the misconduct may be relevant to the case and therefore considered.

Spent warnings must, however, be retained to monitor any patterns of behaviour about the individual at any point during their career which may arise, for example, safeguarding concerns.

Dismissal

There may be circumstances when the actions of an individual are serious enough to constitute a fundamental breach of trust and confidence and irreparably breaches the employment contract between the colleague and The ICB. This would constitute gross misconduct. Dismissal is the ultimate sanction that can be imposed and is, therefore, not undertaken lightly. Where allegations are upheld for gross misconduct a colleague will be summarily dismissed without notice.

Where a final written warning has previously been issued, a colleague may be dismissed where there has been insufficient or no sustained improvement in conduct, or further breach (or breaches) of conduct have occurred. If the colleague is dismissed in these circumstances, notice will be given in line with their terms and conditions of employment.

Action short of dismissal or alternative sanctions

There may be exceptional cases where the manager conducting the hearing takes the view that, whilst dismissal may be warranted, the particular circumstances may best be served by action short of dismissal. In these circumstances, other sanctions may be considered as an alternative to dismissal and will usually be accompanied by a final written warning. Examples of alternative sanctions are;

- demotion and disciplinary redeployment
- disciplinary redeployment
- demotion

The final written warning for this sanction may be for a period of either 12 or 24 months depending on the severity of the case. These sanctions will normally be applied immediately and will not attract any pay protection.

The organisation cannot create posts to accommodate disciplinary redeployment to the same or a lower banded post and a consideration of such a course of action will only be possible where a vacancy exists. The reasonableness of the transfer will also need to be considered.

The colleague must agree to the alternative sanction. If they do not agree, then dismissal is the only alternative.

Exceptions to specified time limits

There may be occasions where a colleague's conduct is satisfactory throughout the period the warning is in force, only to lapse soon thereafter. Where a pattern emerges and/or there is evidence of repeated conduct issues, the colleague's disciplinary record should be borne in mind in deciding how long any warning should last and could therefore vary to the durations described above.

Use of external advisors

The organisation may instruct external advisors or partner NHS organisations, to carry out an investigation or assist with the process as required. Any such parties will report to a nominated representative of the organisation and act within ICB policies.

Right to appeal

The colleague has the right of appeal against any formal warnings or dismissal under the disciplinary procedure although this will not stop the imposed sanction taking effect.

Appeals may be raised for several reasons, for instance new evidence, undue severity or inconsistency of penalty. The appeal may either be a review of the disciplinary sanction or a rehearing, depending on the grounds of the appeal. This will be at the organisation's discretion depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.

Appeals must be made in writing stating the full reasons for the appeal within 5 working days of the date they were informed of the decision.

Appeals will be heard by at least 2 managers of appropriate authority not previously involved in the case with the POD team support, and where possible will be more senior to the disciplinary panel chair.

All parties involved in the appeal will be written to at least 5 working days before the proposed date of the hearing. Any additional, previously unconsidered paperwork to address the grounds of the appeal will be exchanged by all parties no less than 3 working days before the appeal hearing.

The appeal hearing will follow the same format as a disciplinary hearing, but the disciplinary panel chair will replace the investigating officer and the appellant will present their case first. The appeal panel may decide the disciplinary panel chair is not necessary at the appeal should they consider they have sufficient information to make an informed decision.

If the colleague is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful, they will be reinstated with no loss of continuity or pay.

If any new matters are raised in the appeal hearing further investigation may need to be carried out. The chair may adjourn the appeal hearing if there is a need to carry out any further investigations such as re-interviewing witnesses in the light of any new points that have been raised at the hearing. If any new information comes to light this will be provided to the colleague with a summary including, where appropriate, copies of additional relevant documents and witness statements. The colleague will have a reasonable opportunity to consider this information before the hearing is reconvened.

Following the appeal hearing the panel may:

- confirm the original decision
- revoke the original decision
- substitute a different penalty

Usually, a penalty will not be increased on appeal unless there is new information or evidence being available that requires further investigation.

