

## **Your Behaviour Matters – Disciplinary Policy and Procedure**

Reference No:	P_HR_06
Version:	8
Ratified by:	LCHS Trust Board
Date ratified:	11 September 2018
Name of originator/author	C Burroughs/Angie Scarfe
Name of responsible committee/individual:	Employment Policy Group JCNC
Date issued:	September 2018
Review date:	September 2020
Target Audience:	All staff
Distributed via:	Website

## Your Behaviour Matters – Disciplinary Policy and Procedure

### Version Control Sheet

Version	Section / Para / Appendix	Version / Description of Amendments	Date	Author / Amended By
1		Review extended to 2008/09 in accordance with MPHS, pending ACAS code of Practice and other relevant legislation/organisational changes.	2007	SM
2		Policy fully reviewed	July 2008 – January 2010	SM
3		Separation of Disciplinary and Investigation Policy	July – August 2010	KLL
4			April – June 2011	ES/KLL/RA
5		Full Review	August 2011 – April 2012	RT/REI
6		Policy fully reviewed to incorporate investigation process.	May 2013	RT
6.1		Minor amendment made following agreement at December EPG	December 2013	REI
7		Full Review	May 2015	CB/AS
7.1		Minor change relating to loss of professional registration	December 2015	KS
7.2		Incorrect review date inserted on version 7.1	March 2017	KS
7.3		Extended to Mar 18	Jan 2018	EPG
8		Full Review	July 2018	FC
9		Updated Monitoring Template and Equality Analysis	March 2019	FC

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# **Your Behaviour Matters – Disciplinary Policy and Procedure**

## **Policy Statement**

### **Statement**

This policy and procedure applies to all employees and the aim is to ensure consistent and fair treatment for all in the organisation.

This procedure provides a positive framework for encouraging improvement and sets out the action which will be taken up to and including dismissal when locally, nationally or professionally agreed standards are not being reached as a result of misconduct.

Every member of staff has a personal responsibility to achieve and sustain high standards of performance and conduct at all times and to comply with this policy.

For any issues/concerns relating to doctors and dentists employed by the organisation, these will be investigated under the national document – Maintaining High Professional Standards in the Modern NHS (MHPS, 2005). If the outcome of this investigation is to progress to disciplinary action, this will be undertaken in line with the organisation's local Your Behaviour Matters – Disciplinary Policy and Procedure.

The advisory and assessment services of the National Clinical Assessment Service (NCAS) may be sought at any time.

### **E&D statement**

This policy aims to meet the requirements of the Equality Act 2010 and ensure that no employee receives less favourable treatment on the grounds of gender, sexual orientation, transgender, civil partnership/marital status, appearance, race, nationality, ethnic or national origins, religion/belief or no religion/belief, disability, age, carer, pregnancy or maternity, social status or trade union membership.

# Your Behaviour Matters – Disciplinary Policy and Procedure

## Contents

Version control sheet  
Policy statement

Section	Page
1. Principles	5
2. Investigation	5
3. Gross Misconduct	6
4. Agreed Outcome	7
5. Disciplinary Hearing	7
6. Withholding Incremental Progression	8
7. Referrals	8
8. Appeals	9
9. Record-keeping	9
10. Probationary Periods	9
11. Monitoring Template	10
12. Equality Analysis	11

## 1. Principles

- Informal action will be considered, where appropriate, to resolve problems.
- Investigatory processes and disciplinary matters will be managed with a view to achieve a timely resolution.
- Employees may be represented or accompanied, if they wish, by a trade union representative or a work colleague during investigatory and disciplinary processes. Exceptions to this will apply during the investigation process, only when it is determined by the Investigating Officer that this will cause an unreasonable delay to proceedings.
- No disciplinary action will be taken until the case has been fully investigated.
- No employee will be dismissed for a first breach of discipline except in the case of gross misconduct.
- An employee will have the right to appeal against any disciplinary sanction, unless issued as part of the agreed sanction process.
- Where an employee is unable to conduct their normal duties due to ill health this will not, as a matter of routine, exempt the employee from attending any meeting that is part of the investigatory or disciplinary process. However, specific medical certification of an employee's fitness to not attend will be considered and further advice will be sought from Occupational Health.
- All proceedings under this policy are strictly confidential. A breach of confidentiality in this process will be considered "on its own merit" under this policy.
- Where a related grievance is raised during the disciplinary process, this will be considered as part of the disciplinary hearing and additional evidence may be presented and considered as necessary.

