

Disciplinary Policy

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Divisional and Department:	Human Resources, Workforce and Organisation Development				
Author / Originator and Job Title:	Eleanor Palmer-Rigby, Human Resources Business Partner (HRBP) NHS Policy Streamlining Group Jayne Taylor, Deborah Booth, Steve Moore, Natalie Fishwick HR Managers Kerry Scholes, Acting HRBP				
Replaces:	CORP/POL/525, Version 2, Disciplinary Policy				
Description of amendments:	Addition of new heading 4.6.5 Pay Progression Updates throughout to reflect the principles of Just Culture and Dido Harding Recommendations Sections 1.1, 1.2, 3.1, 3.1.2, 3.2 Also in accordance with agenda for change and the new pay progression rules 3.6.5 has been added				
Approved by:	Joint Negotiating Consultative Committee (JNCC)				
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Version Control Sheet

This must be completed and form part of the document appendices each time the document is updated and approved

Date dd/mm/yy	Version	Author	Reason for changes
May 2019	3	Eleanor Palmer-Rigby, Human Resources Business Partner (HRBP) NHS Policy Streamlining Group Jayne Taylor, Deborah Booth, Steve Moore, Natalie Fishwick HR Managers Kerry Scholes, Acting HRBP	Update to Pay Progression

Consultation / Acknowledgements with Stakeholders		
Name	Designation	Date Response Received
	Pay Review Working Group	28/02/2019
	Human Resources Policy Forum	11/04/2019

All HR policies are reviewed and approved by the HR Policy Forum which includes representatives from Management, HR and Staff Side.

This policy should be read in conjunction with:

- Investigation Guide for Managers (CORP/GUID/201) (BTHFT - Procedure, 2018)
- Disciplinary and Appeal Procedure (CORP/PROC/636) (BTHFT - Procedure, 2018)
- Handling concerns Procedure for Medical and Dental Staff (CORP/PROC/451) (BTHFT - Procedure, 2015)

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1 Introduction / Purpose

1.1 Definition

The standards of behaviour and attitude expected of employees are those necessary for the proper operation of the workplace and to maintain mutual trust and confidence between the Trust and its employees.

Where standards of behaviour fall below what is expected this could constitute misconduct or gross misconduct. Allegations will be taken seriously and where necessary the disciplinary policy will be followed.

The Trust works in accordance with the principles of Just Culture (NHS Improvement, Last Updated 14/12/2018) to ensure that staff involved in any deviation to the Trust's standards, policies and/or procedures are treated in a fair and equitable manner

Just Culture encourages accountability and responsibility. Where staff have made a mistake, error or a misjudgement, truthfulness and admission is fundamental.

This policy does not cover situations where levels of poor performance is due to a lack of capability rather than to an employee deliberately / wilfully ignoring instructions or producing sub-standard work.

1.2 Principles

- Where appropriate employees and managers should make every effort to resolve issues without recourse to the formal disciplinary procedure. This will not be possible in the cases of gross misconduct.
- Managers should engage in early fact finding as soon as possible after an incident or issue has taken place to ultimately guide them in determining the best course of action. They should gather evidence including statements from those involved directly or witnesses where possible and practical. They should seek to understand what has happened, where, when, why and any mitigating circumstances.
- Matters should be dealt with promptly whilst ensuring that investigation is appropriate.
- Employees should be informed of the allegations against them and given full opportunity to state their case before any decision is reached.
- There is no presumption that a disciplinary procedure will result in a disciplinary penalty.
- The outcome of the disciplinary is based on the hearing managers reasonable belief with regard to the evidence, not what has been proved beyond reasonable doubt.
- All those involved in a disciplinary matter will respect the confidentiality and privacy of others. Where information such as notes are to be shared individuals must be advised.
- In the event that allegations are made against an employee who is also an accredited trade union representative, a Full Time Officer with the appropriate trade union will be informed as soon as the allegation (s) are raised and may represent the employee at

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any stage of the formal disciplinary process and/or during the preceding investigation.

At all formal meetings employees have the right to be accompanied by a member of a recognised trade union or a Work Colleague. The representative or colleague will have the opportunity to address the meeting in order to present the employee's case. They cannot, however, answer a question directly asked of the employee

2 General Principles / Target Audience

The Disciplinary Policy applies to all staff employed by Blackpool Teaching Hospital NHS Foundation Trust.

The procedure to be applied in cases of professional misconduct or professional competence of medical and dental staff is set out in the Trust's Handling Concerns Procedure for Medical and Dental Staff (BTHFT - Procedure, 2015).

