Disciplinary Policy

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## Introduction

The Disciplinary Policy is in accordance with all legal requirements and ACAS guidance. The policy aims to encourage employees to achieve and maintain the required standards of conduct, performance and attendance. It ensures fairness and consistency in the treatment of individuals. In cases where an employee fails to attain the required standard or level of conduct the disciplinary policy will be instigated and this may result in disciplinary action.

## Purpose

The Integrated Care Board (ICB) is committed to providing a safe and healthy working environment, and to promoting the well-being of its employees. The ICB has an expectation that employees conduct themselves professionally.

The policy provides a standard framework to be used by managers to engage with their employees regarding these expectations and deal with issues fairly, consistently and promptly when the required standard is not met.

The aim of this policy is:

* To develop a culture of trust and collaboration through managing conduct objectively and constructively.
* To ensure that our workforce understands how their conduct will be managed throughout their employment.
* To ensure that managers understand and can identify potential misconduct/gross misconduct and how to manage this effectively and to put in place appropriate support measures specifically designed to tackle and address misconduct.

## Scope

This policy applies to all directly employed staff working within the ICB. It does not apply to workers, bank, agency/temporary staff, work experience students or volunteers.

## Definitions

* **Conduct** - the actions of the employee within the workplace. In certain circumstances it may be appropriate to apply this policy to incidents outside the workplace (to include arrests or criminal proceedings) which bring the ICB into disrepute.
* **Misconduct**\* - unacceptable or improper behaviour/conduct.
* **Gross misconduct**\* - acts that are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence.

\* Examples of both misconduct and gross misconduct are contained in the appendices.

* **Disciplinary action** - formal action that may be taken against an employee including formal warning and/or dismissal where there is reasonable belief that misconduct has occurred.
* **Disciplinary Procedure** - the process the ICB will follow to ensure the effective management of conduct in a fair and consistent manner.
* **Reasonable belief** - Any disciplinary action taken will be based on a reasonable belief that misconduct has occurred. This is significantly different to a criminal investigation whereby the onus is to prove an occurrence ‘beyond reasonable doubt’.

## Roles and Responsibilities

### Integrated Care Board

* + 1. The ICB Board is accountable and responsible for ensuring that the ICB has effective processes regarding disciplinary procedures and actions in accordance with relevant legislation and best practice guidance.

### Chief Executive

* + 1. The Chief Executive is accountable for the policy and procedure being in place to ensure fair and equitable approach to disciplinary procedures and outcomes.

### Executive Chief People Officer

* + 1. The Executive Chief People Officer oversees the implementation of this policy and is responsible for ensuring that managers take action to meet the organisation’s obligations to ensure equity and consistency.

### Policy Authors

* + 1. Policy authors are responsible for ensuring that this document is updated when any changes are made to legislation or best practice.

### Line Managers

* + 1. Line Managers are responsible for:
* Ensuring staff and patients are treated fairly and equitably.
* Ensuring that ICB policies and procedures are complied with.
* Informing the Human Resources department when incidents arise
* Arranging meetings in line with this policy.
* Carrying out a fair, timely and thorough investigation in line with the
* Policy.
* Providing a fair and reasonable outcome for staff in line with this policy
* Ensuring all timescales in the policy are adhered to.
* Maintaining confidentiality during and after the application of this policy.
* Ensuring the employee’s health and wellbeing are fully considered during any investigation and beyond and referrals made to occupational health as appropriate.
* To ensure that employees are made aware throughout of the Employee Assistance Programme.
* Notifying and seeking advice from the Chief Nurse and/or Medical Director in respect of any referrals that may be necessary to the relevant professional body, e.g. General Medical Council (GMC), General Dental Council (GDC), Nursing and Midwifery Council (NMC) , Health Professions Council (HPC) or General Social Care Council (GSCC).
* Ensuring the relevant referrals to the professional body are reported in line with professional guidelines.

### Employees

* + 1. Employees are responsible for:
* Maintaining professional conduct at work with colleagues and patients.
* Ensuring they treat colleagues and patients fairly and equitably.
* Ensuring they comply with all ICB policies and procedures.
* Attending meetings as requested under this policy.
* Arranging the attendance of their union representative or companion at meetings.
* Notifying the manager conducting the interview who their representative/ companion and any witnesses will be prior to the meeting.
* Maintaining confidentiality during and after the application of this policy.
* Notifying the ICB of changes to their circumstances e.g. if they are not of good character or an unfit person.

## Principles

Alleged breaches of conduct will be fully investigated before any disciplinary action is taken and wherever possible, the manager will attempt to resolve the matter through informal discussion with the employee.

Managers considering whether or not an issue should be progressed to a disciplinary hearing should discuss the matter with an HR representative before making a decision.

Support in the form of the Employee Assistance Programme, other psychological support or referral to Occupational Health is available for both the employees involved in disciplinary investigations. The Investigating Officer will ensure that options available are offered/discussed both in person and in writing. Advice can be sought from the Human Resources team regarding availability of support for employees.

Where an employee has identified as having a disability, those managing the process or meetings will make every effort to accommodate requests for ‘reasonable adjustments’. Advice can be sought from the Human Resources team regarding availability of support for employees.

