

# **Worcestershire Acute Hospitals NHS Trust Disciplinary Policy**

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## What this Policy Covers

Worcestershire Acute Hospitals Trust is committed to ensuring that colleagues are managed in a supportive, consistent, fair and effective manner. This Policy is designed to ensure that the practice of reflection and improvement is embedded; and to help and encourage colleagues to achieve and maintain high standards of conduct, protecting the interests of the Trust, patients and colleagues.

Expected standards of behaviour and conduct are included within the 4ward Behaviours, the Behaviour Charter and through codes of conduct set by professional bodies.

This policy applies to all WAHT colleagues. This policy will:

- outline the procedure to be followed in respect of alleged policy breaches
- ensure that any disciplinary matter is dealt with fairly and that the first steps taken are to establish the facts
- detail disciplinary sanctions that can be applied and their duration
- clarify your responsibilities along with those of the Trust Board of Directors, Managers and your Colleagues

## Principles

The Trust is committed to embedding a “just culture” where equal emphasis is put on accountability and learning. If an adverse event occurs, it asks “what went wrong” rather than “who is to blame”.

Where possible, issues of minor misconduct will initially be addressed informally between you and your manager.

No formal action will be taken without a prompt and appropriate investigation to establish the facts of the matter.

Where formal action is deemed necessary an appropriate manager will be responsible for working with the HR Advisory Service to ensure a Case Manager and Investigating Manager are appointed.

This policy should not be seen merely as a means of imposing sanctions. The intention is that disciplinary cases are dealt with early on to resolve problems as quickly and fairly as possible.

**Health and Wellbeing:** We understand that going through disciplinary procedures can be very upsetting and we want to ensure you are properly supported throughout. Signposting and access to wellbeing services will be provided at all stages.

**Fairness:** The application of this procedure will be consistent, fair, prompt (within timescales defined in the policy), impartial, reasonable and applied without discrimination.

**Confidentiality:** Information relating to an allegation of misconduct should not be divulged to any parties not involved in the disciplinary process. Statements, letters and other communications will be strictly confidential to those involved and records will be kept in accordance with the General Data Protection Regulations 2018 and in line with the Trust Corporate Records Management Policy and Procedure.

**Natural justice:** Cases should be investigated as thoroughly as is reasonable in the circumstances. At every stage of the procedure, Colleagues will be advised of the nature of the complaint, in writing and will be given the opportunity to state their case. Where a warning is given, Colleagues will be provided with appropriate support to improve their conduct.

**Equal opportunities:** This policy will be applied without any distinction as to sex, gender, assignment, age, sexual orientation, marriage and civil partnership status, race, ethnic or national origin, colour, creed, disability, religion or belief, political belief, membership of or activities as part of a trade union.

**Representation:** You have the right to be represented by an accredited trade union representative or accompanied by a work colleague.

Prior to any meeting, you should inform the Manager or Panel with whom you are meeting that you will be represented/accompanied, giving the name of your representative. There are differences between accompanying roles and we recommend colleagues take advice to ensure this is fully understood.

Any medical and dental practitioner covered by these procedures may be accompanied by a friend, partner/ spouse, work colleague or trade union/ defence organisation representative. The companion/ representative may be legally qualified but they will not be acting in a legal capacity.

**Professional bodies:** The Trust also reserves the right, if appropriate, to report the matter to the relevant professional body (e.g. DBS, NMC, GMC, HCPC, Counter Fraud), which may also take additional action.

## Responsibilities

- You are responsible for cooperating with any investigations or hearings as required; if a colleague has provided a statement, should the matter proceed to a Hearing, they would be expected to attend.
- Where a potential disciplinary issue arises, Managers are responsible for acting in accordance with this policy in a timely manner.
- Managers are responsible for ensuring that colleagues know the standards of conduct required in their job.
- The HR Advisory Service is responsible for providing professional HR advice and support to managers and colleagues on applying this policy and associated procedures. The HR Advisory Service will be involved in all formal stages of the disciplinary procedure.

## Policy In Practice

### Process

Each case should be considered based on individual circumstances, including the nature of the allegation, its effect on Colleagues, the Trust and patients.

