



**Golden Jubilee  
Foundation**

<b>Name</b>	<b>Management of Employee Conduct</b>
<b>Summary</b>	The aim of this policy is to ensure that conduct issues are dealt with in a fair and consistent manner in matters relating to conduct.
<b>PIN Policy</b>	Management of Employee Conduct
<b>Associated documents</b>	Management of Employee Capability Policy Managing Health At Work PIN Policy Safer Pre and Post Employment Checks Policy
<b>Target audience</b>	All staff or individual groups
<b>Version number</b>	1
<b>Date of this version</b>	July 2017
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<b>Approving committee/group</b>	SMT/Partnership Forum
<b>Document author</b>	Edited by Elaine Barr, HR Manager

## Golden Jubilee Foundation Values Statement

What we do or deliver in our roles within the Golden Jubilee Foundation is important, but the way we behave is equally important to our patients, customers, visitors and colleagues. We know this from feedback we get from patients and customers, for example in “thank you” letters and the complaints we receive.

Recognising this, the Golden Jubilee Foundation have worked with a range of staff, patient representatives and managers to discuss and promote our shared values which help us all to deliver the highest quality of care and service across the organisation. These values are closely linked to our responsibilities around Equality.



Our Values are:

- Valuing dignity and respect
- A 'can do' attitude
- Leading commitment to quality
- Understanding our responsibilities
- Effectively working together

Our policies are intended to support the delivery of these values which support employee experience.

## **1 Policy Statement**

It is the aim of the Golden Jubilee Foundation (GJF) to ensure that all employees are treated in a fair and equitable manner. Employees are expected to adhere to acceptable standards of conduct in the course of their employment. Where such standards are not met, a formal process should only be followed where there is no other alternative. In all cases, the primary object must be to assist and support the employee to improve to the required standard. Dismissal on grounds of conduct should only be considered as a last resort.

Where concerns arise over potential misconduct, action is required in the interests of both the GJF and the employee. A failure to deal with it may adversely affect colleagues and standards of patient or customer care, and as a result other staff may become disillusioned and dissatisfied. Some may even look elsewhere for employment. In this way, the efficiency and the quality of the service can quickly deteriorate.

This policy has been developed in partnership with trade unions/professional organisations. It reflects the best practice identified in, and meets the minimum standards set out in, the Management of Employee Conduct Partnership Information Network (PIN) Policy. The policy also reflects current employment legislation.

This policy and procedure has been assessed for relevance and screened for equality impact, to identify and mitigate, where possible, any potential for the policy and procedure to have differential impact on employees having regard to their differences, such as ethnicity, gender, disability, age, sexual orientation, religion, literacy or belief.

## **2 Scope**

This policy applies to all directly employed staff, including bank/temporary staff and GJF staff on secondment. It applies to all employed medical and dental staff in cases of personal misconduct. However, it does not apply to matters concerning the professional conduct of medical and dental staff.

In the cases of conduct issues relating to staff groups who require to be professionally registered, the GJF has in place a mechanism to ensure that relevant statutory regulatory bodies are informed, as appropriate, where such issues arise guidance will be provided by the HR team. Employees must be advised in advance of any such referral being made. Decisions in relation to ongoing professional registration as a result of such issues will be for the relevant statutory regulatory body to determine. This policy will, however, apply in relation to those conduct issues in so far as they relate to an individual's employment within the GJF.

## **3 Aims of the Policy**

This policy will ensure that conduct issues are dealt with in a fair and consistent manner. The policy provides:

- Assistance to employees to improve wherever possible when such issues arise;
- Firm but fair and consistent means of dealing with conduct issues; and
- A means of resolving conduct issues where improvement is unachievable.

In order to achieve these aims, the following principles and values apply:

- This policy will be appropriately communicated to all employees and will be made readily accessible to them;
- All employees will be made aware of acceptable standards of conduct, and of the need to adhere to such standards;
- Good standards of conduct, and special effort by individual teams, will be acknowledged, encouraged and reinforced;
- Issues of conduct will be addressed at the earliest opportunity and (except in more serious cases) on an informal basis in the first instance before resorting to the formal procedure;
- Issues of conduct will be addressed fairly, consistently and confidentially, irrespective of the position/level within the GJF of employees with whom such matters arise;
- Issues of conduct will be addressed in a supportive manner, with every opportunity to improve being offered. Termination of employment on grounds of conduct will only ever be as a last resort;
- Joint training on the policy will be provided for managers and trade union/professional organisation representatives using a partnership model, in order to ensure that relevant staff are sufficiently skilled and competent in implementing the process;
- Specialist HR advice will be available to managers involved in implementing the process;
- At all stages of the formal procedure, an employee will be entitled to be accompanied by a trade union/professional organisation representative or work colleague; and
- This policy will be subject to ongoing monitoring to ensure that it is being fairly and consistently applied and that the stated principles and values are being met. The policy will be subject to regular review, in partnership, to ensure that any new standards and/or structures are incorporated when necessary and that it remains fit for purpose.

#### **4 Roles and Responsibilities**

Employees will:

- Ensure that they are aware of the standards of conduct expected of them, and that they seek further guidance if unclear;
- Adhere to the expected standards of conduct;

- Work with managers on any agreed supported improvement plan;
- Comply with any support/monitoring mechanisms put in place; and
- Raise concerns with the appropriate manager where they perceive others not to be adhering to the expected standards of conduct.