Where an employee is due to commence maternity leave but the process can not be completed before this date, the process may be paused and concluded on return to work.

All cases of suspected fraud, bribery or corruption within the Organisation must initially be referred to the CFO / Executive lead for Finance or the Local Counter Fraud Specialist (LCFS) (also refer to the ICB’s [Anti-Fraud, Bribery and Corruption Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=2) and below) prior to a full investigation being initiated as required under the Standing Financial Instructions. This is to assess the case and exercise discretion as to the need to involve others or whether to allow the matter to be dealt with internally.

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You may also contact the NHS Counter Fraud Authority (NHSCFA) via their online reporting mechanism:

<https://cfa.nhs.uk/reportfraud>

Or via telephone: 0800 028 4060

No disciplinary action will be taken against a trade union representative without firstly discussing with the relevant full-time officer.

Employees will be informed in writing of the issues causing concern and will be given the opportunity to present their views before any decision is made at a disciplinary hearing.

Employees have a statutory right to be accompanied to a disciplinary hearing by a Trade Union Representative or a work colleague. This statutory right does not extend to witnesses, who are required to attend a hearing. Employees, including witnesses, may also be accompanied during an investigation meeting providing it does not unreasonably delay the investigation. Legal representation is not permitted at any stage during the ICB’s internal processes.

Employees are required to attend all meetings relating to the disciplinary process. During the investigation, if they or their representative are unable to attend the arranged meeting, they must give as much notice as possible and provide reasons why to the Investigating Officer. The Investigating Officer may then re-arrange the meeting on one occasion, taking into consideration the timescales for the investigation.

If an employee or their representative are unable to attend a disciplinary hearing, they must give as much notice as possible and provide reasons why. The ICB will then reschedule to a mutually convenient time, within 10 working days of the original date wherever possible. However, where an employee fails to attend such meetings without reasonable grounds, then the meeting may be held in their absence. The employee will be informed of this in writing.

If an employee has a valid objection to the person appointed to undertake the investigation or to hear the case, they must raise this objection in writing, clearly stating their reasons, to the Director of HR.

Throughout the formal stages of a disciplinary process, meetings with the investigating officer and within a hearing/appeal may be recorded. Only one official recording, using an electronic device, will be made. A note taker may also be present. A written account of the meeting will be kept on file by the ICB and will be used to summarise the findings of the meeting to the employee who is subject to the meeting. A copy of the recording will not routinely be given to an employee.

Covert recordings of discussions/meetings may be subject to disciplinary action.

The level of disciplinary action to be taken will be determined according to the seriousness and nature of the alleged misconduct, as well as the number of different examples of misconduct. Once the formal disciplinary procedure has been initiated subsequent misconduct within the warning period may lead to further, and perhaps more serious, disciplinary action, which may ultimately lead to dismissal.

Warnings are active from the date of issue for the periods detailed under Section 8.6.

No employee will be dismissed for a first instance of misconduct: however, summary dismissal may occur in the case of Gross Misconduct.

The employee will have the right of appeal against any disciplinary warning or sanction issued in the formal stages of the procedure (see section 8).

It is important that employees know what standards of behaviour and conduct are expected of them and the obligations expected of them whilst at work. Employees should be given all the necessary support, training and guidance to achieve good performance.

There should be regular reviews of performance, including discussions of development needs and employees should be aware of what standards of performance are required and what support is available to achieve these standards. Where an employee cannot achieve an acceptable level of performance due to lack of ability or skill, rather than any wilful refusal to carry out the duties of the job, the [Managing Performance Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=2) should be used.

## Scheme of Delegation

| **Stage** | **Responsible Manager(s)** |
| --- | --- |
| Informal procedure | Line Manager or equivalent level manager from elsewhere within the organisation |
| Formal procedure | Line manager or equivalent level manager from elsewhere within the organisation  |
| Appeal following formal procedure | Line Managers manager or equivalent who has not previously been involved or implicated |
| Dismissal Hearings | Chaired by a manager at grade 8B or above plus one other manager (which may be a HR representative) |
| Appeal against dismissal | Chaired by a manager at Exec level or above plus one other manager and a HR representative |

## Process

### Informal Process

* + 1. The procedure outlined below will be followed in cases of suspected minor misconduct in relation to conduct or behaviour.
		2. The employee’s line manager will speak to the individual, in private, as soon as possible after an issue comes to light. This will be a two-way discussion aimed at establishing the circumstances and encouraging improvement.
		3. If, during the discussion, it becomes evident that there is no problem the manager will confirm to the employee that no disciplinary action will be taken.
		4. If during the discussions it becomes clear the issues are not of a behavioural or conduct nature but more of a capability issue the line manager should follow the [Managing Performance Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=2).
		5. Where an improvement in an employees’ conduct is required, the manager will;
* Discuss with the employee the improvement required and ensure that the employee is clear on what is expected. This should also include discussion around any additional support the line manager may be required to provide.
* Confirm the period in which the improvements will need to be made (dependent on conduct issues) and ensure regular meetings are held to review progress during the set review period.
* Confirm to the employee that if the required improvements are not seen within the agreed timeframe that progression may be sought to the formal stage of this procedure.
* Outline any sanctions imposed, for example withdrawal of flexi time
* Follow up discussions in writing outlining all of the above and makes notes at any review meetings held during review period.
	+ 1. If, during the initial discussion, it becomes obvious that the matter may be more serious, the meeting will be adjourned, and the employee advised that an investigation will be instigated under the formal stages of the disciplinary procedure.
		2. If managed informally there is no right to be accompanied by a staff side representative or workplace colleague to the meeting with the line manager.