Where a concern regarding conduct or behaviour is identified, the Manager will as a priority undertake an initial fact find using the Fact Finding and Suspension Risk Assessment Checklist.

### Suspension

Suspension will only be applied where alternatives such as restricted duties or a temporary move to another location are deemed inappropriate. This is a precautionary measure which does not prejudice the outcome of the investigation or any subsequent disciplinary action. A colleague will normally be suspended from duty on full pay except where the individual is in contravention of professional registration requirements (see Trust's Professional Registration policy) or where they are not available for work (e.g. in legal custody).

### **Guidance for Managers Undertaking a Suspension Meeting Document and Notification of Suspension Letter.**

Managers should refer to the following Guidance Documents: Fact Finding and Suspension Risk Assessment and Checklist; Alternative to Suspension - Notification of Temporary Reassignment to Alternative duties Letter; Guidance for Managers Undertaking a Suspension Meeting and Notification of Suspension Letter.

### Informal

Minor misconduct will be handled informally between you and your manager as part of usual day-to-day management.

The aim of an informal discussion is to:

- explore with you the circumstances and what may have led to the poor conduct or standards of behaviour,
- confirm that you understand the behavioural / conduct standards the Trust expects,
- (where appropriate) help you make the necessary changes within an agreed timescale by setting objectives/standards and providing any necessary training or other support,
- agree how and when progress will be reviewed,
- explain the consequences of continued poor conduct or behavioural standards. Continuation may lead to formal action.

The discussion should be dealt with in a timely manner.

At the end of the informal meeting, your manager will check that you understand what needs to be done, how the matter will be reviewed and over what period of time.

There is no right to be accompanied nor to appeal against informal outcomes.

Managers must write summarising discussions under the bullet points above. Where this happens, you must be given a copy and another will be placed on your personal file, dated and marked “conversation of concern”.

The letter will remain on your personal file and may be considered as part of any similar formal processes in the future.

## Formal

Where the Fact Finding and Suspension Risk Assessment Checklist completed by your manager identifies more serious concerns, including potential gross misconduct, informal discussions will not be appropriate, and it will be necessary to begin formal proceedings.

It may also be appropriate to move to the formal stage where previous informal discussions, have not brought about the required changes in behaviour or conduct.

Your line manager will, having determined that the formal process is necessary, contact the HR Advisory Service who will support the appointment of a Case Manager with no previous involvement in respect of the alleged misconduct.

The Case Manager will review the evidence and determine whether a full investigation is required initially. If deemed necessary, they will write terms of reference to enable an investigation.

The investigation will include meeting(s) with you and any witnesses to obtain any relevant information, review documents or other evidence.

The Investigating Manager will then submit an investigation report to the Case Manager, presenting the facts obtained through investigation. It is not the responsibility of the Investigating Manager to decide next steps. However, they may have recommendations arising from their investigations for further consideration.

Following receipt of the report the Case Manager will review the investigation and recommendations and decide if:

- organisational or team training/ learning is required
- further individual support is needed to change/ improve behaviour
- there is a formal case to answer (A Hearing)
- a sanction short of a Hearing is appropriate
- another policy applies

You will be informed of next steps and this will be confirmed in writing within 7 calendar days of that decision.

Where deemed necessary, a Disciplinary Hearing will be held within 28 calendar days of the Case Manager's confirmed decision.

The Investigating Manager's report and any statements collated during the investigation process will be included in the documentation to be considered at the Disciplinary Hearing and you will receive a copy 14 calendar days before the Hearing.

If you wish to rely on any additional information you are required to provide this to all parties 7 calendar days before the Hearing.

These timescales may be reduced by mutual consent.

### **The Disciplinary Hearing**

A Disciplinary Panel will include a Senior Manager (Equivalent to Band 8a or above) who will chair the Hearing and will be supported by a member of the HR Advisory Service who has had no previous involvement.

