MANAGEMENT OF
EMPLOYEE CONDUCT
The NHS in Scotland is committed to building a modernisation programme to provide high quality patient care and improve the working lives of all NHS staff. The National Human Resources Strategy “Towards a New Way of Working” seeks to achieve this through substantive partnerships with staff, managers, trade union/professional organisations, patients and other relevant organisations.

Unlocking the potential of staff and removing boundaries which have traditionally existed between managers and trade unions/professional organisations to improve the working lives of employees and enhance service delivery to patients will require a unique partnership. This partnership must be based on a philosophy of mutual trust, using an open and honest approach in all aspects of consultation and negotiation.

It is intended that this guideline will be adopted after local discussion involving trade union/professional organisation representatives and managers. Local Partnership Forums should be fully involved. Local arrangements may then be made to implement the national guideline and to establish a method of monitoring their implementation and effectiveness. It is not intended that these guidelines should replace agreements negotiated in relation to professional groups which address specific needs and circumstances relevant to these groups.

Our National Health: A Plan for Action, A Plan for Change establishes a new staff governance standard. The performance against the standard will be assessed by the Scottish Partnership Forum (SPF) and Local Partnership Forums and form an integral part of the performance and accountability framework. All organisations are required to adopt the values and principles of this PIN Guideline on the Management of Employee Conduct, however the attached model policy is not intended to be prescriptive. Organisations should adapt the model policy to suit their own local situation in terms of structures and resources available to them.
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1. INTRODUCTION

This guideline is based upon evidence of best practice which is currently available. By using this guideline organisations can be satisfied that they are adopting best practice principles when dealing with complex human resources issues.

Alternative approaches are not precluded as long as they are based upon the best practice principles outlined in this guideline. The ultimate decision about the organisation’s approach must be developed in a fully inclusive manner to ensure that the changes which are required in organisational culture, behaviour and attitudes are achieved.

The essential components set out within the ACAS Code of Practice: Disciplinary Practice & Procedures in Employment, provide the foundations of this guideline. The commitment at national level to partnership working is the driving force which sets out a modern employment relations model that supports new ways of working.

This framework provides the broad principles to enable the management of employee conduct by managers and trade unions/professional organisations working together at all levels to seek resolutions. It provides a template for the formation of local policies, which should be applicable to all occupational groups. Policy and procedure on employee conduct should be developed and agreed by the appropriate local forum and reviewed jointly on a regular basis.

This employee conduct guideline should be applied for matters of misconduct. Further guidelines to deal with capability and ill health are currently being produced.
2. MAIN REPORT

2.1 Strategic Framework/Organisational Culture

The management of employee conduct within the NHS has been effected in the past by the use of formal disciplinary procedures based on traditional industrial relations models. Together with counselling, which has been seen as part of, or a prerequisite for disciplinary action this has often led to the belief that a blame culture exists within NHS organisations.

In the modern NHS it is essential that we move away from such a culture and that actions to support a change in culture are prevalent in managers, trade unions/professional organisations representatives and staff alike.

A cultural shift of this nature can only be achieved in partnership i.e. adoption of a joint approach to the resolution of problems and difficulties. This will be a testing time for all: managers need to have confidence in staff, allowing staff the freedom to undertake their duties and providing support rather than punishment for any shortcomings. Staff must also rise to this challenge and adapt to what should be a safe environment where any shortcomings can be admitted in the knowledge that appropriate reparative action will be taken speedily and supportively.

Notwithstanding this it is accepted that there will be occasions when there is no alternative to formal disciplinary action, but it will be accepted that all efforts to avoid such action will have been made.

2.2 Principles and Values

The following principles and values should be contained within all policies on the Management of Employee Conduct.

• The management of employee conduct should always be consistent with respect for the employee as an individual and should respect the diversity of staff.

• Early intervention when problems are identified should be encouraged enabling a developmental or educational rather than a punitive approach to be taken. There should be a range of methods available to respond to issues of conduct and capability e.g.
counselling, support from Occupational Health or from professional conduct committee structures if appropriate. Other than in allegations of gross misconduct, the disciplinary procedure should be used only as a last resort.

- There should be indicative mechanisms for acknowledging, encouraging and re-inforcing good practice and special effort by individuals or teams. In particular there should be in place a Performance Management procedure to promote positive performance. Other methods could include news-sheets and notice boards.

- The roles and responsibilities of employees, managers and trade union/professional organisation representatives within the organisation’s employee conduct policy should be clearly set out.

- Standards of employee conduct and acceptable levels of behaviour should be agreed and clearly articulated through induction and orientation processes and through effective communication strategies.