### Formal Process

* + 1. Before any disciplinary hearing is held, an investigation should take place in accordance with the Managing Investigations Guidelines to establish the facts of the case.
		2. Normally the investigation process should take no longer than 4 weeks. However, where it is not possible to complete the process within this timescale, the reasons for the delay will be recorded and the expected date for completion of the investigation process communicated in writing to all parties involved.
		3. Although not a statutory right, employees, including witnesses, may also be accompanied during an investigation meeting providing it does not unreasonably delay the investigation. The companion may be a Trades Union representative or an appropriate, current work colleague (ie. Not someone involved in the incident(s) being investigated). It will be the responsibility of the individual to make arrangements to be accompanied. Any witnesses subsequently asked to attend a formal hearing, to give or confirm the evidence that they have previously given during an investigatory meeting, will not be entitled to be accompanied or represented at the formal hearing’.
		4. If an employee is unwilling or unable to attend an investigation meeting or disciplinary hearing the organisation will consider all the facts and evidence available and decide how to proceed, taking into account:
* The seriousness of the matter being investigated.
* The employee’s disciplinary record.
* Work performance.
* Length of service etc
* Medical opinion on whether the employee is likely to be fit to attend the meeting, and if so in what timeframes.
* How any similar cases may have been dealt with.
	+ 1. If an employee is unavailable to attend an investigatory meeting or hearing the matter will be concluded taking into account, all the evidence available. The employee will be advised of this in writing and offered the opportunity for a colleague or union representative to attend on their behalf or provide a written statement for consideration.
		2. Once the investigation has concluded the investigation report must be reviewed by the manager who commissioned the investigation to ascertain what course of action should be taken in line within this policy. The outcome will then be communicated to the employee in writing as soon as possible.

### No Action Required

* + 1. If, following the conclusion of the investigation and having reviewed all the evidence, it is decided no disciplinary hearing should be held the employee concerned will be notified by their line manager or another appropriate manager.
		2. The employee may be accompanied at the meeting by a Union representative or work colleague, providing this does not delay the meeting being arranged or taking place. The meeting will:
* Outline the process carried out.
* Summarise the evidence.
* Provide the reasons for taking no further action.
* Allow the employee an opportunity to respond.
* Discuss and agree an action plan to prevent recurrence where appropriate (this may be carried out under the [Managing Performance Policy](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=2) where performance concerns are identified)
* Put in place any necessary improvements/controls/procedures/ processes required.
* Stress the continued confidentiality and sensitivity of the issue.
* Advise of the importance of behaving in a professional manner towards work colleagues who may have provided evidence or witness statements and any retaliation of any nature will be regarded as a serious matter.
	+ 1. The details of the meeting should be confirmed in writing to the employee within 5 (five) working days.

### Managers authorised to take Disciplinary Action

* + 1. To ensure fairness and impartiality, where reasonably practicable, the disciplinary panel should consist of no less than two members. The meeting will be led by a manager of sufficient authority to take sanction (see section 5 scheme of delegation), who has not been previously involved in the matter, in consultation with either another impartial manager or a HR representative. Where dismissal is a possibility, the disciplinary hearing will be conducted by a manager authorised to dismiss and a HR representative as outlined under point 5 of this policy.

### Outcomes of Disciplinary Hearing

* + 1. The outcome of a disciplinary hearing will generally fall into one of the following categories:
* Case dismissed.
* No action required.
* The employee is required to attend counselling or will require retraining.
* First written warning.
* Final written warning.
* Dismissal.