Overlapping disciplinary and grievance issues

Concerns regarding a disciplinary process will be dealt with as part of the disciplinary process and a separate grievance process will not be conducted. Efforts will be made to resolve the concerns informally through the investigation process. Where that is not possible, the grievance will be heard at the hearing and appeal stages of the disciplinary procedure.

If the grievance is unrelated to the disciplinary proceedings, it may be appropriate to run investigations concurrently or delay the grievance process until after the disciplinary process is complete.

Recording meetings and hearings

The ICB may decide to record a meeting with consent from both sides. Recordings will be made available to all parties. Colleagues, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure unless consent is given and agreed by all parties. Unauthorised recording of meetings will be considered a disciplinary matter.

Referrals to external bodies

In cases where colleagues are dismissed or resign during a disciplinary process a referral to the disclosure and barring service (DBS) and professional bodies will be made where the thresholds for referral are met. It may be appropriate to make a referral prior to the conclusion of the process to meet the requirements of the relevant professional or regulatory body as well as to manage any potential ongoing risk.

Criminal charges

Where conduct is the subject of a criminal investigation, arrest, charge or conviction, advice will be sought, and the facts investigated before deciding whether to take formal disciplinary action. Disciplinary action will not be automatic and will depend upon the circumstances. POD advice should be sought regarding the commencement of or progress of internal investigations in relation to the impact of criminal investigations, and this advice will be sought prior to any decision being made relating to the internal disciplinary proceedings.

Colleagues should inform their manager immediately if they are involved in a criminal investigation, arrest, or are subject to a charge or conviction. Failure to notify their line manager may result in disciplinary action.

The ICB will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where colleagues are unable or have been advised not to attend an investigation meeting or disciplinary hearing or say anything about a pending criminal matter, a decision may have to be made based on the available evidence.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if it is considered that it is relevant to the colleague's employment.

Where a criminal investigation relates to allegations of abuse of adults, children, or young people the organisation will co-operate and share information about the colleague with other relevant agencies as appropriate.

6. Keeping records and timescales

During informal action, formal investigation and any subsequent stages of the procedure The ICB will collect process and store personal data in accordance with our data protection policy. The data will be held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure. Records will be kept in accordance with the requirements of data protection legislation. Records will be created, stored, retained, appraised, and destroyed in line with the Data Protection Act 2018, the NHS records management code of practice, the Information Commissioners Office employment code of practice, and any nationally implemented laws, regulations and secondary legislation, as amended or updated.

Information may also be collated in respect of freedom of information requests, but personal details will be omitted.

Information will also be collated to comply with organisational reports, and government or NHS bodies reporting requirements.

Records will be kept in line with the ACAS guide to discipline at work and will include:

- the complaint against the colleague
- the colleague's defence
- findings made and actions taken
- whether an appeal was lodged
- the outcome of the appeal
- any grievances raised during the disciplinary procedure
- subsequent developments
- notes of any informal meetings

Copies of meeting records will be given to the colleague including copies of any formal minutes that may have been taken. In certain circumstances (for example to protect a witness) some information may be withheld.

All stages of this procedure should be recorded and retained in the colleague's personal file and electronic record.

Any expired warnings will be retained but marked as spent. Summary data only needs to be retained for spent warnings.

Records kept will be referred to for future stages of the procedure as appropriate.

The information will be retained for the duration of the employment contract and any live warnings may be disclosed when references are requested as per the legal obligations of honest and factual disclosure.

Although the anticipated timescales are specified in this procedure, this does not prevent colleagues, their representatives and management from varying these where appropriate and with due cause. Decisions will be fully documented and communicated to all parties.

7. Implementation plans and monitoring effectiveness

A copy of the policy will be stored electronically on the document library and IRIS. A copy of the policy will be circulated to members of the POD team.

A clear communication will be sent to all staff to make them aware that the revised policy has been issued and that they are responsible for familiarising themselves with the updated version.

The trust directors and unions and staff voice will be advised of the issue of the revised policy.