- Issues such as openness, fairness, consistency of approach, integrity, removal of prejudice and confidentiality should be included in employee conduct policies with an aim to minimise a blame culture.

- Joint training for managers and trade union/professional organisation representatives should be provided using a partnership delivery model.

- Review and evaluation will be required to ensure that the stated principles are being met through the operation of the policy, and that any new standards or structures are incorporated where necessary.

- The disciplinary procedure should be easily understood and should operate without unnecessary detriment to any member of staff by virtue of their gender, race, ethnic origin, age, sexual orientation or work pattern.

## 2.3 Legal Framework

### 2.3.1 Trade Union and Labour Relations Act 1974 and updated 1992

This legislation affords employees the right not to be unfairly dismissed and lays down rigid criteria in respect of the disciplining or dismissing of an employee because of their membership or activities in relation to a trade union. This legislation also allows time off for trade union officials to represent their members involved in disciplinary proceedings.

### 2.3.2 The Employment Rights Act 1996

This legislation places a duty on an employer to provide written particulars to an employee within 8 weeks of them commencing
employment. These written particulars must include details of any disciplinary policy or procedures in place within an organisation. This legislation also gives employees the right not to be unfairly dismissed.

2.3.3 The Employment Relations Act 1999
This legislation accords employees the right to be accompanied through any disciplinary proceedings. The act also states that a meeting must be rescheduled if an employee’s representative is unable to attend an arranged meeting.

2.4 Framework For The Management of Employee Conduct

2.4.1 Supported Improvement

It is the intention of this guideline to promote the development of individuals and the resolution of difficulties created by conduct in a supportive and proactive way. In order to achieve this there needs to be a conscious effort made to move away from a culture of blame to one that supports staff through difficult periods and develops a “trust” culture which provides freedom for staff to give of their best.

In an ideal world we would hope that formal disciplinary procedures for the management of employee conduct need no longer exist. However, it is accepted that there are occasions when the avoidance of such measures would be both inappropriate and dangerous.

The aim of this method of supported improvement is to ensure that every effort is made within an organisation to assist employees and encourage their improvement. This in turn should reduce dramatically the number of occasions for formal disciplinary procedures to be applied.

2.4.1.1 A twin track approach should be taken in managing employee conduct to enable managers to respond to issues not considered to be a serious or gross breach of conduct in a proactive and supportive fashion. There should be clarity from each organisation on forms of behaviour which constitute serious/gross misconduct and which would be subject to disciplinary procedures, examples of these should be clearly set out.

2.4.1.2 Where an underlying problem is identified, e.g. ill health, capability, alcohol/drug abuse, other policies and procedures may provide a more appropriate response.
2.4.1.3 Where the problem is not considered to be either serious or gross misconduct e.g. timekeeping, attendance, work performance, poor interpersonal relations, the following steps should be taken before disciplinary procedures are instigated:

- Problems should be discussed with the employee as soon as possible. Difficult problems/issues cannot be ignored. Managers and trade union/professional organisation representatives should share responsibility to define the problem, agree a course of action to try to resolve it and agree which monitoring mechanisms should be used.

- The manager should meet with the employee and should discuss the areas of concern. An Action Plan should be agreed with the employee which details the steps required to rectify the issue along with an agreed timescale for improvement. This may include setting objectives, agreeing further training and/or development opportunities, secondments, mentoring, coaching.

- The emphasis should be on a proactive partnership approach to support the employee achieving the standards required.

- The employee should be notified in writing of the action agreed and should confirm that they understand the improvements expected of them.

- There should be regular review of performance and constructive feedback should be given. The employee should also be provided with an opportunity to feedback the benefits of any support mechanisms provided.

- The employee should be made aware of likely outcomes if they fail to improve to the standard required including the possibility of disciplinary action.

2.4.2 Suspension

It is recognised that there may be occasions when it is considered inappropriate for an employee to be away from work and where the use of suspension to respond to employee conduct problems may be considered. The use of suspension is not part of the disciplinary procedure and careful consideration should be given to its use.
2.4.2.1 Suspension is an emotive term and can be seen both by the individual and others as having negative connotations including implied guilt. The following situations provide examples where suspension might be used, but consideration should always be given to alternatives to suspension, such as the use of paid leave.

- Where a disciplinary offence is alleged to have taken place and an investigation is required. It may be that a person against whom allegations have been made could be seen to either interfere with or influence an investigation if they were at work.

- Where a manager feels that an individual is unfit for duty and that they may be a danger to patients, themselves or to others and believes it is in everyone’s best interest that an assessment is carried out by the Occupational Health Service.

- Where it is suspected that an individual is under the influence of either alcohol or drugs. In these circumstances it might be inappropriate for the manager to attempt to investigate the circumstances immediately.