## 2. Investigation

An investigation should be a fair and objective fact-finding exercise to establish information on a matter by collecting relevant evidence, such as witness statements, written documents and physical evidence.

Many potential disciplinary issues can be resolved informally. However, where an issue cannot be resolved informally, then it may be pursued formally. An assessment will be undertaken to establish if a formal investigation is required.

A formal investigation will commence on receipt of a Terms of Reference from the Commissioning Officer, usually the Head of Service. In the case of doctors and dentists, clinical leads / directors and consultants, the organisation's Medical Director or the most senior clinical manager will act as Commissioning Officer. Within the Terms of Reference, the Investigating Officer should be given details that set out exactly what they are expected to investigate and a provisional timeframe within which the investigation should be completed.

Investigations will be completed within the service area, usually by the line manager. Managers required to act as Investigating Officers who have not accessed formal training will utilise their transferable decision making skills when analysing investigation information and may be supported by HR colleagues and/or Practitioner Performance.

While an investigation should be completed as quickly as is practical, it also needs to be sufficiently thorough to be fair and reasonable. Any delay to the investigation's conclusion should be explained to those involved and included in the report.

If an employee is under investigation, they should be informed in writing of the allegations against them and that an investigation will be carried out and be notified of who to contact if they have any questions during the investigation.

When individuals might be able to provide information relevant to the investigation, an investigator may interview them and/or ask them to provide a witness statement. An investigator should give any employee

that they intend to interview advance written notice of their investigation meeting.

In potential disciplinary matters, it is not an investigator's role to prove the guilt of any party but to determine if there is a case to answer. The level of judgement should be based on the balance of probability that the issue occurred (i.e. that it is more likely than less likely to have occurred / that there is more evidence than not) and not on the judgement of beyond reasonable doubt that it definitely did occur.

The Investigating Officer will provide a management report detailing the enquiries, evidence and their recommendations to the Commissioning Officer.

### **3. Gross misconduct**

The following list provides some examples of offences which are normally regarded as gross misconduct (the list is not exhaustive):

- the abuse or deliberate action detrimental to patients, relatives or staff
- theft or fraud
- physical violence or bullying
- deliberate and serious damage to property
- serious misuse of an organisation's property or name
- deliberately accessing internet sites containing pornographic, offensive or obscene material
- the use of social media to make statements/comments or post pictures which could be considered of an inappropriate nature
- serious insubordination including wilful refusal or failure to carry out a reasonable instruction of management
- unlawful discrimination, harassment or victimisation
- bringing the organisation into serious disrepute
- incapacity for work due to persistent misuse of alcohol or drugs, where support and counselling have been offered
- an act or omission causing a threat to the safety and well-being of others, loss, damage or injury through serious negligence, for example, failure to exercise a duty of care to another member of staff
- a serious breach of Trust policies and procedures or health and safety rules
- loss, misuse or unauthorised disclosure of confidential information
- provision of false information or wilful omission of information
- unauthorised absence
- corruption or bribery including receipt of money, goods, favours or excessive hospitality (including undisclosed sponsorship for study leave and overseas leave) without the express knowledge of the Trust
- criminal or civil proceedings, serious acts or omissions which are the subject of criminal or civil proceedings which could bring the individual or the Trust into disrepute and which might undermine the trust and confidence which should exist between the Trust as an employer and the individual as an employee
- a serious breach of trust and confidence.

While the alleged gross misconduct is being investigated, the employee may be excluded or temporarily transferred from normal duties, during which time the individual will be paid their normal pay rate. Exclusion or temporary transfer from normal duties is a neutral action and will be invoked only when it is considered a necessary measure to protect the safety and/or health and wellbeing of patients and/or employees, including the respondent, to any allegation(s) or to protect the integrity of an investigation. The Director of Nursing, AHPs and Operations and Director of Workforce and Transformation (or their nominated deputies) will formally authorise any exclusion.

#### **4. Agreed Outcome**

In some circumstances where an individual admits the allegation, it may be possible to issue a sanction without the need to progress to a formal disciplinary hearing.

The possible sanction will be discussed with the individual.

If the individual agrees to accept the sanction, this will be issued as a result of the discussion. The individual will not be entitled to appeal against the sanction.

If the individual declines to accept the sanction, the matter will progress to a disciplinary hearing for the outcome to be determined.