Managers will:

- Ensure that all employees for whom they are responsible are made aware of the standards of conduct required;
- Ensure that such employees are made aware of and have access to this policy;
- Ensure that good standards of conduct, and special effort by individuals and teams, is acknowledged, encouraged and reinforced;
- Ensure that they are fully aware of and comply with the provisions of this policy, identifying and dealing with issues which arise in a fair, consistent, confidential, timely and supportive manner; and
- Ensure that they seek HR advice where necessary and appropriate when dealing with conduct issues.

Trade union/professional organisation representatives will:

- Work in partnership with the GJF to develop joint training as part of the implementation of this policy and participate in such joint training;
- Work in partnership with the GJF to raise awareness of the benefits of, and the approach to, the management of employee conduct as outlined in this policy;
- Support their members, including providing representation throughout the formal stages of the procedure, ensuring that their members are aware of their rights and responsibilities under this and other relevant policies; and
- Participate in partnership monitoring, evaluation and review of this policy.

Human Resources will:

- Develop and deliver, in partnership, training on this policy for managers and trade union/professional organisation representatives;
- Advise managers on the correct implementation of this policy; and
- Support employees by providing advice on this policy.

Occupational Health will;

- Provide timely and comprehensive guidance to managers and support to employees following any referral which requires to be made in the course of managing conduct issues.

## **5 Disciplinary Rules**

Disciplinary rules are established to promote fairness in the treatment of employees, and order in the conduct of employee relations throughout the GJF. They will also set standards, and enable employees to understand what is expected of them – and the consequences of failure to observe those standards.

The GJF has agreed rules necessary for the maintenance of satisfactory standards of conduct which are set out in the Standards of Business Conduct for NHS Staff and additionally in the Organisational Values. In addition to the above, all those who are appointed as members of the board of the GJF must abide by the Standards of Conduct, Accountability and Openness of NHSScotland (2001). All employees within the GJF, as well as board members, must abide by the principles of these standards.

Any type of behaviour or conduct at work which falls below the standard required by the GJF or is in breach of GJF policy may be deemed to be a form of misconduct. Where such behaviour or conduct is so serious in itself, or has such serious consequences that the relationship of trust and confidence which is needed between the GJF and an employee has been damaged irreparably, this may be deemed to be a form of gross misconduct.

## **6 Procedure**

### **6.1 Informal Approach**

It is recommended that, prior to invoking the formal procedure, managers need to reflect on whether there are ways of dealing with alleged misconduct in a more supportive way.

The emphasis should be on a two-way, open and honest discussion, with a view to determining the underlying issues and identifying potential remedies, resulting in a series of commitments on the part of the employee and their manager, with the aim of providing a supportive working environment for employees which seeks to achieve continuous improvement rather than punish mistakes. Managers are responsible for ensuring that such discussions take place promptly where such issues arise, and that they are managed confidentially.

If the issues continue, the manager will meet regularly with the employee, providing guidance on what is unacceptable, reinforcing what is acceptable and setting targets and timescales for improvement. These meetings should be recorded and a copy kept by both parties in accordance with standard record-keeping procedures, in order to ensure clarity of expectations and commitments.

Where the manager has followed the principles of fair and reasonable management, providing support to the employee and monitoring improvement over a reasonable time period, and where there is still insufficient

improvement, the manager will advise the employee that the formal procedure may need to be invoked.

## **6.2 Formal Procedure**

Where there has been inadequate improvement, despite having been given initial, informal guidance and support, or in more serious cases, a more formal approach will be required.

### **6.2.1 Right to Be Accompanied**

Employees have a right to be accompanied by a trade union/professional organisation representative or a work colleague at any investigatory meeting or disciplinary (or appeal) hearing being held under this policy.

While there is no right to be accompanied at a meeting to confirm suspension, employees should (where practicable) be given reasonable notice to organise representation.

Specific to any resulting disciplinary (or appeal) hearing, the role of such a representative will be as follows:

- To prepare, present and sum up the employee's case on their behalf; and
- To provide further information after the employee's response or to respond on behalf of the employee to any views expressed, with a view to providing additional clarity to the case.
- The representative is not permitted to answer questions on the employee's behalf with the employee being required to personally respond to any specific questions directly.

Where the employee is a trade union/professional organisation representative, no disciplinary action should be taken without discussion with a full time official of the appropriate organisation.

If the representative chosen by the employee is not available at the time proposed for any investigatory meeting or subsequent disciplinary (or appeal) hearing, the meeting/hearing must be postponed to an alternative time suggested by the employee, providing that such alternative time is reasonable and falls before the end of five working days after the original date proposed.

In the case of witnesses, they must be offered the opportunity to be supported by a trade union/professional organisation representative or work colleague at any investigatory interview or subsequent disciplinary (or appeal) hearing which they are asked to attend.

### 6.2.3 Undertaking Investigations

As soon as an employee's manager is aware of alleged misconduct, they should conduct the HR department to discuss the matter. This is to ensure that all appropriate informal steps have been taken to provide guidance on the fair application of this policy.

Prior to any disciplinary process a full and thorough investigation must be carried out timeously in order to establish the facts of the case.

The manager will inform the employee of the alleged misconduct and advise that there will be an investigation.