- Where allegations are made of bullying or harassment and it is considered necessary for whatever reason that neither the accuser nor the accused attends work.

2.4.2.2 When it is considered that suspension is essential there will be a designated Contact Officer (a neutral person) for anyone who has been suspended. The nature of suspension is such that the individual is unable to enter the premises or contact others within the organisation. This can isolate individuals from their normal organisational support mechanisms. Obviously some staff will receive support from staff side organisations but not all. The Contact Officer is a named individual with responsibility for keeping the suspended member of staff up to date on the progress of any investigation and to act as a recognised point of contact for any issues the employee may wish to raise.

2.4.2.3 The following guidelines should apply to suspension:

i) Suspension will always be on full pay.

ii) Suspension will always be for as short a period as is possible and any extensions beyond that which the
employee is originally informed will be confirmed in writing.

iii) Where possible advice should be sought prior to suspension from the personnel department.

iv) Written confirmation should be given within two working days stating the reasons for the suspension.

v) Staff who are suspended should be available to attend an interview at short notice if required subject to the availability of support. Staff suspended must not work for another employer during their normal working hours.

vi) An individual’s line manager will normally carry out suspension.

2.4.3 The Disciplinary Procedure

2.4.3.1 In most cases, the disciplinary procedure need only be used if supported improvement measures have failed to have a satisfactory effect. The use of supported improvement measures in the early stages of a problem cannot be over emphasised. Most staff will respond positively to advice, thus avoiding the use of the disciplinary procedure.

2.4.3.2 Should it be necessary to instigate the disciplinary procedure it is imperative that a fair and effective procedure exists to deal with these circumstances. The following details the issues that should be contained within a disciplinary policy and procedure. The actual wording of the policy should be determined locally through each organisations Local Partnership Forum.

1. Scope of Policy & Procedure

There should be a statement which:

• identifies the staff groups covered by the policy & procedure. This should be all staff;

• defines the responsibilities and behaviours expected of managers, employees, trade union/professional organisation representative and personnel staff e.g. The manager – be open and honest in dealing with members of staff, to be approachable, to respect individual members of staff as individuals, to carry

1 Bevan, 1997
out investigations fairly, consistently and timeously, to act in the best interest of patient care;

The trade union/professional organisation representative - to represent their members interests, to recognise that decisions have to be taken in the best interest of patient care, to work at all times within agreed policies and procedures, to participate and co-operate in investigations;

The employee - to recognise that decisions have to be taken in the best interest of patient care, to work within agreed policies and procedures, to participate and co-operate in investigations;

Personnel staff – to provide support and appropriate advice to managers, staff and trade union/professional organisation representatives, to act as a sounding board for managers, staff and trade union/professional organisation representatives, to support managers during investigations and any subsequent hearings, to ensure that the organisation's policy and procedure is followed at all times, to ensure that there is fairness and consistency.

states that employers of sub-contracted and agency staff should have policies and procedures in place which meet the standards suggested in this guidance.

2. Representation

The policy should clearly state that all staff have the right to be represented at all stages of the disciplinary procedure.

3. Facilities

There should be reference to the facilities required by trade union/professional organisation representatives to provide support to employees and to enable them to perform the duties associated with this type of support.

4. Time Scales

The policy should highlight that matters should be dealt with quickly and within defined time limits, however the policy should also allow for flexibility dependent on the circumstances and by agreement.
5. Investigation, Evidence and Sharing of Information

There should be reference to how the investigation will be conducted, and it is suggested that the following points be incorporated into the policy and procedure:

- An individual should be identified who will be responsible for progressing an investigation into any allegations of serious misconduct. A member of the personnel team will provide professional advice to the investigation. It may be necessary for professional clinical guidance to be sought and provision to do this should be made;

- A thorough investigation of the incident will be undertaken and a report of the facts established and the information obtained will be compiled. On the basis of the information obtained a decision will be taken by either the investigatory individual or line manager whichever is most appropriate, as to whether there is sufficient evidence to carry out a disciplinary hearing or whether there is no case to answer;

- Timescales for investigations should be stipulated, but there must also be provision for a degree of flexibility by agreement;

- All relevant evidence collected from any investigation should be shared with the employee and their representative.

Guidance notes on the conduct of an investigatory hearing are attached as Appendix 3.2.

6. Disciplinary Hearing

The policy should detail how a disciplinary hearing would be conducted. It is recommended that this include the following:

- Staff should be given adequate notice in writing of a disciplinary hearing in order to arrange representation and prepare a response to the allegations against them. This would not usually be less than 5 working days. Under the Employment Relations Act 1999 employees have the right to ask for a postponement of the hearing if the chosen representative is not available on the scheduled date. The alternative date should be within 5 working days from the original scheduled date.
It is recognised that different organisations have evolved to different levels in terms of partnership working. Individual organisations may with to discuss through their Local Partnership Forum whether a trade union/professional organisation partner could be included in the disciplinary process.