3 Definitions and Abbreviations

HRBP Human Resources Business Partner

MSOC Management Statement of Case – A Pack of evidence to explain the case

4 Policy

4.1 Precautionary Suspension

Where serious concerns are raised it may be appropriate for the employee to be suspended from work or have their professional practice restricted. Decisions to suspend are never taken lightly, consequently it is necessary for 2 people to authorise any suspension. Initially decisions should be made by a manager at Grade 8b or above, plus final approval from a Director, Deputy Director of Associate / Assistant Director before an employee is suspended. Suspension is a precautionary act not a disciplinary one and will be for the minimum period possible.

A review of continuation of suspension will take place every four weeks and the employee informed of the reason for a further suspension. Suspension will be on full pay with no loss of earnings.

During suspension employees must not contact their work area or approach anyone involved or likely to be involved in the case. If they wish to contact witnesses to support their case this should be done via their representative or the investigation manager. Except in medical emergencies they are required to remain off Trust premises unless given express permission by the investigating manager or nominated deputy to attend for a specific purposes e.g.: medical appointment, meeting the representative. Employees must be reasonably available between 9am – 5pm Monday to Friday to attend meetings. Pre-booked annual leave will be honoured.

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4.2 Support

Recognising the potential impact that can be caused by suspension or restriction to practice, a communication plan must be agreed to ensure those staff are contacted on a regular basis to keep them updated on the progress of any investigation and to check on their health and wellbeing. Typically a communication plan will include who will be the main contact from the Trust, how contact will be maintained (telephone is best, but it could include email or letter) and the frequency. Communication should be two-way and suspended / restricted employees should know who they can contact with any queries.

Suspended / restricted employees must be referred to Occupational Health and made aware of services which may provide support including the Employee Assistance Programme.

The Trust should appoint a buddy who can be a point of contact, provide support, and raise queries on the employee's behalf. It is likely this person would be their Representative; however that will not always be the case and could be a nominated manager.

Responsibility for arranging the support, outlined above, rests with the Manager who enacted the suspension / restriction and/or the Senior Manager who has requested the investigation takes place.

4.3 Investigation

A competent investigation manager will be appointed by a relevant Senior Manager to carry out the investigation. The Senior Manager will define the scope of the investigation and an outline of the related issues.

It is of paramount importance that time and resources are available to complete a thorough, appropriate, professional and timely investigation. Responsibility for this rests with the Investigation Manager and the Senior Manager who appointed them. The HR team will make the Senior Manager aware of any concerns in this regard.

The aim of the investigation is to ascertain the staff member's account of the allegation and allow the staff member to comment freely on the allegation. Statements should be obtained or investigation meetings held with relevant witnesses as determined by the investigation manager.

The investigation manager will produce a summary report of their findings and the Senior Manager will use the report to decide the next course of action. In the case of formal disciplinary action being taken, this report will form basis of the Management Statement of Case (MSOC).

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4.4 Informal Procedure – Verbal Warning

Managers should always discuss conduct issues with their employee at the earliest opportunity and where appropriate should first attempt to deal with any minor misconduct informally before resorting to the formal procedure. If employees commit a minor infringement the manager will usually issue a Verbal Warning and advise that a further breach may result in the Formal procedure being instigated. A note of the conversation should be placed on the personal file for reference purposes.

Managers will summarise concerns and expectations in the form of a letter, a copy of which will be placed on the personal file. If informal action does not bring about the required improvement, or the misconduct is too serious to be classed as minor, formal disciplinary action will be considered.

4.5 Formal Procedure

At all formal stages of the Disciplinary process, once the matter has been fairly and thoroughly investigated and it has been established that there is a case to answer, a disciplinary meeting will be arranged with minimum delay.

Reasonable notice (normally 7 days) will be given of the arrangements for the meeting, including who will be present at the hearing. This notice will be confirmed in writing and the management statement of case detailing the allegation/s, any witness statements and supporting documents will be distributed to all relevant parties. Where the Manager presenting the case intends to call witnesses, these details should also be shared with all parties in advance of the hearing.

The employee must be advised if a formal warning or dismissal is a potential outcome. Employees, managers and representatives must make all reasonable steps to attend.

The employee will be given the opportunity to respond to the MSOC and may provide a written or verbal submission. In the case of a written submission, this should be provided to the panel members and management allowing reasonable time to review prior to the hearing where possible.

If the employee or the Representative wishes to call witnesses to the hearing, it is the responsibility of the employee / Trade Union Representative to arrange their attendance. Any issues with release of the employee to attend should be raised with the investigation manager or HR.