The manager will be responsible for the investigation and will undertake it personally as the investigating officer (except where they are implicated or involved in any aspect of the allegation, in which case they will nominate a representative to act as investigating officer). The investigating officer may be supported by a representative of HR in undertaking the investigation (and in any formal hearings which subsequently result).

The investigating officer will seek to compile sufficient information and evidence for a management decision to be reached on whether a disciplinary hearing is necessary (i.e. sufficient supporting evidence regarding the allegations).

The investigation will involve interviewing the individual who is the subject of the investigation and any potential witnesses, and the gathering of any other relevant material.

The investigating officer will write to individuals no later than 7 days in advance of the investigatory interview, setting out:

- The date, time and location of the meeting;
- Who will be attending the meeting;
- The purpose of the meeting; and
- The right to be accompanied.

They must also ensure that all those interviewed have been provided with a copy of the local policy in advance of the meeting.

All those interviewed should be asked, following the meeting, to provide a written statement (which must be signed and dated) and be given the opportunity to consult with their representative regarding the content of this statement. Individuals may alternatively choose to sign and date the notes of



the meeting produced by the investigating officer, where they agree that these are an accurate reflection of the discussion.

All those interviewed should be advised that meeting notes and any written statement may require to be shared with the individual under investigation and their representative, and other witnesses, as appropriate.

In the case of witnesses, they should additionally be advised that such meeting notes and written statements may be used as evidence should the issue proceed to a disciplinary hearing (or subsequent appeal) and that they may be asked, by either party, to attend. Where the evidence of a witness is to be used at a subsequent hearing, they must be available to attend (although this could be waived following discussion and agreement of all parties), except in cases where such witnesses are not employed by the GJF and are not prepared, or are unable, to attend (in which case all effort must be made to obtain a written statement or signed, dated confirmation of any investigatory meeting notes as an accurate reflection of the discussion).

At the conclusion of the investigation, the investigating officer will make a recommendation as to whether the matter requires to be progressed. In some cases, following investigation, it might be determined that, while the matter does not require to be progressed to a formal disciplinary hearing, the findings of the investigation suggest that sufficient concerns remain which require informal action to be undertaken.

The employee who is the subject of the case must be advised of any recommendation to progress matters to a disciplinary hearing prior to such recommendation being made.

#### **6.2.4 Attendance at Disciplinary and Appeal Hearings**

Disciplinary hearings (including appeals) will comprise a Chair (according to the scheme of delegation), and two other panel members (one of whom will normally be a member of the HR department). To ensure impartiality, panel members, including the Chair, must have had no prior involvement in the case. In addition to the employee and their representative, the investigating officer (or disciplinary panel Chair in the case of appeals) will also be in attendance (who may themselves be supported by a member of the HR department). Any witnesses called, by either party, to a disciplinary or appeal hearing will additionally have the right to be accompanied.

#### **6.2.5 Disciplinary Hearing**

According to the scheme of delegation, the Chair will be notified of the need to convene a disciplinary hearing. They will be responsible for identifying membership of the disciplinary hearing panel.

The Chair will also be responsible for ensuring that the employee and their representative are advised in writing, no later than 7 days prior to the hearing, of the following:

- The date, time and location of the hearing;
- The allegations to be considered;
- The potential outcomes. Where the potential outcome may be dismissal (either summary dismissal due to the severity of the allegations or dismissal with notice, where the allegations are less serious, but there is a relevant live first/first and final written warning on file) this must be stated;
- Who will be attending the hearing;
- The right to be accompanied;
- Arrangements for the exchange of cases; and
- A copy of the policy.

Thereafter, and 7 days in advance of the hearing, the investigatory report will be shared with the panel and Chair and with the employee and their representative. Similarly, should the employee wish to provide a written statement in support of their case, this should be submitted within 2 working days following receipt of the investigatory report, and will be shared with the panel and Chair and those presenting the investigatory report. Such cases should include details of any witnesses which either party is calling to the hearing. It is the responsibility of the party calling the witness to inform them of the arrangements for the hearing.

#### **6.2.6 Disciplinary Hearing Outcome**

Following the hearing, the panel will adjourn to consider the case. There are three potential outcomes;

- No case to answer;
- Informal action required; or
- Formal disciplinary sanction required.

The formal disciplinary sanctions available to the panel are as follows:

- First Written Warning – 6 months
- Final/First and Final Warning – 12 months
- Alternatives to Dismissal; or
- Dismissal (with notice, as a result of repeated misconduct, or without notice in the case of summary dismissal on grounds of gross misconduct).

The sanction applied by the disciplinary panel should take into account the seriousness of the allegations against the employee and any mitigation which is offered.

Previously issued warnings must be disregarded for disciplinary purposes after their expiry. Consideration, however, may be given to the circumstances

which resulted in such warnings being issued where subsequent allegations of misconduct arise where this can be shown to demonstrate a repeated pattern (although any such reference must be reasonable and appropriate, considering the severity of the earlier matter and the period of time which has since elapsed).