### Disciplinary Hearing

* + 1. A disciplinary hearing will normally be held by a panel consisting of a manager of appropriate level (see section 5 scheme of delegation), who has not been previously involved in the matter, who will act as the Panel Chair. They will be accompanied by another appropriate manager and a HR representative.
		2. The HR representative role will be to provide advice on Human Resources policies and employment legislation and to ask questions to obtain clarification on any issues that are discussed, or new relevant information disclosed.
		3. Before the disciplinary hearing the employee will be advised in writing of the purpose of the meeting and specify detail of the complaint or allegation being considered, covering all issues to be discussed and advising them of their right to be accompanied by a trade union representative or work colleague. The individual will be given a minimum of 5 working days’ notice of the disciplinary hearing. If the individual, or their chosen companion, is not available to attend on the date proposed, the ICB will endeavour to offer an alternative reasonable date within 10 working days of the original date wherever possible. Note: This meeting will normally only be re-arranged once, except in exceptional circumstances.
		4. Should either party wish to call any witnesses to the disciplinary hearing they must give at least 2 working days’ notice to the Panel Chair and will have full responsibility for arranging the attendance of these witnesses.
		5. All relevant facts and evidence (including a copy of the disciplinary investigation report) will be made available to the employee (and their representative if applicable) at least 5 working days prior to the disciplinary hearing. Additional information gathered by the employee, that they wish to present at the meeting, must also be made available to the disciplinary panel at least 2 working days prior to the meeting. The employee should also confirm the name of the representative accompanying them to the hearing (if applicable).
		6. Either party may present evidence including details of previous relevant warnings, witness statements, call witnesses and have the opportunity to ask questions.
		7. Adjournments may be called by the panel at any time during the hearing should new facts emerge which require investigation or clarification. If the employee becomes distressed an adjournment may be called in order for them to regain their composure.
		8. Once the panel has heard all evidence and have completed discussions an adjournment will be held in order that there can be a period of dispassionate reflection by the disciplinary panel to consider what action, if any, is to be taken. Where possible, both parties will be verbally informed of the outcome after the adjournment.
		9. The employee will be advised in writing of the outcome of the disciplinary hearing within 5 working days unless a longer period is specified and can be justified. If disciplinary action is taken, the employee will be informed of the required improvements which are necessary and if applicable details of timescales for achievement, the duration of the warning and the consequence of a failure to improve performance as required. The letter must include the date of the disciplinary hearing, the reason for issuing the warning as well as details of any sanctions which may be imposed. It should also be noted whether the employee invoked their right to be accompanied. The right of appeal will also be included. To ensure fairness and impartiality, where reasonably practicable, the disciplinary panel should consist of no less than two members. The meeting will be led by a manager of sufficient authority to take sanction (see section 5 scheme of delegation), who has not been previously involved in the matter, in consultation with either another impartial manager or a HR representative. Where dismissal is a possibility, the disciplinary hearing will be conducted by a manager authorised to dismiss and a HR representative as outlined under point 5 of this policy.

**FIRST WRITTEN WARNING**

* + 1. If the issue is serious, a First Written Warning will normally be issued and will be kept on the employee’s HR file for 12 months. A copy of the written warning will be kept on file but should be disregarded for disciplinary purposes after 12 months from the date of issue. The warning maybe declared on any employment references.

**FINAL WRITTEN WARNING**

* + 1. If the issue is more serious or if there is a still an active First Written Warning in place and insufficient improvement has been made or further misconduct occurs, a Final Written Warning will normally be issued and will be kept on the employee’s HR file for 24 months. A copy of the written warning will be kept on file but should be disregarded for disciplinary purposes after 24 months from the date of issue. The warning maybe declared on any employment references.

**DISMISSAL WITH NOTICE**

* + 1. If, during the period of a live Written Warning, further misconduct occurs or insufficient improvement has been made, the employee will normally be dismissed with notice. Dismissal maybe declared on employment references.
		2. The employee will be provided with written reasons for dismissal, the date on which the employment will terminate, their entitlement to pay, and the right of appeal.
		3. The organisation reserves the right to make a payment in lieu of notice.

**SUMMARY DISMISSAL**

* + 1. Where behaviour or misconduct is sufficiently serious to constitute gross misconduct the employee will normally be summarily dismissed - i.e. without notice. Dismissal maybe declared on employment references.
		2. The employee will be provided with written reasons for dismissal, the date on which the employment will terminate and the right of appeal.

**POTENTIAL ADDITIONAL SANCTIONS**

* + 1. Additional sanctions may be included after full discussion with an HR Representative who will be able to advise on the appropriateness, equity and viability of any further sanction. These can include, but are not limited to:
* Demotion or transfer to another job or location.
* Deferred increment
* Loss of privileges e.g. removal of right to self-certificate absence and the requirement for all absences to be covered by a medical certificate, removal of flexi-time.

**DEFERRED PAY STEP PROGRESSION**

* + 1. In cases where an employee is subject to the new pay step progression arrangements and has a live formal warning on file at the time their pay step is due, progression will be delayed. The line manager should initiate a review meeting shortly before the expiry of the warning. Subject to the employee satisfying all requirements for a pay step, they will progress with an effective date the day after the sanction expires.

### Suspension

* + 1. This does not constitute disciplinary action or sanction, nor does it infer guilt. Suspension is only to be invoked when an individual's continued presence at workplaces themselves / other person(s) at risk, or hampers any investigation. If appropriate, suspension should be instigated as soon as possible after the matter to be investigated comes to light or a need for suspension is identified. Suspension will normally be on full pay unless the reason for the suspension is due to a lapse in a clinical professional registration which will render the employee unable to perform their full duties, in which case the individual will be suspended on no pay as detailed under point 10.6 of this policy. It is expected that suspension will be no longer than 4 weeks but may be extended in exceptional circumstances. Employees who are suspended will be informed in writing of the reasons for the suspension. The necessity or otherwise for suspension, will be agreed between the manager and a HR Representative.
		2. Should it be concluded that no further action is necessary following investigation; a briefing session should be held between the individual, their trade union representative or appropriate work colleague if required, and their manager prior to a return to work.
		3. During any period of suspension, the employee should not:
* Attend the workplace (unless requested to by the Investigating Officer as part of any investigation or by the ICB as part of any element of the investigation or conclusion of the process).
* Have direct contact either in person, by telephone, text or in writing (including email, Facebook, Twitter or other networking sites) with work colleagues or other employees on work related issues, including in private or in a social environment; in particular the case should not be discussed outside of the investigation or hearing, and confidentiality should be maintained at all times. A named individual will be provided as a point of contact for any queries relating to the case. This may include a member of the HR department.
* Carry out any bank or agency work at a time when they would normally be working for the organisation.
* Work for any other employer at a time when they would normally be working for the organisation. The organisation reserves the right to make the other employer aware of the reasons for suspension where this may relate to patient safety or care.
	+ 1. Arrangements can be made for any meetings requested by any party as part of the process to take place at an alternative location or room away from the normal work area.
		2. Where an employee falls sick during a period of suspension, the normal contractual sick pay entitlements will apply in accordance with the occupational sick pay scheme. The investigation process will continue if an employee is ill, however, it may be necessary to seek advice from Occupational Health concerning the employee’s requirement to attend any meetings, but this will not prevent the process continuing.
		3. Where an employee wishes to take annual leave during a period of suspension, the normal arrangements for the authorisation and taking of annual leave will apply.