Where the Employee or their Representative feels that management witnesses are not being called that they believe are material to their own case, they should raise this matter formally with the chair of the hearing, preferably in advance. Alternatively they can seek to call these witnesses themselves.

The manager hearing the allegation may be accompanied by a professional advisor if considered necessary. An HR representative will always attend hearings at which dismissal is a potential outcome.

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If dismissal is a potential outcome, the chair of the meeting must be a Senior Manager Grade 8b and above.

At the meeting the investigating manager will state the nature of the allegations and outline the case by going through the MSOC. The employee will be given full opportunity to respond to the allegations. In considering the sanction, the manager will take account of the employee's previous work record and other mitigating factors.

Witnesses will be called into the meeting at appropriate times as agreed with the Chair.

The outcome of the meeting will be delivered verbally where possible and confirmed in writing within 7 days. If disciplinary action is to be taken the letter will include details of the complaint, the improvement required (if appropriate) and the right to appeal. It will also state that further disciplinary action may be taken if there is not a satisfactory improvement.

Summary notes of the hearing will be taken.

4.5.1 Formal Disciplinary Sanctions

The seriousness of the misconduct will determine the level of disciplinary action to be taken and are as follows:

- First written warning – to remain live for a 12 month period
- Final written warning – to remain live for a minimum 12 month period
- Dismissal with contractual notice
- Transfer to another position, including demotion
- Summary dismissal (without contractual notice) – gross misconduct cases only

4.5.1.1 Action Short of Dismissal

Where dismissal is a potential outcome to a hearing, managers may take action short of dismissal as follows:

- Final written warning and downgrading (without pay protection)
- Final written warning and transfer
- Final written warning and downgrading (without pay protection) and transfer
- With-holding pay progression

4.5.2 Pre-Agreement / Expedited Procedure

Following an investigation where there are exceptional circumstances an agreement can be reached by both parties in relation to not proceeding to a formal hearing, but considering the acceptance of a first written sanction. This can only apply where the relevant facts are not in dispute, where an employee is not already subject to a live sanction and both sides are in agreement about the outcome of the process.

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In these circumstances, the process should include:

- Letter confirming the allegation and the admittance
- Meeting to discuss and agree the sanction with the investigating manager and the employee (up to a maximum of a first written warning)
- Right of appeal

This approach will not apply to allegations of gross misconduct or where dismissal is a possible outcome.

4.6 Appeals

Any employee has the right of appeal against a formal disciplinary sanction. A more senior level of manager than heard the original case, will hear the appeal with the exception of appeals against dismissal. Appeals against dismissal will be heard by a Panel of 2 Directors, one of whom must be a non-Executive Director. A senior member of HR will also be present to support the Panel.

An appeal must be made in writing within 14 days of receipt of the letter detailing the disciplinary sanction and must include clear grounds upon which the appeal is made.

The Chair of the disciplinary panel will respond to the grounds of appeal in writing and provide copies to the appeal panel and employee, ensuring reasonable time for all parties to review prior to the hearing.

4.7 Disciplinary Rules

4.7.1 General Misconduct

General Misconduct is conduct or behaviour which does not merit immediate dismissal but is of an unacceptable standard for the efficient functioning of the Trust. A list of offences that constitute General Misconduct is contained in Appendix 1 but this list is not exhaustive.

4.7.2 Gross Misconduct

Gross Misconduct is behaviour or an offence that so undermines the trust and confidence the Trust has in an employee that he/she cannot be retained in employment in any capacity with the Trust.

These are offences which affect the relationship between the employees and the Trust to such an extent that the member of staff cannot any longer reasonably be retained in his/her post by the Trust. Any member of staff who commits any act of Gross Misconduct will be dismissed without notice unless there are sufficient mitigating circumstances. A list of offences that constitute Gross Misconduct is contained in Appendix 2 but this list is not exhaustive.

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4.7.3 Criminal Offences and Offences Committed Outside of Work

If an employee is charged or convicted of an offence, whether committed on or off duty, they must inform the Trust. The Trust will consider whether the offence renders the employee unsuitable for continued employment and may take disciplinary action up to and including dismissal. The Trust reserves the right to take action independently of any legal proceedings.