It will be for the Local Partnership Forum to agree on the role of the trade union/professional organisation partner will be. This role should be made clear to all parties prior to any hearing taking place.

Guidance notes on the conduct of a disciplinary hearing are attached as Appendix 3.3

7. Professional Misconduct

The policy should make reference to the procedure to be followed where there are allegations of professional misconduct.

8. Disciplinary Sanctions

Warnings

The policy should detail the levels of disciplinary warnings that may be issued and the length of time these warnings will be held on record. As a guide these could include:

- First written warning: 6 months
- Final written warning: 12 months
- First and final written warning: 12 months

This guideline recommends that verbal/oral warnings (many of which are confirmed in writing) are not considered an appropriate way of responding to employee conduct issues. Although it is recognised that such a warning is contained within the ACAS Code of Practice it is advocated that NHS employers should have in place mechanisms to manage minor problems without recourse to the disciplinary procedure. This approach utilising supported improvement measures should assist in the creation of a “trust” culture within organisations.

Dismissal

The policy should specify the level of management with the authority to dismiss, this should be a senior manager within the organisation.
Examples of behaviour which would constitute gross misconduct and which could lead to summary dismissal (i.e. without notice) should be stated, it should be made clear that the list is not exhaustive.

The policy should state that alternatives to dismissal can be considered. The manager with authority to dismiss may consider transferring the employee to an alternative area/post within the organisation or downgrading the employee. The appropriateness of this will be dependent on individual circumstances.

9. Scheme of Delegation

The policy should clearly identify which level of management can issue different levels of warnings and who has the authority to dismiss an employee. The policy should also be clear about the appropriate level of management to hear appeals against warnings and dismissal.

10. Appeals Procedure

The policy should allow for at least one level of appeal against a warning and a dismissal. The procedure for appeal against warnings and dismissal should be clearly laid out and specify the time limit for lodging an appeal. A manager who has not had any previous involvement in the case should hear the appeal. Appeal panels in dismissal cases must include a member of the board and a senior personnel professional. It is recognised that different organisations have evolved to different levels in terms of partnership working. Individual organisations may wish to discuss through their local partnership forum whether a trade union/professional organisation partner could be included in an appeals panel. The appeal procedure should state that the appeal panel cannot impose a higher level of disciplinary action on the employee than the action taken by the disciplinary panel. This guidance does not preclude any individuals contractual rights of appeal.

11. Records

A record should be kept of disciplinary action taken; this should include details of the breach of
disciplinary rules, the employee’s defence or mitigation, action taken and reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. Records should be kept in accordance with the Data Protection Act 1998, records must be kept confidential and the policy should identify where this record should be kept. Procedures for removing warnings and other associated documentation from employee records should be specified.

12. Recognised Trade Union Representatives

The policy should state that no disciplinary action would be taken against a recognised trade union representative until the circumstances have been discussed with the appropriate full time official.

13. Review of Policy & Procedure

The policy should have a timescale and mechanism for annual review by the Local Partnership Forum, there should also be the opportunity to review on an ad hoc basis if required.

2.5 Training

2.5.1 Once the policy has been agreed it is important that the organisation considers how the policy will be communicated throughout the organisation. It is recommended that the Local Partnership Forum be responsible for planning and leading programmes of training in these procedures and that this is undertaken on a partnership basis.

An ongoing training plan should be developed and communicated throughout the organisation. This should be reviewed and evaluated by the Local Partnership Forum on an annual basis. The following points require to be considered when developing the training plan and designing the training:

• the identification of the key management and staff groups to be trained;
• specification of the training programme and commissioning of training providers;
• evaluation of the training programme;
• the organisation should also ensure that systems are in place to communicate the policy to new employees during induction to the organisation.
1. SCOPE

1.1 This procedure is designed to clarify the rights and responsibilities of management, staff and trade unions/professional organisations in respect of employees who become liable to disciplinary action resulting from failure to meet the required standard of performance or conduct relating to their work or profession.

1.2 The intention within this procedure is to ensure that the principles of fairness, equity, reasonableness and justice are applied in dealing with matters that may warrant disciplinary action. It is designed to ensure that employees are made aware of the standards of performance or conduct required of them, and have opportunities for counselling and training in order to meet them and to set out clearly the steps that must be taken when standards consistently continue not to be met.