## Agreed Outcome

If an employee accepts a summary of the findings of the investigation as provided to them and where this summary indicates that the allegations as investigated are proven, meaning that a hearing is justified and a disciplinary sanction is likely, (or if the employee admits all of the allegations made against them and the facts are not in dispute) either immediately, during or at the end of an investigation, it is possible for the level of sanction to be agreed without the need for a full disciplinary hearing. In these circumstances, the relevant Manager with the authority to issue disciplinary sanctions and in consultation with HR and Deputy Director or Associate Director must be aware of and in agreement to the proposal of an agreed outcome.

Any Agreed Outcome cannot apply to cases of Gross Misconduct or cases involving Safeguarding issues or where dismissal is anticipated and should not compromise due process e.g. audit.

An Agreed Outcome can only take place when all parties (the employee, representative and appropriate manager) are in agreement to the process.

If an employee or their representative does not consent to the process of an Agreed Outcome occurring, then the normal disciplinary process must be followed.

Management notes will be taken of any Agreed Outcome meeting. An HR representative will be present at any discussions involving an Agreed Outcome.

At the meeting all information should be available relating to the allegation(s) to enable a full discussion to take place.

The ICB can propose a suitable sanction without recourse to a disciplinary hearing. The employee, in consultation with their representative, can accept or decline the sanction. If the sanction is accepted, there is no right to appeal. The proposed sanction will be confirmed in writing within 5 working days.

If the employee decides against the Agreed Outcome then the normal disciplinary process will continue.

## Appeals

An employee in receipt of a disciplinary warning or notice of dismissal has the right of appeal.

Appeals, outlining the grounds on which the appeal is being made, must be lodged in writing to the person specified in the disciplinary hearing outcome letter within 10 working days of the receipt of the written notice of disciplinary action or dismissal. The letter must include details of the grounds for appeal. In exceptional circumstances this period may be extended.

Appeals will be heard within 20 (twenty) working days of receipt of the letter requesting the appeal (wherever possible) but either party may, with the consent of the other and in exceptional circumstances, be entitled to extend this period.

The employee must be given at least 5 working days’ notice of the date of the appeal hearing.

The Appeals Hearing Procedure (Appendix D) should be followed.

Appeals will be heard by a more senior manager to the person taking the first instance disciplinary action and will follow the Scheme of Delegation under section 8. All Appeal hearings will include a HR representative.

The employee will have the right to be accompanied at the Appeal Hearing by either a trade union representative or workplace colleague.

Both parties must provide to the Appeal Hearing Panel, a full written ‘statement of case’ including the grounds upon which the appeal is presented/resisted, with copies of any documents the party concerned intends to use in evidence, and the identities of any witnesses the party concerned intends to call, at least 2 working days prior to the Appeal Hearing. This should be done via the HR representative managing the case.

The Chair of the original hearing panel will be required to present the ‘statement of case’ as they were the manager issuing the disciplinary sanction. However, the Chair of the original hearing may call the Investigating Officer, line manager or any other witnesses that they see fit in order to ‘resist’ the case put to the hearing panel. The decision of the Appeal panel will be communicated to both parties verbally, following the adjournment wherever possible, and in any case will be confirmed later in writing (again to either party), within 5 working days of the Appeal Hearing. The decision of the Appeal panel is final. There is no further internal redress following the appeal outcome.

## Variations to Timescales

Time scales regarding the procedural steps contained within this policy are completed as quickly as possible.

## Issues relating to and Resulting from Disciplinary Action

### Employee Responsibility

* + 1. All employees have a responsibility to report any investigation, disciplinary action or otherwise taken against them by a separate organisation such as the Police, NCA, HMRC etc. Should an employee become aware of action being taken against another employee of the ICB, this is to reported. This should be reported to HR immediately. Some examples are detailed below:

### Reporting to Statutory Bodies

* + 1. Professional healthcare staff are responsible for complying with the relevant standards set by their regulatory or professional bodies for example for nurses, the Nursing & Midwifery Council’s (NMC) Code of Professional Conduct.
		2. All registered healthcare professionals are required, in addition to their responsibilities to the organisation, to report details of professional misconduct to the appropriate statutory body in accordance with the relevant code of professional conduct.
		3. Employees in these professions, practising within their relevant Profession’s Statutory Code of Professional Practice and Conduct are encouraged and will be supported, in bringing to the organisation’s attention, practice and / or behaviour which is professionally unacceptable.