Where allegations involve professional misconduct or technical issues, a Senior Professional (internal or external) from an appropriate discipline should also be part of the Panel. The Chair will set up the Hearing. The Hearing Invitation Letter you receive will give information about:

- the allegations against you
- the date, time and venue for the hearing and names and job titles of the Panel Members
- Copies of any reports, statements or information relevant to the disciplinary process that will be relied on or referred to at the Hearing. However, in certain circumstances (e.g. where necessary to protect witness confidentiality or anonymity) some information may be withheld
- the names and positions of any witnesses
- the Hearing being of a disciplinary nature and that it may result in disciplinary action being taken against you (including dismissal)
- your right to be represented/ accompanied

If you or your representative are unable to attend for a justifiable reason, the Disciplinary Hearing will be rearranged once. At the second attempt, if you still cannot attend, the hearing may still take place, and a decision may be made in your absence.

At the hearing, both parties you (and your representative) and the investigating manager (who will be supported by a member of the HR Advisory Service) will be given an opportunity to present their cases, call any witnesses and, in addition to the Panel Members questions, both parties will also be able to ask questions.

After both cases have been heard, the Hearing will be adjourned so the Panel can come to a decision. It will decide firstly whether disciplinary action is warranted, and secondly, if disciplinary action should be taken, what level of sanction should be made. The parties will be recalled and the Chair of the Panel will inform both parties of its decision. The outcome will be confirmed in writing within 7 calendar days of the Hearing. In some circumstances, the Panel may need more time to reach a decision and the hearing will be adjourned for a reasonable amount of time.



## Disciplinary Sanctions

The sanction level will be determined by the severity of the allegations and may take into account previous sanctions. Warnings may run concurrently if they are for different reasons.

The Panel will normally select one of the following sanctions if the allegations are upheld.

### Written warning

A written warning will usually be used as the first step of corrective action following conduct offences. The Panel will explain the nature of your unacceptable actions and the conduct or standards required in future. You will be advised in writing that failure to improve conduct may result in further disciplinary action. A copy of the warning will be held on your personal file and considered live for 12 months.

### Final written warning

A final written warning is usually issued following a written warning that has not resulted in improved conduct, but it may be given after a more serious first offence where the overall conduct does not justify dismissal. However, you will be advised in writing that failure to improve may result in dismissal. The final written warning will remain on your personal file and considered live for disciplinary purposes for 18 months, (in exceptional circumstances, as an alternative to dismissal the panel may request that a final written warning remains live for up to 24 months).

In reaching a decision, a Panel may consider previous warnings that have expired only where they are directly relevant to the case being considered and demonstrate a previous pattern of behaviour that has continued.

There are two types of dismissal:

- Where a colleague has failed to respond adequately to a previous warning(s) (in this case dismissal is effective immediately and is with payment in lieu of notice)
- Where a colleague has committed an act so serious that the trust and confidence in the colleague is broken. In such circumstances the actions of the colleague would be termed '**gross misconduct**' and the **dismissal would be 'summary dismissal'** i.e. immediate dismissal without notice or payment in lieu.

Examples include things such as theft or fraud, physical violence, gross negligence or serious insubordination. The Panel reserves the right to impose a sanction short of dismissal. This may include demotion or transfer to a different post. Any action short of dismissal must be agreed to by all parties. Failure to agree may result in dismissal. Any such decision will be confirmed to you in writing once you've been informed of the outcome.

## Appeal

You have the right to appeal against any formal disciplinary sanction. The appeal should be made within 14 calendar days of receipt of the letter to the Deputy Director of People and Culture.

An appeal hearing will be arranged, and the process and timescales will mirror those of the Disciplinary Hearing detailed above. The Appeal Panel Members will have had no prior involvement in any aspects of the current issue.

The Appeal Hearing will not be a rerun of the Disciplinary Hearing. In the Appeal Hearing, you will need to demonstrate:

- the original hearing was in some way procedurally unfair; and/or
- the decision in the original hearing to find you blameworthy was perverse; and/or
- the type of warning imposed was excessive in relation to the offense for which you were found blameworthy; and/or
- new evidence of a material nature, which could not be reasonably known at the time, came to light immediately after the original hearing.

The decision of the appeal Hearing will be final. An Appeal Hearing Panel may overturn the Disciplinary Panel's decision in full or part and can increase a sanction, up to and including dismissal.

## **Implementation Plan**

This policy will be available on the Trust Intranet.

A policy briefing will be developed for Divisional Management Boards, Directorate Meetings and Worcestershire weekly.

[HR Key Documents Supporting Documents](#)

[Disciplinary Policy Supporting Documents](#)