1.3 In most cases, the disciplinary procedure need only be used if supported improvement measures have failed to have a satisfactory effect. The use of counselling in the early stages of a problem cannot be over emphasised. Most staff will respond positively to advice, thus avoiding the use of the formal stages of the disciplinary procedure.

1.4 The disciplinary procedure should not be used on its own to deal with smoking, alcohol and drug abuse related problems; rather it should be used in conjunction with those policies.

1.5 The disciplinary action taken will depend on the seriousness of the misconduct, misbehaviour or lack of performance at work.

1.6 Due to the serious implications of disciplinary action, especially dismissal, it is the policy of the organisation to ensure that the fullest consideration is given to the employee’s circumstances with regard to length of service, past performance, health and any domestic or social factors, which may be relevant commensurate with the provision of a satisfactory standard of service.
1.7 This agreement covers all staff directly employed or seconded by this organisation.

2. Disciplinary Procedure

2.1 Rights of the employee at all formal steps

2.1.1 It is the right of all employees to be represented or accompanied by a representative of a recognised trade union or professional organisation or by a friend not acting in a legal capacity at all formal stages of the procedure. It is the responsibility of the employee to arrange this. Employees shall be reminded of their rights prior to the disciplinary hearing.

2.2 Investigation

No disciplinary action will be considered until a thorough investigation has been carried out. A manager will be identified to undertake the investigation, a member of the personnel team will support the manager. (Guidance on conducting an investigation is attached as Appendix 3.2)

2.3 Disciplinary Hearing

When following a full investigation there appears to be case for considering disciplinary action, the employee will be required to attend a disciplinary hearing. (Guidance notes on conducting a disciplinary hearing are attached as Appendix 3.3)

At the disciplinary hearing the employee will be advised of the case against them and will be given the opportunity to state their case either personally or through their representative.

A manager who has no involvement in any investigation relating to the case, supported by a member of the personnel team, will conduct the disciplinary hearing.

The manager hearing the case will make a decision based on the information presented at the hearing and will also consider any mitigating circumstances put forward by the employee or their representative. The manager will advise the employee, in writing, within seven working days of the hearing of the decision.

The employee will be required to acknowledge receipt of the letter.
The following information should be detailed in the letter:

- The date, venue and names of people in attendance at the disciplinary hearing.
- The precise reason for the disciplinary hearing being held.
- The nature, if any of the disciplinary action decided upon.
- The reason for the decision.
- What action the employee must take to improve their behaviour and/or conduct and the consequence of any recurrence.
- Reference to any action that the organisation has agreed to take e.g. training, mentoring, secondment etc.
- Details of the employees’ right of appeal and the means of exercising that right.

2.4 Disciplinary Sanction

Where it is deemed necessary to take formal disciplinary action there are four possible sanctions:

- First Written Warning
- Final Written Warning
- First and Final Written Warning
- Dismissal

The sanction that is imposed on an employee following thorough investigation of the situation and following attendance at a disciplinary hearing will depend on the severity of the situation and it is not necessary for the level of sanctions to be used sequentially.

First Written Warning

A First Written Warning should be given by the employee’s immediate line manager and will remain valid for 6 months. The warning should clearly point out the employee’s failure/omissions and should also detail how the employee could improve and what support the organisation will give to help the employee. Details should also be given regarding agreed timescales for improvement and the possible consequences of any further failures. The manager issuing the warning should ensure that manager to whom they report are aware that a warning has been issued. The warning should be issued in writing and a signed copy acknowledging receipt and understanding of the letters content should be obtained from the employee. This signed copy will be placed in the employees personal file. After the time limit has expired the warning letter and associated documentation will be removed and destroyed.
Final Written Warning and First and Final Written Warning

A Final Written Warning should be issued by a senior manager and will remain valid for 12 months. The warning should clearly point out the employee's failure/omissions and should also detail how the employee could improve and what support the organisation will give to help the employee. Details should also be given regarding agreed timescales for improvement and the possible consequences of any further failures. The manager issuing the warning should ensure that manager to whom they report are aware that a warning has been issued. The warning should be issued in writing and a signed copy acknowledging receipt and understanding of the letter's content should be obtained from the employee. This signed copy will be placed in the employee's personal file. After the time limit has expired the warning letter and associated documentation will be removed and destroyed.

Dismissal

The decision to dismiss an employee can only be taken by a member of the management team. Any decision to dismiss must be discussed with the Director or Deputy Director of Human Resources before the any dismissal takes place.

The decision to dismiss an employee on disciplinary grounds arises mainly as follows:

• As a result of persistent unsatisfactory behaviour/conduct where the system of written warnings has been exhausted. In this situation the dismissal is likely to be with notice.
  Or

• As a result of gross/serious misconduct. In these situations the dismissal is likely to be summary dismissal (without entitlement to notice).