As there are no substantive changes no formal training is required. Attention will be drawn to the increased emphasis of need for supporting staff through this process

The POD team will monitor effectiveness of the policy.

8. Update and review arrangements

This policy has been agreed by management and staff side representatives.

The policy will be reviewed every 3 years or earlier in view of developments which may include legislative changes, national policy instruction (NHS or department of health) or trust board decision.

9. Policies referred to in this document

- Grievance and dignity at work
- Prime financial policies and scheme of reservation and delegation
- Anti-fraud and bribery
- Cornwall IT's acceptable use policy
- Performance policy
- Whistleblowing policy

Appendix 1: Levels of misconduct

1. The level of misconduct will be determined at the outset of a formal disciplinary process and may be adjusted if necessary, as an investigation progresses, should further information or evidence emerge.
2. Minor misconduct is likely to result in informal action as per section 5 of the disciplinary policy.
3. Misconduct, serious or gross misconduct will result in formal action and the level of misconduct may be determined dependent on the severity, context of the allegations or findings. Serious or gross misconduct may be an appropriate consideration where there are multiple allegations.
4. Unless there is no case to answer or informal action is considered appropriate formal outcomes as defined in section 5 are as follows for:

    - misconduct, first written warning
    - serious misconduct, final written warning
    - cumulative misconduct, dismissal with notice
    - gross misconduct, summary dismissal (dismissal without notice) or action short of dismissal are possible outcomes

The following lists are not intended to be exhaustive and give only an indication of the type of offences that may be considered.

Misconduct or serious misconduct

Examples of behaviour that may be regarded as warranting disciplinary action include but are not limited to:

- unauthorised absence
- failure to comply with the organisation's or local departmental rules for reporting absence
- poor attendance, time keeping or time wasting
- failure to achieve and maintain standards and the abuse of work breaks, such as, extending breaks and/or returning late without permission to do so

Insubordination

Rude and disrespectful behaviour, refusal to obey reasonable instructions from a manager. This needs to be weighed up against the need for taking the initiative and openness.

Poor standard of work

Minor acts of carelessness or negligence in the performance of duties which do not cause undue risk to health and safety where this relates to conduct rather than capability which should be addressed through the The ICB's performance policy and procedure.

Unacceptable behaviour

Likely to cause offence or nuisance to others and create disharmony, such as, victimisation or harassment, verbal abuse of colleagues and/or using obscene language. In some circumstances this will form gross misconduct.

Abuse of the organisation's IT systems

Including unacceptable use of social media or excessive use of telephones, email, or internet usage for personal reasons.

Non-attendance for training

Failure to attend mandatory, contractual, or legally required training (unless a management request has been received to support this).

Health and safety

Repeated and/or wilful failure to carry out safe working practices and procedures. Serious breach of workplace health and safety rules. Failure to report any accident or incident during working time or occurring on NHS premises which did (or might have) caused injury or illness to self or others.

Non-compliance

Failure or refusal to comply with your contract, investigations, Organisational policies or established operational, legal, or other operational procedures.

Damage to NHS property or unauthorised usage

This could result in serious error, risk, or offence to others.

Multiple or repeated breaches of less serious offences

This would include those categorised under misconduct.

Serious verbal abuse

This would include abuse of colleagues, patients, or any other person whilst on duty or on NHS premises. In some circumstances this will form gross misconduct.

Gross misconduct

Examples of behaviour that may constitute gross misconduct include but are not limited to the items below.

Indecency

Any act of indecency against a patient, member of staff or member of the public.

Theft, attempted theft, or misappropriation

Any instances of theft from the organisation or from a patient, member of staff or member of the public and related to employment with the organisation or, the borrowing or unauthorised taking away without permission of the owner but without the intention of permanently depriving the owner of use. This may also include fraudulent misuse of the organisation's property or name such as, phones, cars or computers.

Bribery and corruption

Accepting or offering bribes or other secret payments, which may include breaches of The ICB's standing orders, prime financial policies and scheme of reservation and delegation etc. Any activity that constitutes bribery or corruption defined by the Bribery Act 2010.