Following the conclusion of an investigation or disciplinary hearing HR, in consultation with a relevant Senior Manager (e.g. Deputy Director or Assistant Director etc.) will decide whether to refer the matter to the relevant professional body e.g. NMC for them to determine if Codes of Conduct or Codes of Practice have been breached and take the action considered appropriate by them.

### Registration Matters

* + 1. These standards include a requirement by law to maintain state registration in certain professions, for the duration of an individual’s employment. To practice unregistered will be considered a direct breach of the relevant Code of Professional Practice and Conduct, as well as a breach of the employee’s contract of employment, as it will render the employee unable to perform their full duties for which they were employed.
		2. Where a professional registration has lapsed it will be necessary to undertake some initial exploratory work to understand the circumstances of this – and also to risk assess the continuation of the individual in post – whilst the matter is addressed.
		3. Where it is an essential criterion of the post that professional registration is present at all times (i.e. clinical post – NMC registration, or GMC registration) it should be assumed that work in that field should cease immediately. Where it is apparent that the cessation of professional registration is not the fault of the individual (i.e. professional body administrative error), every effort should be made to ensure immediate resolution (where possible) if reasonable and if the needs of the organisation allow, it may be possible to temporarily offer non-clinical duties or an alternative post for a very limited time whilst matters are addressed.
		4. Where it is apparent that an individual has willingly or otherwise, allowed the lapsing of professional registration (i.e. by not adhering to the nursing revalidation process, failure to pay registration fees in adequate time or through their own negligence – list not exhaustive); the Organisation considers this a disciplinary matter and will immediately invoke disciplinary processes. Any suspension may be without pay in this circumstance.
		5. Where a professional registration is ‘desirable’ but not essential, and there has previously been a valid professional registration in place, the line manager must explore with the individual the circumstances surrounding the lapse in registration – to determine if additional support should be given to assist the individual to re-gain registration – and to consider the implications of non-registration to the Organisation.
		6. It is important to consider the facts, as they are available, in any case where professional registration has lapsed. For example, in a non-clinical position, where professional registration is essential but lapses due to an administrative error (i.e. non-payment of fees by due date), it may be considered appropriate to allow a staff member to continue to work until the matter is resolved – as there is minimal risk to the Organisation as the registration does not compromise the knowledge and skills required to undertake the role. If this is deemed to be the case, consideration should be given as to whether it is in fact ‘desirable’ that the post holder holds a professional registration – and not essential.
		7. In exceptional circumstances the organisation will make a distinction, in situations where registration has mistakenly lapsed, and has been brought immediately to the attention of the manager.
		8. Similarly, to the above, should there be any a change to a professional registration that place restrictions or suspensions on their ability or fitness to practice, HR should be informed immediately. Otherwise, this may be treated as a potential fraud.

### Criminal Offences

* + 1. An employee who is arrested on any charge or served with a summons on a criminal charge or is convicted, is required to inform Human Resources as soon as practically possible.
		2. As a public forum, the organisation has a right to attend any court proceedings in order to assess the implications of any criminal charges / convictions upon the employee’s ability to undertake his/her contractual duties. This is whether those charges / convictions arise from acts committed in the course of employment or otherwise.
		3. The organisation may take appropriate disciplinary action, including dismissal in the most serious cases, in circumstances where there is some connection between the criminal charge or conviction and the employment relationship – for example if it is felt that such actions have brought about a loss of trust and confidence or where the organisation has been brought into disrepute.
		4. Disciplinary action may be taken where an offence relating to the individual’s employment is subject to criminal inquiries / prosecution.
		5. The facts of the case should be investigated in the same way as for any other case and a decision taken on whether the conduct justifies disciplinary action. The police will not conduct any investigation on behalf of the organisation or be present at any meeting or disciplinary hearing, unless required to be so by Law.
		6. Management may await the outcome of any criminal procedure but is not precluded from taking action based on the evidence that it has available to it where it has been able to undertake its own investigation and conclude that a disciplinary hearing is warranted. In this situation, the decision will not be based on the criminal standard of proof ‘beyond reasonable doubt’ but will be in accordance with the civil standard ‘on the balance of probabilities’.
		7. The organisation may take disciplinary action, including dismissal, where management have reasonable grounds to suspect that a criminal offence has been committed by an employee during the course of their employment or otherwise. Notwithstanding any action taken by its managers / employees, the organisation reserves the right to institute criminal proceedings against employees whose actions constitute a breach of law.

### Custodial Sentences

* + 1. If an employee receives a custodial sentence and is imprisoned this will usually amount to a fundamental breach of contract and the employee should be written to and advised they are in breach of their contract of employment.
		2. Imprisonment, or remand in advance of a court appearance, might be for a work related or non-work related event. Each case will be considered on an individual basis with the involvement of HR.

**WORK RELATED EVENT**

* + 1. For a custodial sentence which has arisen from a work related event the normal disciplinary process should be followed as outlined in this Policy. If the disciplinary process has not commenced or been completed prior to any conviction it is accepted that employers can rely on a certificate of conviction as evidence for internal disciplinary action, notwithstanding any claims to the contrary by the employee or innocence or appeal against conviction.