Where the outcome of the disciplinary hearing is such that dismissal would be an appropriate action, it may be that following clarity around mitigating circumstances, some form of disciplinary action other than dismissal may be deemed appropriate. Any such alternatives should be based on the general principles of equity and consistency and may be subject to review, and will normally be in conjunction with an appropriate level of warning. Alternatives to dismissal may include a permanent or temporary demotion (protection of earnings would not apply in such cases), relocation to another suitable post/location or a period of re-training. Movement into another post (including demotion) will only be an option where it is identified that such a post exists. A post will not be created to facilitate such a move.

Some acts, termed 'gross misconduct', are so serious in themselves or have such serious consequences that the relationship of trust and confidence which is needed between the GJF and the employee is damaged irreparably, and therefore call for summary dismissal without notice for a first offence.

All disciplinary hearing outcomes must be confirmed in writing to the employee and their representative within 7 days following the hearing. The letter should confirm the following:

- Details of who was present at the disciplinary hearing;
- The allegations considered;
- The hearing outcome (including any disciplinary sanctions issued) and the reason such a decision was taken;
- The date on which any issued warning will expire or, in the case of dismissal, the date on which employment will terminate (recognising, except in the case of dismissal on grounds of gross misconduct, the employee's contractual notice);
- In the case of warnings, the potential consequences of further misconduct prior to expiry of the warning (particularly the potential for consideration of dismissal prior to expiry of a final/first and final written warning);
- In the case of dismissal any necessary administrative or financial arrangements; and
- Details of the right of appeal

### **6.2.7 Appeals**

All employees have a right to appeal against any decision taken.

Details of the right of appeal must be clearly set out within the letter confirming the outcome of a disciplinary hearing, detailing to whom such an

appeal must be made and the timescales within which it must be lodged (i.e. no later than 10 days following receipt of the letter confirming the disciplinary hearing outcome).

The identified Chair, in accordance with the scheme of delegation, will be responsible for identifying membership of the appeal hearing panel.

The Chair will also be responsible for ensuring that the employee and their representative are advised in writing, no later than 14 days prior to the hearing, of the following:

- The date, time and location of the hearing;
- Who will be attending the hearing;
- The right to be accompanied;
- Arrangements for the exchange of cases; and
- A copy of the policy

Thereafter, and 7 days in advance of the hearing, the employee's appeal case will be shared with the appeal panel and Chair, and with the manager who chaired the earlier hearing and issued the disciplinary sanction against which the employee is appealing.

Similarly, 7 days following the receipt of the employee's appeal case, the written case produced by the manager who chaired the earlier hearing will be shared with the appeal panel and Chair and the employee and their representative. Such cases will include details of any witnesses which either party is calling to the appeal hearing. It is the responsibility of the party calling the witness to inform them of the arrangements for the appeal hearing.

An appeal cannot result in any increase in the penalty as this may deter individuals from appealing.

Following the hearing the Chair will be responsible for ensuring that the employee and their representative are advised in writing of the outcome of the appeal hearing. This should include the rationale behind any decisions taken in response to the employee's grounds for appeal. Such a letter must be issued within 7 days following the appeal hearing. The outcome of the appeal will be final, with no further internal right of recourse.

### **6.2.8 Grievances/Dignity at Work Complaints**

Where an employee raises a grievance or dignity at work complaint during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance/complaint. Where the grievance/complaint and disciplinary care are related, however, it may equally be appropriate to deal with both issues concurrently.

### **6.2.9 Failure to Engage**

There may be occasions where an employee is repeatedly unable or unwilling

to attend a meeting/hearing. This may be for various reasons, including illness or a refusal to face up to the issue. In such cases consideration will require to be given to all the facts before coming to a reasonable decision on how to proceed. Considerations will include:

- The seriousness of the disciplinary issue under consideration;
- The employee's disciplinary record (including current warnings), general work record, work experience, position and length of service;
- Medical opinion on whether the employee is fit to attend the meeting/hearing;
- How similar cases in the past have been dealt with; and
- Whether, therefore, it is considered fair and reasonable in the particular circumstances to proceed in the absence of the employee.

Where an employee continues to be unavailable to attend a meeting/hearing, it may be concluded that a decision in their absence will need to be made based on the evidence available. The employee must be informed where this is to be the case.

### **6.3 Preliminary Precautionary Measures**

It may be necessary, due to the nature of the issues of concern, to remove an employee from certain duties, or to put in place additional supervision in order to mitigate risk, whilst any necessary investigation is undertaken and in advance of agreeing a supported improvement plan. It may ultimately be necessary, in such cases, to place an employee on a short period of paid leave until such times as a supported improvement plan can be agreed and implemented; or the necessary information gathered. However, this should be as a last resort and for as short a period as possible, all effort being made to identify alternatives which will allow the employee to remain at work (e.g. through the use of alternative duties or additional supervision). In the event that this is health related, it would be 'Medical Leave' that would be utilised. Regular communication should be maintained with the employee during any such periods of paid leave and arrangements should be regularly reviewed by the Manager in conjunction with HR.

## **7 Debrief and Reintegration**

Regardless of whether or not a matter progresses to a disciplinary hearing, it may be appropriate to undertake a debrief in order to review the case, any lessons learned and agree any further general organisational improvement actions identified during the investigation/hearing process. Involvement in such a discussion will be determined on a case-by-case basis.

In addition to the duty of care, referred to below, it is also critical to ensure that, where the outcome does not involve dismissal, the employee is supported in being reintegrated back into their job role and within their team (or within any new job role/team, into which they are placed as a hearing

outcome). Manager should liaise with HR and staff-side representatives to discuss measures which might help to support reintegration.