Fraud

Any deliberate act of failing to declare information when requested promptly or providing a false statement or by abusing the position of employment to cause a loss by an act of deception and dishonesty constitutes fraud. Or an attempt to defraud the organisation, patient, member of staff or member of the public and being related to employment with the organisation. Fraud may include the deliberate falsification of timesheets and travel claims and obtaining employment by deception by falsifying applications and qualifications.

Assault

Any physical violence or extreme verbal assault upon a patient, member or staff or member of the public which is related to employment with The organisation.

Bullying, harassment or serious abuse

This includes any deliberate act of discrimination, physical abuse, intimidation or other behaviour causing serious offence or leading to humiliation or embarrassment. This could also include victimisation of those who have raised a complaint of bullying and harassment.

Malicious damage or misuse

This includes damage or misuse of the organisation's property, patient property or property belonging to a member of the public or another member of staff.

Gross carelessness and negligence

Any action or failure to act which did or could have resulted in injury or detriment (all staff have a common law duty to them).

Colleague to exercise reasonable skill and care in the performance of their work

Being unfit for duty

Attending work whist intoxicated. Being under the influence of alcohol, recreational drugs, or any other psycho-active substances.

Misuse or supplying of controlled substances

Selling or illegally handling drugs or other controlled substances during work time on or off NHS premises.

Serious breach of confidentiality

This includes matters relating to patients and confidential staff matters, such as the whistleblowing and data protection policies such as, disclosure of personal or sensitive information without appropriate permission from the owner of that information.

Serious professional misconduct

This is misconduct which could result in removal from a professional register where membership is a condition of employment or serious neglect of duties, serious or deliberate breach of contract or operating procedures.

Wilful or deliberate failure to observe organisational policies and procedures

This would include such policies as grievance and dignity at work; antifraud and bribery, Cornwall IT's acceptable use policy.

Repeated and/or deliberate infringement of health and safety policy or legislation

This includes serious or repeated breaches of health and safety rules or serious misuse of safety equipment

Misuse of the organisation's facilities

This includes deliberately accessing internet sites containing obscene, pornographic or offensive material.

Gambling

Any gambling activity undertaken during working time or through the use of the organisation's equipment.

Working for another employer

This involves working while on duty, on call, or standby or on suspension from duty while on sick leave or annual leave without the written permission of the organisation.

Serious breach or repeated breaches of professional boundaries

Failure to report incidents

This includes criminal conviction, caution, reprimand, bind over or failure to report being the subject of police enquiry, legal or professional proceedings. Regarding allegations or offences committed outside the organisation, the relevance of the case to the ICB and the individual's employment will be considered on a case by case basis.

Serious insubordination

Such as, failure to obey a reasonable instruction not exclusive to but also including where this failure could result in loss, damage or injury.

Failure to disclose or giving false information

This would include failing to disclose information:

- regarding an application for employment such as qualifications
- entitlement to work including immigration status
- making untrue allegations in bad faith against a colleague
- failing to disclose any information required by your employment
- nor disclosing any other information that may have a bearing on your duties

In addition, making false or misleading information under the whistleblowing policy maliciously, for personal gain or otherwise in bad faith.

Victimisation

Victimising a colleague who has raised concerns, made a complaint or given evidence or information under the whistleblowing, grievance, and dignity at work, disciplinary

Bringing the organisation into serious disrepute

Examples of misconduct from the above examples which combined could constitute gross misconduct.

Appendix 2: The disciplinary hearing

This section should be read in conjunction with section 5 of the policy subtitled disciplinary hearing. The hearing will be chaired by a manager not previously involved in the investigation process. There will be a minimum of 2 independent managers on the panel. The investigating officer will also normally attend to present the investigation and a note taker may also be present.

At the disciplinary hearing, the investigating officer (or nominated representative) will present the allegations against the colleague and the evidence that has been gathered. The colleague (or their companion on their behalf) will be able to respond and present any evidence of their own.