4.7.4 Fraud, Bribery and Corruption

The Trust takes the issues of fraud, bribery and corruption very seriously and any suspicious activity will be referred to the Local Counter Fraud Specialist for investigation, in accordance with the Trust's Counter Fraud, Bribery and Corruption Policy (**BTHFT - Procedure, 2017**). The results of any investigation could lead to disciplinary action being taken up to and including dismissal and/or civil, criminal prosecution proceedings being instigated against the appropriate person/persons involved.

4.7.5 Pay Progression

Staff employed on or after 1st April 2019, who have a live formal disciplinary sanction, will NOT achieve pay progression until that sanction is spent.

5 References and Associated Documents

BTHFT - Procedure, 2015. *Handling Concerns Procedure for Medical and Dental Staff*. [Online]

Available at: <http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-PROC-451.docx>

[Accessed 10 9 2019].

BTHFT - Procedure, 2017. *Fraud, Bribery and Corruption Policy*. [Online]

Available at: <http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-POL-136.pdf>

[Accessed 10 9 2019].

BTHFT - Procedure, 2017. *Standards Of Business Conduct Policy*. [Online]

Available at: <http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-POL-358.pdf>

[Accessed 10 9 2019].

BTHFT - Procedure, 2018. *Disciplinary and Appeal Procedure*. [Online]

Available at: <http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-PROC-636.docx>

[Accessed 9 9 2019].

BTHFT - Procedure, 2018. *Equality Diversity and Inclusion*. [Online]

Available at: <http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-POL-206.docx>

[Accessed 10 9 2019].

BTHFT - Procedure, 2018. *Investigation Guide for Managers*. [Online]

Available at: <http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-GUID->

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[Accessed 10 9 2019].

Crown, 2010. *Bribery Act 2010*. [Online]

Available at: <https://www.legislation.gov.uk/ukpga/2010/23/contents>

[Accessed 10 9 2019].

NHS Improvement, Last Updated 14/12/2018. *A just culture guide*. [Online]

Available at: <https://improvement.nhs.uk/resources/just-culture-guide/>

[Accessed 17 10 2019].

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Appendix 1: Types of offences considered to be General Misconduct	
B1	Unauthorised absence from his/her place of work, including extended or unauthorised breaks during working hours
B2	Sleeping whilst on duty, including during unpaid time off, which could have an adverse effect on one's fitness for work;
B3	Failure to observe Health and Safety, and/or Fire regulations or related instructions.
B4	Insubordination
B5	Personal misconduct of a sufficiently serious nature as to affect his/her performance of duties and/or relationship between the member of staff and the Trust.
B6	Negligence in job performance.
B7	Unauthorised use of the Trust's resources or of information obtained during the course of his/her employment.
B8	Refusal, without reasonable grounds, to wear any uniform or protective clothing provided by the Trust.
B9	Undertaking any other employment which adversely affects the performance of his/her duties.
B10	Failure, without reasonable grounds, to comply with the requirements of the Trust's Policies and Procedures and Codes of Conduct.
B11	Behaviour, which exposes the Trust to justifiable complaints arising out of legislation such as Equality Act, or the like.
B12	Any act or omission committed by an employee that results in a financial loss to the Trust;
B13	Devalues public opinion of the Trust or its customers
B14	Unauthorised use of RA smartcards and systems, including inappropriate access to clinical / staff records

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Appendix 2: Types of offences considered to be Gross Misconduct

A1	Theft or attempted theft
A2	Fraud
A3	Acceptance of gifts or hospitality in contravention of the Bribery Act 2010, and, "Standards of Business Conduct for NHS staff".
A4	Failure to inform the Trust of any pecuniary interest of which the employees is aware in a contract which has been; or is proposed to be, entered into by the Trust in accordance with the provision of the Standards of Business Conduct Policy (BTHFT - Procedure, 2017)
A5	Serious misrepresentation at the time of appointment and/or at any time during employment
A6	Serious incapability at work brought on by alcohol or illegal drugs including consumption during working time
A7	Physical or indecent assault
A8	Ill-treatment of and/or sexual offences against patients.
A9	Any form of bullying and/or harassment, coercion or intimidation of a fellow employee, a patient, contractor and/or a member of the public;
A10	Loss, damage, negligent, misuse or unauthorised use of Trust property or assets;
A11	Deliberate disclosure of privileged and confidential information to any unauthorized persons
A12	Negligent or deliberate failure to comply with the legal requirement and/or the Trust's regulations concerning medicines.
A13	Working whilst contravening an enactment or breach of rules laid down by any relevant statutory bodies including practising without a professional registration in a profession where there is a requirement to obtain and maintain registration.
A14	Criminal offence(s) outside of the working situation, which substantially affect the performance of duties, or relationship between the member of staff and the Trust.
A15	Deliberate and serious damage to property
A16	A serious breach of health and safety rules
A17	Any act or omission constituting serious negligence in a member of staff's performance of his/her duties.