#### **5. Disciplinary Hearing**

It should be the Commissioning Officer and not the investigator who makes the final decision as to whether or not a disciplinary hearing will be held. If their decision differs from the investigator's recommendation, the reasons for this should be written down and included as an addendum to the report.

Disciplinary hearings will be chaired by the Commissioning Officer supported by a HR Representative. The Investigating Officer may be required to attend, however, they should only be there in a fact giving capacity and should not be there to give their opinion or present the case against the employee. Additional panel members may also be invited where this is deemed necessary. Witnesses may be called to attend where appropriate. In cases of potential dismissal, a Deputy Director or other appropriate senior manager will chair the hearing and a HR Business Partner will be in attendance. If a Director is subject to disciplinary action, the Chief Executive is authorised to take such action in conjunction with a Non-Executive Director.

The employee will be advised of what is alleged against them and will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary hearing.

A maximum of two dates will be offered allowing seven calendar days' notice of the hearing. Following which, should the employee be absent without reasonable mitigation, an outcome will be decided in absentia.

Employees will be given the opportunity to state their case before any decision is made at a disciplinary hearing.

Outcomes of a disciplinary hearing will normally be either:

- First written warning for misconduct if conduct does not meet acceptable standards and it constitutes a minor matter and there is some evidence of mitigation. A record of the warning will be kept, but it will be considered spent and disregarded for disciplinary purposes after a period of six months of satisfactory service.

Or

- Final written warning if the offence is sufficiently serious, or if there is further misconduct or a failure to improve in standards during the currency of a prior warning and there is limited evidence of mitigation, or where it constitutes a more serious matter and there is significant evidence of mitigation. A record of the warning will be kept, but it will be considered spent and disregarded for disciplinary purposes after a period of twelve months of satisfactory service.

Or

- Dismissal or action short of dismissal if it constitutes a serious matter considered as gross misconduct and there is limited evidence of mitigation, or is a repetition of prior misconduct or failure to improve in standards and the individual is on an active final written warning, the final step in the

procedure may be dismissal or some other action short of dismissal such as downgrading or transfer. Downgrading may be applied instead of, or in addition to any other action under this procedure. Normal pay protection arrangements will not apply to any downgrading under this procedure. Where an employee has accepted redeployment to an alternative role at a lower pay band or reducing the responsibility in the current role to equate to the pay band below, they may be relocated where in the view of management it is considered necessary and appropriate. Excess mileage will not be payable for any change of base in these circumstances.

Variance to the length of sanction awarded may be agreed dependant on the mitigation/risk.

If, on completion of the investigation and the full disciplinary procedure, the organisation is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

Written confirmation of formal outcomes will be provided to the employee and will set out the nature of the misconduct, the improvement that is required and any help or support that may be given, along with the right of appeal.

## **6. Withholding Incremental Progression**

Increments will automatically not be awarded if a formal written warning has been issued. The incremental date will be deferred by the duration of the warning.

If an individual is subject to an ongoing investigation at the time of their appraisal, the pay increment will be withheld until the disciplinary procedure has been concluded. If the outcome of the disciplinary procedure is that no formal sanction is issued, the individual will then be awarded their increment and this will be backdated.

## **7. Referrals**

Professional healthcare staff are, at all times, responsible for complying with the relevant standards set by their regulatory or professional bodies. The organisation will not determine if any professional code of conduct or standards have been breached but may refer the matter to the appropriate professional body at any stage in the investigatory or disciplinary process where it is considered appropriate or may take action under this policy where a breach of standards is determined by a professional body. All referrals will be completed by Practitioner Performance and the employee will be notified.

The Trust has an obligation under the Protection of Children Act and the Care Standards Act to refer the names of employees to the Disclosure and Barring Service in the following circumstances:

- If the Trust dismisses an employee on the grounds of misconduct (whether or not in the course of employment) which harmed a child and/or vulnerable adult or placed a child/or vulnerable adult at risk of harm (“the specified grounds”).
- If an employee resigns or retires in circumstances related to actual or potential harm to children and/or vulnerable adults such that the Trust would have dismissed the employee or would have considered dismissing on such grounds had the employee not resigned or retired.
- If the Trust has, on the specified grounds, transferred an employee to a position within the organisation which is not a child care position or position involving vulnerable adults.

Where the organisation has an obligation under legislation e.g. safeguarding, it will refer the names of employees to the Secretary of State as appropriate.