The decision to dismiss should only be taken after a full investigation of all the circumstances and following a disciplinary hearing at which the employee or their representative is given the opportunity to state their case.

As an alternative to dismissal, the manager with authority to dismiss may consider transferring the employee to another area/post with the organisation or downgrading an employee. The appropriateness of this will be dependent on individual circumstances but may be particularly appropriate where the main reason for dismissal relates to capability or job performance.

Following the decision to dismiss the employee should be advised as soon as is reasonable practicable of the reason for the dismissal.
This should be by letter and should include the following

- Details of who was present at the disciplinary hearing, excluding witnesses;
- Details of the allegations;
- Reasons why the decision to dismiss was taken;
- The date on which the employment will terminate;
- Information on the appeals procedure, including details of timescale.

2.5 Right of Appeal

First Written Warning

An employee, who is aggrieved at being issued a first written warning, has the right to appeal to the manager to whom the decision-maker is responsible. Any appeal should be made in writing and should be received within 10 working days of the disciplinary hearing.

Final or First and Final Written Warning

An employee who is aggrieved at receiving a final or first and final written warning, has the right to appeal to the manager to whom the decision-maker is responsible. Any appeal should be in writing and should be received within 10 working days of the disciplinary hearing.

Dismissal

An employee who is aggrieved at being dismissed has the right to appeal to the Chief Executive/General Manager. Any appeal, which should be in writing, should be received with 10 working days of the disciplinary hearing.

The organisation will convene a panel, which will include a member of the Board and a senior member of the personnel team to hear the appeal against dismissal. No member of the panel will have had any previous knowledge of the case.

Arrangements for Appeals against Dismissal

- A senior member of the personnel team will be responsible to co-ordinating all arrangements on behalf of the Chief Executive/General Manager;
- The appeal hearing will be held within one month of receipt of the appeal;
- The employee and their representative will be informed in writing of the date, venue and time of the appeal hearing.
They will also be advised of the names of those who will hear the appeal;

•• The employee will be advised of their right to be accompanied by their trade union/professional organisation representative or friend;

•• The employee and the dismissing manager will be asked to submit written case at least 7 working days prior to the appeal hearing. They will also be required to submit the names of any witnesses to be called;

•• It will be responsibility of the employee and the dismissing manager to inform any witness of the arrangements for the appeal hearing;

•• At least 5 working days before the appeal hearing copies of the written case along with the names of any witnesses to be called will be circulated to the panel, the employee and the dismissing manager.

2.6 Criminal Offences

Disciplinary action should not be taken automatically against an employee because he/she has been charged with or convicted of a criminal offence. Each situation requires to be considered individually on the basis of whether the employee’s conduct warrants action because of its employment implications or because it is unacceptable to other employees.

In situations where it is considered that the conduct warrants investigation under the disciplinary procedure the following should be considered:

•• An investigation into the facts of the case should be undertaken, this should include meeting with the employee where possible

•• It is not necessary to await the outcome of any prosecution before taking any action

•• If the employee refuses to co-operate with internal disciplinary investigations this does not stop the employer from taking action. In these situations the employee should be advised in writing that unless further information is provided a decision will be taken, up to and including dismissal, on the basis of the information available

•• In some cases the nature of the offence may have no bearing on the employees employment but the employee may not be available for work because they are in custody or remand. In these circumstances the employer will need to decide, whether, considering the needs of the service, the employees job can be kept open.
Where, following a criminal conviction leading for example to the loss of a driving license the continuation of employment in a particular job would be illegal, employers should consider whether suitable alternative work is available.

2.7 Reasons For Disciplinary Action

Normally grounds for disciplinary action will relate to either misconduct or failure to perform tasks and requirements of the post to an acceptable standard. Examples of less serious misdemeanours which may result in the issue of a first written warning are listed below, although these examples are not exhaustive.

- **Performance**
  - Substantial and/or careless work;
  - Poor timekeeping.

- **Capability**
  - Lack of capability (excluding health reasons), to fulfil the requirements of the post.

Examples of serious misdemeanours which if proven may result in a final warning or, in some cases, summary dismissal without previous warnings being given. Some of the examples below might not construe a serious misdemeanor on their own, however, if there is a cumulative contribution of 2 or more, then the problem could then be construed as a serious misdemeanor. The examples listed below are not intended to be exhaustive.

- **Qualification**
  - Wilful omission of information or provision of false information to secure employment, including failure to disclose convictions exempt from the Rehabilitation of Offenders Act;
  - Failure of a trainee to obtain qualification within the normal contractually expected timescale.