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Appendix 2: Types of offences considered to be Gross Misconduct	
A18	Unjustified refusal of a lawful and reasonable instruction (gross insubordination)
A19	Undertaking any other employment while unable to attend for duty for reason of ill-health and being in receipt of sick pay.
A20	Any breach of an explicit term of his/her contract of employment with the Trust; and/or any disregard of common law practice.
A21	Verbal abuse of a patient(s), member(s) of the public or member(s) of staff during the course of employment or on the Trust's premises.
A22	Bringing the Trust into serious disrepute
A23	Deliberately accessing internet sites containing pornographic, offensive or obscene material
A24	Maliciously making or assisting someone else to make an unfounded complaint.
A25	Displaying of a dangerous weapon on Trust property or in a Trust vehicle; assault, or an attempt to assault any person(s), patient(s) or employee(s).
A26	Unlawful discrimination or harassment
A27	A breach or failure to meet one of the standards as outlined in the Care Quality Commission Regulations e.g. Fit and Proper Persons, Duty of Candour
A28	Any action / omission, which can reasonably be judged to have resulted in an complete lack of confidence / trust in the individual by the Trust.
A29	Any form of nepotism in regard to recruitment and promotion

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Appendix 3: Equality Impact Assessment Form					
Department	HR & OD	Service or Policy	Disciplinary Policy	Date Completed:	February 2018
GROUPS TO BE CONSIDERED Deprived communities, homeless, substance misusers, people who have a disability, learning disability, older people, children and families, young people, Lesbian Gay Bi-sexual or Transgender, minority ethnic communities, Gypsy/Roma/Travellers, women/men, parents, carers, staff, wider community, offenders.					
EQUALITY PROTECTED CHARACTERISTICS TO BE CONSIDERED Age, gender, disability, race, sexual orientation, gender identity (or reassignment), religion and belief, carers, Human Rights and social economic / deprivation.					
QUESTION	RESPONSE		IMPACT		
	Issue	Action	Positive	Negative	
What is the service, leaflet or policy development? What are its aims, who are the target audience?	Disciplinary Policy to ensure that staff are compliant with our rules and values				
Does the service, leaflet or policy/ development impact on community safety	No				
<ul style="list-style-type: none"> Crime Community cohesion 					
Is there any evidence that groups who should benefit do not? i.e. equal opportunity monitoring of service users and/or staff. If none/insufficient local or national data available consider what information you need.	No				
Does the service, leaflet or development/ policy have a negative impact on any geographical or sub group of the population?	No				
How does the service, leaflet or policy/ development promote equality and diversity?	It is equitable across all groups				
Does the service, leaflet or policy/ development explicitly include a commitment to equality and diversity and meeting needs? How does it demonstrate its impact?	Not applicable				
Does the Organisation or service workforce reflect the local population? Do we employ people from disadvantaged groups	Not applicable				
Will the service, leaflet or policy/ development	No				
i. Improve economic social conditions in deprived areas ii. Use brown field sites iii. Improve public spaces including creation of green spaces?					
Does the service, leaflet or policy/ development promote equity of lifelong learning?	Not applicable				
Does the service, leaflet or policy/ development encourage healthy lifestyles and reduce risks to health?	Not applicable				
Does the service, leaflet or policy/ development impact on transport? What are the implications of this?	Not applicable				
Does the service, leaflet or policy/development impact on housing, housing needs, homelessness, or a person's ability to remain at home?	Not applicable				
Are there any groups for whom this policy/ service/leaflet would have an impact? Is it an adverse/negative impact? Does it or could it (or is the perception that it could exclude disadvantaged or marginalised groups?	No				
Does the policy/development promote access to services and facilities for any group in particular?	No				

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Appendix 3: Equality Impact Assessment Form				
Does the service, leaflet or policy/development impact on the environment	No			
<ul style="list-style-type: none"> During development At implementation? 				
ACTION:				
Please identify if you are now required to carry out a Full Equality Analysis			No	(Please delete as appropriate)
Name of Author:	Eleanor Palmer-Rigby	Date Signed:		February 2018
Signature of Author:				
Name of Lead Person:	Eleanor Palmer-Rigby	Date Signed:		February 2018
Signature of Lead Person:				
Name of Manager:	Lesley Smith-Payne	Date Signed:		February 2018
Signature of Manager				