## **8 Duty of Care**

In line with current health and safety legislation, the GJF has a duty of care to its employees. In the context of this policy, this means that the GJF needs to be mindful of the potential risks to health and safety associated with individuals who are involved (primarily the individual who is the subject of the case and any witnesses).

Where it is suspected that an individual's health and safety may be at risk, at any stage of the procedure, contact should be made with Occupational Health as a matter of priority. Trade union/professional organisation representatives, where they perceive any potential concerns in this regard should advise their member to seek Occupational Health support, as well as advising management accordingly.

Particular consideration needs to be given in circumstances where the decision of the disciplinary panel is to dismiss an employee (or where an appeal hearing panel has upheld a decision to dismiss). Where concerns around the individual's health and safety exist, it may be helpful to arrange for the individual to meet with Occupational Health following verbal confirmation of the outcome or, where the outcome is to be conveyed solely in writing, invite the employee to attend to receive the written confirmation, with Occupational Health on-hand for immediate support.

## **9 Retention of Records**

All records pertaining to management of an employee under this policy must be held in accordance with both the Data Protection Act 1998 and the Scottish Government Records Management: NHS Code of Practice (Scotland) Version 2.1 (January 2012).

## **10 Review**

This policy will be subject to ongoing monitoring and evaluation to ensure that it is being implemented fairly, consistently, effectively and in line with the policy's stated principles and values. The policy will be subject to review every 3 years, in partnership, to ensure that any new standards and/or structures are incorporated when necessary and that it remains fit for purpose.

## **Appendix A**

### **Disciplinary Procedures for Medical Staff**

All doctors have a duty to achieve acceptable standards of personal conduct and professional conduct and competence. These standards and principles of good practice are set out in the GMC “Good Medical Practice” publication as well as those that apply to all staff who work for the National Waiting Times Centre Board.

Allegations made in relation to medical staff are classified as matters relating to personal conduct, professional conduct and professional competence. The definitions of each are as follows:

- Personal Conduct – performance or behaviours of practitioners not directly associated with the exercise of medical or dental skills.
- Professional Conduct – performance or behaviours of practitioners arising from the exercise of their medical or dental skills.
- Professional Competence – performance or behaviours of practitioners related to the exercise of their medical or dental skills and professional judgement.

On receipt of an allegation from any source, the Medical Director will nominate an individual to make preliminary enquiries in order to determine which of the three classifications of conduct is applicable in each case. The criteria and process are outlined as follows:

#### **Allegations Relating to Personal Conduct**

Allegations relating to Personal Conduct apply to matters that relate to performance or behaviours of medical practitioners not directly associated with the exercise of medical or dental skills.

The issue of disciplinary action relating to personal misconduct arises when an individual has:

- Fallen short of the normal standards of personal conduct in the work area
- Breached the normal disciplinary rules of the organisation
- Behaved in a way which impacts adversely on the employment contract whether within or away from the workplace

If the allegations are considered to relate to personal conduct, the Medical Director will write to the practitioner with an outline of the allegations, informing the practitioner of the decision that the allegations are being investigated in line with the process contained in the NWTTCB Management of Employee Conduct Policy.

The position of a medical practitioner is no different to that of any other member of staff relating to the NWTTCB Management of Employee Conduct Policy.

If the practitioner is dissatisfied with the decision that the allegation is deemed to be one of personal conduct and will be dealt with as such, they may appeal within seven days of receipt of the formal notification.

### **Allegations Relating to Professional Conduct**

Allegations relating to professional conduct apply to matters concerning professional conduct and may include serious neglect or disregard of professional responsibilities to patients or certifying as true information that the doctor knows to be untrue or has not taken steps to verify.

This may also include matters of dishonesty such as false claims on the NHS or any abuse by the doctor of their position of trust including a breach of professional confidence.

### **Allegations Relating to Professional Competence**

Allegations relating to professional competence apply to matters concerning professional competence and may include failures in keeping professional knowledge and skills up to date, recognising the limits of professional competence or attempting to practice techniques in which the doctor has not been adequately trained. Such matters can also include failure to maintain any or inadequate records or inability or refusal to communicate effectively with patients or their relatives.

Matters relating to both professional conduct or professional competence will be dealt with in accordance with the nationally agreed procedures for dealing with such matters.

### **References:**

- NHS circular No. 1990(PCS)8, as amended by NHS Circular 1990(PCS)32 – Disciplinary Procedures for hospital Medical and Dental and Community Medical Staff.
- PCS(DD)2004/2 – New Consultant Contract



## **Appendix B**

### **Guidance on Suspension**

- 1** Suspension is an emotive term and, although it is not of itself disciplinary action, it can be seen by both the individual and others as having negative connotations, including implied guilt. Before deciding to suspend an employee, the manager should assess the degree of risk involved (i.e. whether the employee poses a risk to clinical, financial or staff governance). As an alternative, in some situations, it might be appropriate to arrange a temporary redeployment to another work area or role during the course of the investigation, to limit the duties of the individual or to put in place additional supervision of work. Such considerations should always be given in terms of how to mitigate risk during the course of the investigation, with such options having been exhausted before determining the need to suspend as a last resort. This does not preclude circumstances as set out below where the purpose of the suspension is to take the heat out of the immediate situation.
  