- **Capability**
  - Infringement of statutory duties (excluding health reasons), (for example, loss of professional registration) where required for employment

- **Performance**
  - Frequent, persistent failure to deliver agreed work;
  - Unauthorised absence from work;
  - Disclosure of confidential information to unauthorised persons;
  - Presentation on duty in an unfit state to carry out assigned duties;
Physical/verbal abuse of members of the public, visitors, patients or staff;
Neglect of duties resulting in serious or potentially serious consequences for patient care and/or safety or patients, visitors and staff;
Theft of property belonging to the organisation, members of the public, visitors or staff;
Misappropriation of NHS finances by the falsification of records;
Misuse of drugs;
Sexual harassment.

Review Process

This policy has been developed in partnership with managers and trade union/professional organisation representatives through a Partnership Working Group. The policy will be reviewed annually or as requested by the Local Partnership Forum.

Date Approved by Local Partnership Forum

Signature of Chair of Local Partnership Forum

Signature of Chief Executive/General Manager
The purpose of carrying out investigations is to gather all the relevant facts relating to the allegations promptly. A manager should be identified to be responsible for carrying out a thorough investigation into any allegation of serious misconduct and it is suggested that where possible a member of the personnel team support any investigation.

Normally the investigating manager would interview those individuals who may be able to provide information. When interviewing witnesses the following points should be adhered to:

• Give the individual the opportunity to be supported by their trade union/professional organisation representative or colleague;
• Ensure that the questions asked are clear and not leading;
• The individual should be advised that the information they provide may be used as evidence should the issue proceed to a disciplinary hearing and that they may be asked to attend any hearing as a witness;
• The individual should be asked to provide a written statement (which must be dated and signed) and advised that a copy of this may be given to the person being investigated or their trade union/professional organisation representative. The individual should be given the opportunity to consult with their representative regarding the content of their statement.

As part of the investigation the employee against whom the allegations have been made should be interviewed to ensure that they are clear about the allegations/complaints that have been made against them. In these situations the following points should be considered:

• The employee should be given the opportunity to be accompanied by their trade union/professional organisation representative or colleague;
• The individual should be advised of the allegations/complaints that have been made and asked for their response to these;
• The employee should be given the opportunity to provide a written response/statement to the allegations/complaints (which should be dated and signed), and to consult with their representative regarding the content of their written response/statement prior to it being submitted;
The employee should be advised as to the likely timescale of concluding the investigation.

Once all of the information has been gathered the investigating manager should collate the information and on the basis of this, decide if there is any substance to the allegations/complaints. If there appears to be a case to answer then the individual should be advised that the matter would be considered at a disciplinary hearing. If there appears to be no case to answer then the individual should be advised of this in writing and should be given reasons for this decision.

In some circumstances the investigating manager may recommend that although there is not enough evidence to recommend the issue being considered at a disciplinary hearing there are enough concerns to suggest other action such as further training, support/input from Occupational Health or that a one to one meeting should take place between the employee and their manager.
APPENDIX 3.3
CONDUCTING A DISCIPLINARY HEARING

Setting
Disciplinary hearings should be held in suitable accommodation for the purpose, free of interruptions and with facilities for disabled if necessary. A separate room should be available for the employee under investigation to use prior to and during the hearing to discuss matters with his/her representative or companion. It may also be necessary to set aside further rooms for the manager presenting the findings of the investigation and for any witnesses whom may be called. Reception or other appropriate staff must be prepared to direct those attending the hearing as necessary.

Communications
Letters to staff inviting them to attend a disciplinary hearing must
• Advise the employee of the allegations made against them;
• Advise them of their right to be accompanied at the hearing;
• Inform them who will be sitting on the panel for the hearing and who will chair the hearing;
• Indicate the witnesses that are to be called or will be available to be called and the right of the employee to call witnesses;
• Include any relevant evidence and statements which have not previously been shared;
• Identify the possible disciplinary actions which may be taken as a result of the hearing.

The employee or their representative should advise the employer of any witnesses to be called to ensure that the witnesses are available and have facilities at the hearing.

Letters will generally be copied to the employee’s representative.

Representation
Employees have a statutory right to be accompanied by a fellow worker or trade union/professional organisation representative at a formal disciplinary hearing, that is a hearing which may result in some action being taken or confirmed against the employee. The representative, or companion, must be allowed to address the hearing and may also be permitted to respond at the hearing on behalf of the employee.
Where the employee or representative is unable to attend a hearing on the date identified, then an alternative date should be agreed which is suitable for all parties.

Failure to Attend
Where an employee fails to attend a disciplinary hearing without prior notification then the employer may offer a further date for the hearing. Any communication to the employee should be sent by recorded delivery and should advise the employee that a further failure to attend without due cause could result in disciplinary action being taken against them in their absence.