**NON-WORK RELATED EVENT**

* + 1. Each case should be considered on its merits, taking into account the following factors:
* The nature of the offence.
* How long the service can sustain the absence of the employee.
	+ 1. Having considered the above the manager, in conjunction with HR will decide whether or not a job can be kept open for an employee. If the job is kept open, the employee would receive no pay or benefits until they return to work. If the job cannot be kept open the contract should be terminated.

**EMPLOYEES ON REMAND**

* + 1. Where employees are remanded in prison, awaiting trial, irrespective of whether or not the alleged offences are work related, an investigation should be conducted, and a disciplinary hearing convened. This should be done, even if, as will often be the case, the employee will be unable to attend such a hearing. In these circumstances the employee should elect a representative who should be allowed an opportunity to put the employee’s case in their absence. If the employee declines to elect a representative the case will be heard in their absence.

Each case will be considered on its merits and legal advice will be sought where appropriate.

## Monitoring Compliance

The HR Team will be responsible for monitoring that this procedure is followed and may be consulted at any stage through the process to offer advice to those involved.

Monitoring information will be published and reported as appropriate.

Should the monitoring uncover any shortfalls in the implementation of the policy, the HR team will work with the relevant management team to draw up an action plan for improvement. This action plan may include, for example:

• training for line managers

• A risk assessment

• It is also anticipated that any issues in respect of the implementation of the policy may be identified as a result of staff exercising their right of appeal.

## Staff Training

No essential (including mandatory) learning and development requirements have been identified for any staff groups, in order to fulfil the requirements stated within this policy.

Guidance can be sought from Human Resources team.

## Arrangements for Review

This policy will be reviewed no less frequently than every two years. An earlier review will be carried out in the event of any relevant changes in legislation, national or local policy/guidance, organisational change or other circumstances which mean the policy needs to be reviewed.

If only minor changes are required, the sponsoring Committee has authority to make these changes without referral to the Integrated Care Board. If more significant or substantial changes are required, the policy will need to be ratified by the relevant committee before final approval by the Integrated Care Board.

## Associated Policies, Guidance and Documents

* Managing Investigation Guidelines

#### [Associated Policies](https://www.midandsouthessex.ics.nhs.uk/publications/?publications_category=icb-policies&page_no=2)

* Anti-Fraud, Bribery and Corruption Policy
* Managing Performance Policy
* Dignity at Work Policy
* Whistleblowing Policy
* Equality in Employment Policy

## References

* Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice on Disciplinary and Grievance Procedures, published 11th March 2015

## Equality Impact Assessment

The EIA has identified no equality issues with this policy.

The EIA has been included as Appendix A.

## Appendix A - Equality Impact Assessment

**INITIAL INFORMATION**

|  |  |
| --- | --- |
| **Name of policy: Disciplinary Policy**  **Version number (if relevant): 1.0** | **Directorate/Service**: People Services  |
| **Assessor’s Name and Job Title:** Carolyn Druce, HR Business Partner  | **Date:** 29th April 2022 |

|  |
| --- |
| **OUTCOMES** |
| *Briefly describe the aim of the policy and state the intended outcomes for staff*  |
| The policy provides a standard framework to be used by managers to engage with their employees regarding these expectations and deal with issues fairly, consistently and promptly when the required standard is not met. |
| **EVIDENCE** |
| *What data / information have you used to assess how this policy might impact on protected groups?* |
| The ICB monitors the composition of its workforce under the nine protected equality characteristics and reports on this annually. This information helps the ICB to assess the potential impact of its policies upon staff. |
| *Who have you consulted with to assess possible impact on protected groups? If you have not consulted other people, please explain why?*  |
| Relevant Trade Unions have been consulted on the policy and any comments will be taken into consideration. |

**ANALYSIS OF IMPACT ON EQUALITY**

The Public Sector Equality Duty requires us to **eliminate** discrimination, **advance** equality of opportunity and **foster** good relations with protected groups. Consider how this policy / service will achieve these aims.

N.B. In some cases it is legal to treat people differently (objective justification).

* ***Positive outcome*** *– the policy/service eliminates discrimination, advances equality of opportunity and fosters good relations with protected groups*
* ***Negative outcome*** *–**protected group(s) could be disadvantaged or discriminated against*
* ***Neutral outcome***  *–**there is no effect currently on protected groups*

Please tick to show if outcome is likely to be positive, negative or neutral. Consider direct and indirect discrimination, harassment and victimisation.