The chair may adjourn the disciplinary hearing if there is a need to carry out any further investigations such as re-interviewing witnesses in the light of any new points that have been raised at the hearing. The colleague will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

It is the colleague's responsibility to communicate and confirm with their trade union representative and work colleague in all matters relating to the hearing.

Usually, the decision regarding the outcome will be made on the day of the hearing and this will be confirmed in writing within 5 working days. Where this is not possible and in exceptional circumstances the decision may be deferred but again, the outcome will be confirmed in writing no later than 5 working days of the disciplinary hearing. Any reasons for the delay in the decision must also be confirmed to the colleague at the disciplinary hearing.

The format will be as follows:

1. Welcome by chair of panel and hearing officer.
2. Ask everyone present to introduce themselves and explain their role.
3. Explain purpose of hearing.
4. Presentation of management case by investigating officer including evidence from management witnesses.
5. Questions from colleague or representative to investigating office or witnesses.
6. Questions from the hearing officer or panel to the investigating officer or witnesses.
7. Presentation of colleague's case by colleague or representative including evidence from colleague's witnesses.
8. Questions to colleague or witnesses from investigating officer.
9. Questions to colleague or witnesses from the hearing officer or panel.
10. Summing up by investigating officer (no new evidence).
11. Summing up by colleague or representative (no new evidence).
12. Hearing adjourned and all parties asked to leave whilst hearing officer or panel consider evidence, decide on level of sanction (if appropriate).
13. All parties return and colleague advised of hearing officer or panel's decision, (sanction and right of appeal.

14. Notes from the meeting are used to confirm outcome in writing and sent to colleague within the timescale set out in the policy.

Appendix 3: Levels of authority

The following levels of authority apply when acting under the disciplinary policy and procedure:

Informal action

Any supervisor or line manager who has a legitimate supervisory or managerial relationship with a colleague can take informal action.

Formal action

Where the issue may require a disciplinary meeting or a disciplinary hearing, a manager at band 6 or above can commission an investigation and chair panels for the disciplinary meetings or hearings.

They can also take action up to and including dismissal.

Where suspension is considered appropriate (see section 5), the level of officers who have the authority to decide and/or suspend include:

- the chair of the ICB may suspend in respect of the chief officer
- the chair or chief officer may suspend in respect of other executive directors
- executive directors may suspend in respect of other very senior managers

For all other circumstances, directors, deputy directors and heads of service or POD business partners may suspend

Appeals will be heard by 2 independent managers not previously involved. Wherever possible the appeal chair will be more senior than the disciplinary hearing chair.

Hearings which could result in dismissal or appeals against dismissal will also be attended by a POD advisor, for the purposes of providing advice, but not as part of the decision-making panel.

Appendix 4: Example suspension risk assessment tool

Incident details

This risk assessment tool is to be used prior to any decision being taken about whether to suspend or redeploy or amend the duties of an employee. It should be completed by the line manager or disciplinary commissioning manager (DCM) once they have established that an investigation is necessary. This should be done with advice from the people and organisational development team (POD) and a senior manager with authority to suspend.

Date:
Manager:
POD practitioner:
Name of employee:
Department or directorate:
Reported by:

Issue and incident:

Evidence obtained prior to risk assessment

Risk grading (consequence and likelihood)

Consequence	1: Rare	2: Unlikely	3: Possible	4: Likely	5: Almost certain
5 Catastrophic	5	10	15	20	25
4 Major	4	8	12	16	20
3 Moderate	3	6	9	12	15
2 Minor	2	4	6	8	10
1 Negligible	1	2	3	4	5

Key to risks
1 to 3: Low, 4 to 6: Moderate, 8 to 12: High, 15 to 25: Extreme

Risk analysis

Risks	Yes	No	Risk likelihood (L)	Risk consequence (C)	Score (L x C)
Risk of harm to patients and clients	☐	☐			
Risk of harm to employees	☐	☐			
Risk of harm to self	☐	☐			