Attendance at the Hearing
The following parties will be present throughout the hearing:

• The manager hearing the case;
• A personnel advisor;
• The appropriate line manager.

The employee and their representative together with the investigating officer will attend the hearing. In some cases another manager, a professional/clinical advisor or a Local Partnership Forum representative may accompany the chairman. The inclusion of a Local Partnership Forum representative will depend on the evolution of partnership working within the organisation and should be discussed at the Local Partnership Forum. In each circumstance it must be clear that any decision to take disciplinary action is the responsibility of the manager hearing the case. Witnesses will attend only for the period of time when they are being asked to present their evidence and respond to questions. In some situations it may be considered appropriate for witnesses to be accompanied at the hearing. These companions would have no right to address the hearing unless invited to do so by the chairman.

Process for the Hearing
The manager will introduce those present and confirm that the hearing is of a disciplinary nature within the terms of the employer’s disciplinary procedure and could lead to disciplinary action being taken against the employee. The manager or the personnel advisor will then explain the procedure for the hearing.

The investigating manager will present the findings of his/her investigation and call any witnesses. The employee, or their representative, and the panel can then question each witness. The employee will then present their response to the management investigation, including any mitigating circumstances.

Witnesses may be called who can be questioned by the investigating manager and the panel.
Any party will be permitted to have an adjournment for a limited period of time for any reasonable reason approved by the manager hearing the case.

Once all the evidence has been presented the manager hearing the case may then ask supplementary questions to ensure his/her understanding of the respective positions and then both the employee and investigating manager sum up.

There should then be an adjournment for the manager to consider the evidence.

The employee should be advised of the timescale for communication of the manager’s decision. Where this is likely to be relatively short, the employee and their representative may wait to be called back to hear the decision. In these cases the investigating manager should also be present.

This decision will then be confirmed in writing. In more complex cases the decision may be conveyed in writing only. There should not be an unreasonable delay in communicating the decision.

Where disciplinary action has been taken the employee should be informed of their right to appeal against the decision. This should state whom the appeal should be addressed to and the time allowed to lodge an appeal.

This process is intended as a template and should be used flexibly by employers in agreement with staff representatives. For example if both parties wish to call the same witness, it should not necessary for that person to be called on two separate occasions.

**Actions**

Action taken as a result of a disciplinary hearing may be as follows:

- No case to answer and the allegations made against the employee is removed from the record;
- The employee is considered to be in breach of discipline and a warning, as appropriate, is issued in writing and record kept in the employee's personal file for the appropriate period;
- For serious acts of misconduct, the employee may be dismissed, with or without notice, depending on the nature and severity of the offence. The employee may also be given pay in lieu of notice.
APPENDIX 3.4
CHECKLIST

This checklist has been developed to allow NHS employers through their Local Partnership Forum to identify if their policy is in line with the PIN Guidelines on Employee Conduct.

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Has the policy been developed jointly with trade union/professional organisation representatives and managers</td>
<td></td>
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<tr>
<td>2</td>
<td>Has the policy been formally adopted by the Local Partnership Forum and organisation senior team</td>
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<tr>
<td>3</td>
<td>Does the policy give employees the right of representation at every stage</td>
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<td>4</td>
<td>Does the policy clearly state time scales to be followed</td>
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<tr>
<td>5</td>
<td>Does the policy allow for a full investigation to be carried out and for evidence/statements to be shared</td>
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<tr>
<td>6</td>
<td>Does the policy detail the procedure to be followed when there are allegations of professional misconduct</td>
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<tr>
<td>7</td>
<td>Does the policy state the actions/behaviours that would constitute disciplinary action to be considered</td>
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<tr>
<td>8</td>
<td>Does the policy detail the different levels of action that could be considered</td>
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<tr>
<td>9</td>
<td>Does the policy detail the levels of management that can invoke disciplinary action</td>
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<td>10</td>
<td>Does the policy detail the appeals process</td>
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<tr>
<td>11</td>
<td>Does the policy allow for issues relating to recognised trade union officials to be discussed with the full time officer</td>
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<tr>
<td>12</td>
<td>Does the policy allow for regular review</td>
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<tr>
<td>13</td>
<td>Are there mechanisms in place to manage minor conduct issues without recourse to the disciplinary procedure.</td>
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<tr>
<td>14</td>
<td>Has a joint training programme been developed?</td>
<td></td>
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</tbody>
</table>
ANNEX 4.1

REFERENCES


Draft ACAS Code of Practice on Disciplinary and Grievance Procedures, Consultation Document, January 2000

The ACAS Advisory Handbook, Discipline at Work

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