- 2** If the purpose of the suspension is to take the heat out of a situation, it may not be necessary for the individual to remain on suspension until the whole investigation is complete.
  
- 3** The following situations provide examples where suspension might be used:
  - 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 it is suspected that an individual is under the influence of either alcohol or drugs;
  - Where there is a need to remove an employee from the premises to cool down (e.g. where staff have been fighting, although it may be necessary to suspend both employees in this example);
  - 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; or
  - Where there is an allegation of abuse of patients, especially children or vulnerable adults.
  
- 4** Where there is to be an investigation by Counter Fraud Services, CFS should normally be consulted before suspending an employee. CFS may wish to make recommendations regarding the timing of the suspension in the interests of securing the integrity of any potential evidence.

**5** A designated Contact Officer (a neutral person) should be identified in the case of employees who are suspended. The Contact Officer is a named individual with responsibility to act as a recognised point of contact for any issues the employee may wish to raise. The nature of suspension is such that the individual should not enter the premises unless requested by management or their trade union/professional organisation (subject to agreement by management), or contact others within the Board. This can isolate individuals from their normal organisational support mechanisms. Not all employees will be a member of a trade union/professional organisation and therefore receive support through such channels.

**6** The following guidelines should apply to suspension:

- Where possible, advice should be sought prior to suspension from the HR department;
- An individual's line manager, or the responsible manager onsite, will normally carry out suspension. Where practicable, another manager or an HR representative should be present to act as a witness to the suspension;
- Where practicable, employees should be given reasonable notice to organise representation;
- Written confirmation should be given within two working days, stating the reasons for the suspension, the designated Contact Officer and any particular restrictions on access to Board premises, return of keys and parking permits etc.;
- Suspension will always be on full pay when related to matters of alleged employee misconduct (i.e. pay the employee would have received if at work, including the average of enhancements, if applicable);
- Suspension will always be for as short a period as is possible. The investigation should be completed, and if relevant the disciplinary hearing held, within an agreed timescale. Only in exceptional circumstances (e.g. where there has been a Critical Incident) should an employee be suspended for more than four calendar weeks, and this must be discussed with HR;
- In exceptional circumstances, where an employee has to be suspended for more than four calendar weeks, there must be regular communication with the employee regarding progress and the likely timescale for completion of the investigation;
- If the individual subsequently becomes sick, then sick pay will apply;
- Employees who are suspended should be available to attend an interview at short notice if required during normal working hours,

subject to the availability of support and taking into account pre-arranged leave;

- Where an employee is suspended, suspension should similarly apply to other posts held within the Board and to out of hours work (e.g. bank or locum) where the risk of clinical, financial or staff governance being compromised also exists;
- There may be occasions where the above risk is so great that it would be appropriate to inform another employer (e.g. alleged patient abuse) where it is known that the employee also works on the bank of another Board; and
- Suspended employees must not work for another employer during their normal working hours.

## **Appendix C**

### **Investigation – How to Get it Right**

#### **1 When to Investigate?**

While this section relates to investigation of allegations of misconduct, internal investigations may also require to be carried out in other circumstances (i.e. in relation to grievances, dignity at work complaints or matters of capability). While the corresponding locally developed policies which cover these other areas should detail the procedure to be followed in undertaking any necessary investigation, the following general principles will apply in all cases.

#### **2 Why Investigate?**

A fair, consistent, impartial and thorough investigation will ensure that the facts can be established and will allow managers to make appropriate informed decisions about the next steps.

#### **3 Who Investigates?**

It is normal for the employee's manager to investigate allegations (or nominate a representative to act as an investigating officer there the manager is implicated or involved in any aspect of the allegation). In the interests of natural justice the same person conducting the investigation cannot hear the disciplinary complaint against the employee if it proceeds to a formal hearing.

The investigating officer will seek to compile sufficient information and evidence for a management decision to be reached on whether a disciplinary hearing is necessary (i.e. sufficient supporting evidence regarding the allegations). The investigation is likely to include interviews with the key people involved and the gathering of written statements and other relevant material.

#### **4 How to Investigate?**

##### **4.1 Before you start, identify:**

- Details of the precise issue to be investigated (e.g. details of the allegations made etc.);
- Suggested methodology for conducting the investigation (e.g. identification of initial witnesses, copies of relevant policy under which investigation is being held);
- For what purpose and by whom any subsequent investigation report produced would be used; and
- Techniques, such as root cause analysis, which might be helpful.