Risks	Yes	No	Risk likelihood (L)	Risk consequence (C)	Score (L x C)
Risk of harm to The ICB	☐	☐			
Risk of continued fraud	☐	☐			
Risk to service provision	☐	☐			
Risk to investigation process	☐	☐			
Some other substantial reason	☐	☐			

Actions to be taken to reduce risk

Risk:

Mitigation action:

New risk rating (following implementation of mitigation action):

Decision on outcomes following risk analysis

Risk options	Yes	No	Reason for risk option
No requirement to act identified.	☐	☐	
Manage the risk and allow the employee to remain within their role under close supervision.	☐	☐	
Reduce the risk and limit duties and role under supervision within the same workplace.	☐	☐	
Transfer the risk and redeploy the employee temporarily to alternative employment within the organisation.	☐	☐	
Avoid the risk and exclude the employee.	☐	☐	

Signed:
Name and job title:
Date:

Signed:
Name of POD practitioner:
Date:
Date to be reviewed (no more than 28-day period):

Appendix 5: Equality impact assessment

Name of policy or service to be assessed: Disciplinary policy and procedure
Department or section: People and organisational development
Date of assessment: 29 January 2021
Person(s) responsible for the assessment: Tricia Phillips, POD team
Is this a new or existing policy? Existing

Aims, objectives and purpose of the policy

Describe the aims, objectives, and purpose of the policy

The overall aim of the policy and procedure is to support high standards of conduct within The organisation and to ensure breaches of these standards are dealt with fairly and consistently.

Who is intended to benefit from this policy, and in what way?

- Staff by providing an open, fair, and transparent way to deal with conduct issues.
- Patients and users of the service will benefit from learning and improvements resulting from the findings of the disciplinary investigations and hearings.
- Managers dealing with disciplinary cases.

What outcomes are wanted from this policy?

- Clear and consistent process.
- A good understanding of standards of conduct.

What factors or forces could contribute or detract from the outcomes?

- Failure to consistently apply the principles of the policy.
- Failure by managers to adhere to the policy and processes could result in challenges under employment law.

Who are the main stakeholders in relation to the policy?

Colleagues, trade union representatives and management.

Who implements the policy, and who is responsible for the policy?

Managers implement with POD support. The POD team are responsible for the policy

Differential impacts

Race, nationality and/or ethnic origin

Does this have a positive or negative impact on black, Asian and minority ethnic (BAME)?

No impact anticipated for this group however individuals whose first language is not English will be offered support through the process. This may include access to, and the right to be accompanied at meetings by a translator.

How will any negative impact be mitigated?

Not applicable (N/A).

Sex

Does this have a positive or negative impact on people who identify as male, female, or intersex?

There will be no negative impacts on this group providing the policy is applied consistently.

How will any negative impact be mitigated?

N/A.

Disability

What is the positive or negative differential impact on people from the perspective of disability?

Individual circumstances can be considered throughout the process and reasonable adjustments considered in order to support individuals engage with the process and attend any meetings as required. Examples may include access by ensuring appropriate meeting venues; ensuring the availability of audio loops; making documentation available in other formats, different print size; and supporting staff through the process.

How will any negative impact be mitigated?

N/A.

Sexual orientation

Does this have a positive or negative impact on people who identify as heterosexual, lesbian, gay, bisexual, pansexual or asexual?

There will be no negative impacts on this group providing the policy is applied consistently.

How will any negative impact be mitigated?

N/A.

Age

What is the positive or negative differential impact on people from the perspective of age?

There will be no negative impacts on this group providing the policy is applied consistently.

How will any negative impact be mitigated?

N/A.

Religion or belief

What is the positive or negative differential impact on people from the perspective of religion or belief?

There will be no negative impacts on this group providing the policy is applied consistently.

How will any negative impact be mitigated?

N/A.

Marriage and civil partnership

What is the positive or negative differential impact on people from the perspective of marriage and civil partnership?

This is particularly relevant for employment policies.

There will be no negative impacts on this group providing the policy is applied consistently.

How will any negative impact be mitigated?