Where there is a suspicion of fraud/criminal activity the case will be referred to Counter Fraud and/or the Police as required. Disciplinary action, will as far as possible, be undertaken only on completion of any fraud investigation, however the organisation reserves the right to consider each case as appropriate.

## **8. Appeals**

An employee who wishes to appeal against a disciplinary decision must do so in writing stating the grounds for appeal within seven calendar days of confirmation of the disciplinary hearing outcome in writing.

The appeal Chair will be independent and of a level of seniority above that of the disciplinary hearing Chair, supported by a HR Representative. Additional panel members may also be invited where this is deemed necessary.

It is open to those hearing the appeal to uphold the appeal, or to confirm the sanction applied at the previous stage, or to substitute a lesser or more severe sanction, according to their judgement as to the appropriateness of the decision at the previous stage having regard to all the circumstances of the matter.

The panel will hear the appeal and decide the case as impartially as possible. The decision given at the stage of an appeal is final.

## **9. Record-keeping**

At all investigation meetings, disciplinary and disciplinary appeal hearings, a note taker will be present to make non verbatim notes.

## **10. Probationary Periods**

For employees within their probation period, the implementation of this policy should be considered alongside the Probationary Policy and Procedure and to the probation period timeframe, which may be extended as a result.

## Monitoring Template

This template should be used to demonstrate compliance with NHSLA requirements for the procedural document where applicable and/or how compliance with the document will be monitored.

Minimum requirement to be monitored	Process for monitoring e.g. audit	Responsible individuals /group /committee	Frequency of monitoring /audit	Responsible individuals / group / committee (multi-disciplinary) for review of results	Responsible individuals / group / committee for development of action plan	Responsible individuals / group / committee for monitoring of action plan
Number of employees subject to disciplinary action	ER Tracker	Operational Managers Practitioner Performance Review Meetings Workforce and Transformation Executive Group	Annual	Practitioner Performance Review Meetings Workforce and Transformation Executive Group	Operational Managers Practitioner Performance Review Meetings	Operational Managers Workforce and Transformation Executive Group

## Equality Analysis

**Name of Policy/Procedure/Function\*: Your Behaviour Matters – Disciplinary Policy and Procedure**

**Equality Analysis Carried out by: Francesca Civitillo**

**Date: 20<sup>th</sup> March 2019**

**Equality & Human rights Lead: Rachel Higgins**

**Date:**

**Director\General Manager: Marie Fosh**

**Date:**

**\*In this template the term policy\service is used as shorthand for what needs to be analysed. Policy\Service needs to be understood broadly to embrace the full range of policies, practices, activities and decisions: essentially everything we do, whether it is formally written down or whether it is informal custom and practice. This includes existing policies and any new policies under development.**

### Section 1 – to be completed for all policies

A.	Briefly give an outline of the key objectives of the policy; what it's intended outcome is and who the intended beneficiaries are expected to be	Lincolnshire Community Health Services (LCHS) aims to provide the highest standards of patient care. Every member of staff has a personal responsibility to achieve and sustain high standards of performance and conduct at all times. This Policy is designed to promote fairness and consistency in the treatment of employees of LCHS where disciplinary procedures are enacted. The Policy outlines the procedure that will be followed when it is necessary to take action of a disciplinary nature against employees. The intention is that disciplinary cases are dealt with proactively, with a view to resolving problems as quickly as possible.
B.	Does the policy have an impact on patients, carers or staff, or the wider community that we have links with? <b>Please give details</b>	All Trust employees.
C.	Is there is any evidence that the policy\service relates to an area with known inequalities? <b>Please give details</b>	
D.	Will/Does the implementation of the policy\service result in different impacts for protected characteristics?	

	Yes	No	
Disability		X	
Sexual Orientation		X	
Sex		X	
Gender Reassignment		X	
Race		X	
Marriage/Civil Partnership		X	
Maternity/Pregnancy		X	
Age		X	
Religion or Belief		X	
Carers		X	
<b>If you have answered 'Yes' to any of the questions then you are required to carry out a full Equality Analysis which should be approved by the Equality and Human Rights Lead – please go to section 2</b>			
The above named policy has been considered and does not require a full equality analysis			
<b>Equality Analysis Carried out by:</b>	Francesca Civitillo		
<b>Date:</b>	20 <sup>th</sup> March 2019		