## 4.2 Investigatory Interviews

- As part of the investigation, it will be necessary to interview the individual who is the subject of the investigation, as well as any potential witnesses.
- It may be necessary to carry out additional subsequent interviews in order to clarify details where, for example, conflicting accounts are received or where new information comes to light in the course of the investigation.
- The order in which investigatory interviews take place should, where possible, follow a logical order, in order to minimise the likely need to undertake additional subsequent interviews. However, it is appreciated that this may not always be possible and that, indeed, further witnesses may be identified during the course of the investigation.
- Individuals should receive written notice of a request to attend an investigatory interview, which should set out the purpose of the interview and confirm the individual's right to be accompanied, and include a copy of the Board's local policy developed in line with this PIN policy.
- In the case of the individual who is the subject of the investigation, it is important that they are made aware of the allegations being investigated at an early stage (although it is recognised that these may change during the course of the investigation).
- The investigating officer should identify what needs to be established from each investigatory interview and prepare accordingly.
- Those being interviewed should be encouraged to recall their version of events in their own words, with the use of open, rather than closed questions to gain information, clarify the issues and to check understanding of what has been said.
- In the case of witnesses, they should be informed that their statement may be shared with the individual who is the subject of the investigation, that the statement may be used if further action is taken and that they may be required to give evidence if matters subsequently proceed to a disciplinary hearing. If a witness refuses to participate it is important that the investigating officer meets with them to understand their reasons and to discuss any means by which such refusal might be overcome.
- The investigating officer should make full notes of the investigatory meeting. While those interviewed may subsequently be invited to sign and date those notes as an

accurate reflection of the discussion, there is no obligation on the part of the interviewees to do so. However, in such cases, a separate signed and dated written statement would be required from the individual.

### **4.3 Gathering Other Evidence**

- Do not just rely on witness statements as this may result in other crucial evidence being overlooked.
- Files, documents, computer records, policy documents and training records can all be produced as evidence where relevant.
- If any evidence is likely to perish or be removed, gather it as a priority.

## **5 Preparing the Investigation Report**

**5.1** Review and evaluate the evidence. Particular attention should be given to the following:

- Direct witness evidence (which will usually be stronger than indirect information relating to the incident/allegation);
- Evidence which is inconsistent with documents produced at the time;
- Evidence which is vague, omits significant details or contains inherent contradictions; and
- Any bias or influence individual witnesses may have.

### **5.2 The Report**

The report should be structured in a logical format.

- Introduction – a brief introduction to the report clarifying the allegations/incidents which have been investigated, details of the person against whom the allegation has been made and the name of the investigating officer (and the member of the HR department who supported the investigating officer, if applicable).
- Methodology – detail the process of the investigation including a list of the people interviewed, specifying if written statements/notes from meetings have been taken, details of Board policies reviewed and details of any other activities undertaken as part of the investigation.

- Findings – detail the findings from the investigation, including the facts and evidence presented; any inconsistencies found, with explanations where applicable; any mitigating circumstances; and any risks identified. Where information from written statements/notes from meetings is cited, note must be made of the relevant appendices where these can be found.
- Conclusions – this section should include the conclusions drawn by the investigating officer.
- Appendices – all written statements/notes from meetings, copies of correspondence, policies cited during the report and any other relevant information should be included.

## Appendix D

### Misconduct and Gross Misconduct

#### 1. Misconduct

There is no legal definition of misconduct. However, it is recognised that misconduct is any type of behaviour or conduct at work that falls below the standard required by the employer or is in breach of organisational policy.

#### 2. Gross Misconduct

If, after investigation, the offence is considered by a disciplinary hearing panel to constitute gross misconduct, it could lead to summary dismissal without notice for a first offence. Acts of gross misconduct are those which are so serious in themselves, or have such serious consequences that the relationship of trust and confidence, which is needed between the employer and employee, has been damaged irreparably.

Examples of gross misconduct may include:

- Assault;
- Theft or unauthorised removal of NHS property;
- Abuse of a fellow employee or any other person;
- The falsification of pay sheets, clock cards or other wages or financial data; fraud or attempted fraud; or fraudulently claiming expenses or other benefits;
- Conduct likely to lead to a breach of the peace charge, threatening behaviour, gross indecency;
- Inability to perform duties due to the influence of drink or drugs (other than those taken under medical direction), or unauthorised consumption of alcohol or drugs while on duty;
- Criminal offences committed outside working hours which affect the employee's ability to perform their duties, particularly where there is an element of trust involved or it is felt that there could be danger to staff, patients, customers or visitors;
- Wilful failure to adhere to safety rules where this would create a measureable risk of danger to others or damage to machinery etc.; tampering with safety, fire or first aid equipment;
- Gross negligence or irresponsibility;
- Wilful or grossly negligent damage to NHS property or equipment;



- Persistent wilful refusal to perform to the required standards of the job role;
- Breaches of confidentiality;
- Unprofessional conduct as defined by reference to generally accepted standards of conduct or ethics within a staff group;
- Persistent unauthorised absence;
- Inappropriate access and use of IT systems, software or the internet/intranet;
- Wilful disregard of equality and diversity policies;
- Significant or persistent bullying or harassment of a fellow employee or any other person; or
- Wilful failure to adhere to clinical governance/infection control policies (e.g. hand hygiene).

This list is intended only to outline the types of gross misconduct which would be found unacceptable. It is not an exhaustive list of offences for which dismissal without previous warning may take place.

## Appendix E

### Guidance for Disciplinary/Appeal Hearing Chairs

While this section relates to guidance for disciplinary hearing Chairs, individuals may also be involved in charring hearings in other circumstances (i.e. in relation to grievances, dignity at work complaints or matters of capability). While the corresponding locally developed policies which cover these other areas should detail the procedure to be followed in undertaking such a role, the following general principles will apply in all cases.

#### 1. Who is attending?

Explain who is attending and why – please remember that although you may be familiar with all those who are attending, the employee or their representative may not.

#### 2. Why are they attending?

Explain the reason for the hearing, ensuring that the employee understands the allegations which have been made and what policy you are following.