N/A.

Gender re-assignment

Does this have a positive or negative impact on people who identify as trans or transgender, non-binary or gender fluid?

There will be no negative impacts on this group providing the policy is applied consistently.

How will any negative impact be mitigated?

N/A.

Pregnancy and maternity

Does this have a positive or negative impact on people who are pregnant, breast feeding mothers, or those on maternity leave?

There may be issues with meeting timescales referred to in the policy.

How will any negative impact be mitigated?

Timescales may need to be adjusted dependent on childcare or anticipated delivery date.

Other identified groups

Consider carers, veterans, different socio-economic groups, people living in poverty, area inequality, income, resident status (migrants), people who are homeless or living in unstable accommodation, long-term unemployed, people who are geographically isolated, people who misuse drugs, those who are in stigmatised occupations, people with limited family or social networks, and other groups experiencing disadvantage and barriers to access.

How will any negative impact be mitigated?

POD will take an overview of cases for consistency

Human rights values

How have the core human rights values of fairness, respect, equality, dignity and autonomy been considered in the formulation of this policy, service or strategy?

The organisation is committed to a policy of equal opportunities in employment. The aim of this policy is to ensure that no individual receives less favourable treatment because of their race, colour, nationality, ethnic or national origin, or on the grounds of their age, gender, gender reassignment, marital status, domestic circumstances, disability, HIV status, sexual orientation, religion, belief, political affiliation or trade union membership, social or employment status or is disadvantaged by conditions or requirements which are not justified by the job to be done. This policy concerns all aspects of employment for existing staff and potential colleagues.

Which of the human rights articles does this document impact?

☐ To life
☐ Not to be tortured or treated in an inhuman or degrading way
☐ To liberty and security
☐ To a fair trial

☒ To respect for home and family life, and correspondence
☐To freedom of thought, conscience, and religion
☐ To freedom of expression
☐ To freedom of assembly and association
☐ To marry and found a family
☒ Not to be discriminated against in relation to the enjoyment of any of the rights contained in the European Convention
☐ To peaceful enjoyment of possessions

What existing evidence (either presumed or otherwise) do you have for this?

There is the potential for further legal processes to be brought by either party, but this policy is intended to provide clarity to all individuals who may be involved in this process.

How will you ensure that those responsible for implementing the policy are aware of the human rights implications and equipped to deal with them?

Ensuring that managers are aware of the policy and that the POD team are consulted where appropriate.

Public Sector (Social Value) Act 2012

The organisation is committed and obliged to fulfil the requirements of the Public Sector (Social Value) Act 2012. This Act requires the organisations to consider how services commissioned or procured might improve the economic, social and environmental wellbeing of an area.

Please describe how this will support and contribute to the local system, wider system, and community.

Please consider:

- the inclusion of small medium size enterprises (SMEs) in the process and supply chain
- economic – promote skills, tackle worklessness, maintain employment, increase volunteer hours to support the community and promote inclusion
- social – reduce anti-social behaviour, tackle exclusion by promoting inclusion including to vulnerable groups
- environmental – support local, reduce congestion

N/A

Describe how the policy contributes towards eliminating discrimination, harassment and victimisation.

Bullying, harassment and serious abuse are described under gross misconduct and disciplinary action can be taken against this behaviour.

Describe how the policy contributes towards advancing equality of opportunity.

N/A.

Describe how the policy contributes towards promoting good relations between people with protected characteristics.

It supports all colleagues both with and without protected characteristics.

If the differential impacts identified are positive, explain how this policy is legitimate positive action and will improve outcomes, services and/or the working environment for that group of people.

N/A.

Explain what amendments have been made to the policy or mitigating actions have been taken, and when they were made.

N/A.

If the negative impacts identified have been unable to be mitigated through amendment to the policy or other mitigating actions, explain what your next steps are using the following equality impact assessment action plan.

Not applicable.

Signed (completing officer): Tricia Phillips
Date: 28 February 2021

Signed (head of department or section): Emma Goudge
Date: 28 February 2021