Establish at the outset if witnesses are to be called and who is responsible for ensuring that they attend.

It is recommended that you have a note taker and explain this to everyone and what will happen in relation to the management notes (i.e. that they are management notes, not approved minutes). It is important that a note of the hearing is kept, so that it can be referred to in any subsequent appeal or employment tribunal hearing. It is recommended that arrangements are made for someone who is not involved in the case to take a note of the hearing.

#### 3. What Process is to be followed?

If you have to deviate from your policy (e.g. the order in which the hearing is to proceed or who is hearing the case) explain this at the beginning and seek agreement to this.

Explain the order in which the information will be presented, i.e.

- The investigating officer will present their case with the opportunity for questions from the employee and/or their representative, and then from the panel;

- The employee and/or their representative will present their case, with the opportunity for questions from the investigating officer, and then from the panel;
- Either party will call identified witnesses in the course of presenting their respective cases, with the opportunity for the other parties to ask questions of those witnesses; and
- Both parties will have the opportunity to provide a closing statement in summary (at which point no new evidence can be introduced by either party), with the employee and/or their representative having the last word prior to the hearing being adjourned to allow the panel to consider their decision.

Consider the setting and have appropriate breaks if necessary.

#### 4. When to Intervene?

- You need to ensure that all the relevant evidence is heard.
- You may need to intervene if you feel that relevant questions have not been asked.
- You should intervene where it is considered that statements made by either party are irrelevant or unsubstantiated. They should be asked to explain why the statement is relevant or provide evidence to substantiate it. Where such explanation/evidence is not satisfactorily provided, it should be confirmed to all in attendance that it will not be considered when determining the outcome of the hearing.
- You should intervene if the conduct of either party during the hearing is inappropriate.

#### 5. What must you establish?

- The facts as you find them.
- You should form a **reasonable belief** as to whether the allegations are substantiated. It is not necessary for the employer to have conclusive proof of the employee's misconduct – only a genuine and reasonable belief.
- This must be on the basis that you are satisfied that a thorough investigation was undertaken and you have sufficient evidence to reach a conclusion.

#### 6. What must you ensure?

That there has been a fair hearing – i.e.

- Both parties have had reasonable advance opportunity to see the case to which they are responding;
- Both parties have had the opportunity to present their case;
- Both parties have had the opportunity to ask questions of the other's case; and
- Both parties have had the opportunity to sum up, at which point they cannot introduce any new material.

## **7. What to do if there are Facts/Witnesses Missing?**

- Seek to agree with the parties how you are going to deal with the situation (i.e. a short recess to consider information, to call a witness, or to determine if the facts/witnesses are fundamental to the proceeding).
- If another witness is to be called, agree who will organise this.
- As the hearing forms a fundamental part of the overall process, you should ensure that you have sufficient information on which to make a decision.

## **8. What is your Role once you have established all the Facts?**

- Determine whether, having ensured that there has been a reasonable investigation, and following full and thorough consideration of the evidence presented at the hearing, a reasonable belief can be formed as to whether or not some or all of the allegations are substantiated.
- Where such a reasonable belief exists, and you decide that there should be a disciplinary sanction, consider what is appropriate in terms of the policy, the employee's role, and fairness and consistency of application.
- Abide by your policy.
- Consider if the conduct amounts to gross misconduct – this occurs in the case of acts which are so serious in themselves or have such serious consequences that the relationship of trust and confidence which is needed between the employer and employee has been damaged irreparably.
- A decision about the above involves more than just seeing if the type of conduct falls within the list of examples of possible misconduct therefore you should seek the advice of HR.

## **9. When to Hear About any Mitigating Factors?**

- Where conduct has been admitted, you should consider all factors put before you which are relevant as to why the conduct has taken place.

- You should ask about mitigating factors if they have not otherwise been put before you.
- Mitigating factors may include previous work record, work pressure, health, domestic circumstances, dependency issues or team dynamics.

## Appendix F

### Scheme of Delegation

The Scheme of Delegation details the authority to issue a disciplinary sanction to all employees of Golden Jubilee Foundation. This scheme is intended as a guide and it is recognised that there may be occasions where it is necessary to vary the scheme. Where a variation is made, it will be communicated to all parties during the disciplinary procedure, and the level of the post-holder issuing the sanctions will not be at a lower level than those detailed below.

In each case, a member of the Human Resources Department will be present at all stages of the formal procedure.

Post-holder Level	First Written Warning	Final Writing Warning	First and Final Written Warning	Appeal	Dismissal	Appeal
<b>Chief Executive</b>	Chairman	Chairman	Chairman	3 Non Executive Members	Chairman / Non Executive members	TBC
<b>Executive Director</b>	Chief Executive	Chief Executive	Chief Executive	Non Executive Board Member	*Chief Executive/ Non Executive Board Member	*Non Executive Board Member/ Chairman
<b>Senior Manager</b>	Line Manager	Line Manager	Line Manager	*Executive Director/Chief Executive	*Executive Director/Chief Executive	*Chief Executive/ Non Executive Board Member/ Chairman
<b>Managers/all other staff</b>	Line Manager	Line Manager or alternative manager	Line Manager or alternative manager	The Disciplining Managers Line Manager	Executive Director	Chief Executive

\* Panel members should not have been previously involved in the case