| ProtectedGroup | Positiveoutcome | Negativeoutcome | Neutraloutcome | Reason(s) for outcome |
| --- | --- | --- | --- | --- |
| Age |  |  | x |  |
| Disability(Physical and Mental/Learning) | x |  |  | Reasonable adjustments can be made for meetings etc. Psychological support is available.  |
| Religion or belief |  |  | x |  |
| Sex (Gender) |  |  | x |  |
| Sexual Orientation |  |  | x |  |
| Transgender / Gender Reassignment |  |  | x |  |
| Race and ethnicity |  |  | x |  |
| Pregnancy and maternity (including breastfeeding mothers) | x |  |  | Process may be paused to accommodate maternity leave.  |
| Marriage or Civil Partnership |  |  | x |  |

|  |
| --- |
| **MONITORING OUTCOMES** |
| Monitoring is an ongoing process to check outcomes. It is different from a formal review which takes place at pre-agreed intervals. |
| *What methods will you use to monitor outcomes on protected groups?* |
| It is anticipated that any issues in respect of the implementation of the policy will be identified as a result of staff exercising their right of appeal or via the ICB’sGrievance procedure.  |

|  |
| --- |
| **REVIEW** |
| *How often will you review this policy / service?*  |
| This policy will be reviewed in one year or earlier if there are any significant changes in legislation, policy or good practice. |
| *If a review process is not in place, what plans do you have to establish one?* |
| N/A |

## Appendix B – Examples of Misconduct

Misconduct of a minor or serious nature may result in a formal warning under these procedures, the level of which will be determined by the individual circumstances of the case.

Misconduct which is serious, or repeated misconduct or multiple examples of or occurrences of misconduct causing an amalgamation of misconduct, which leads to a breakdown in trust and confidence could also result in dismissal.

The individual circumstances of the case will be taken into account in determining whether the matter is regarded as misconduct or serious misconduct.

The following is a non-exclusive and non-exhaustive list of offences which may be regarded as misconduct for the purposes of this Policy:

* Unauthorised absence from work.
* Failing to comply with procedures for notification of absence.
* Lateness/poor timekeeping.
* Unsatisfactory attendance at work.
* Failure to follow procedures for booking and returning from leave.
* Unsatisfactory and unacceptable performance of duties.
* Failure to follow management requests for the improvement of behaviours, attitude or performance at work.
* Covert recording of discussions/meetings.
* Failure to maintain proper records.
* Time wasting.
* Contravention of safety offences.
* Inappropriate standard of dress.
* Use of unacceptable language.
* Misuse of IT equipment, internet access, email or other information technology;
* Failure or refusal to follow a reasonable, legitimate management instruction. Any concerns about the practicality, legality or safety of any such instruction should be raised with the relevant manager.
* Failure to comply with health & safety requirements.
* Inappropriate behaviour or misuse of authority towards either a colleague, patient, service user, contractor or member of the public.
* Conduct at work which is offensive.
* Negligence in the performance of duties which threatens or could threaten the security or health & safety of a patient, service user, employee, contractor or member of the public or which seriously damages public confidence.
* Misuse of ICB facilities, equipment or vehicle.
* Abuse of organisational policies e.g. annual leave, parental leave.
* Breaches of confidentiality.
* Unauthorised divulging of organisational business to a third party (not including issues raised through the Raising Concerns Policy).
* Acceptance of any additional employment which may hinder or conflict with an employee’s contractual obligations to the organisation.
* Non-declaration of any business interests by employees, their immediate families or households in any contracts between the organisation and third parties.
* Breach of regulations e.g. failure to declare interests and any gifts or hospitality.
* Smoking on organisational premises.
* Any other acts of misconduct of a similar level or gravity.
* Failure to inform any statutory body of a misconduct or capability issue.

## Appendix C – Examples of Gross Misconduct

Gross Misconduct is defined as misconduct of such a serious nature that the organisation can no longer tolerate the employee’s continued presence at work.

All allegations of gross misconduct will normally require the employee to be suspended, pending an investigation. However, there may be instances when the employee is not suspended but the investigation reveals evidence that leads to an employee being dismissed on the grounds of gross misconduct.

The following is a non-exclusive and non-exhaustive list of offences which may be regarded as gross misconduct for the purposes of this Policy:

* Fighting.
* Physically or verbally (or attempting to) assaulting any person whilst at work.
* Violent, abusive or intimidating behaviour or conduct.
* Failure to treat other employees or external parties with dignity and respect.
* Breaches of the organisation’s Equality in Employment Policy, including acts of incitement, acts of discrimination, racism or verbal abuse against employees, patients, clients, service user, contractor or members of the public on any grounds outlined in the Policy.
* Serious bullying and harassment or breaches of the Dignity at Work Policy, including intimidation directed at employees, patients, clients or members of the public.
* Repeated bullying and harassment or breaches of the Dignity at Work policy following prior warning of the inappropriateness of behaviours or approach displayed.
* Actions which significantly or persistently offend or cause damage others or which bring the ICB into disrepute.
* Serious breach of organisational rules relating to electronic communications and computers.
* Serious act of insubordination.
* Failure to comply with relevant statutory or regulatory requirements.
* Wilful failure or refusal to follow a reasonable, legitimate management instruction.
* Sexual misconduct at work.
* Incapability through alcohol or being under the influence of illegal drugs.
* Being unfit for duty, other than for medical reasons. This may include sleeping whilst on duty.
* Serious breaches of the organisation’s or relevant professional Code of Practice and Conduct, including practicing whist unregistered. This includes actions outside of the normal workplace and hours of work which may result in bringing the organisation into disrepute.
* Serious breaches of the NHS Code of Conduct for NHS Managers. This includes actions outside of the normal workplace and hours of work which may result in bringing the organisation into disrepute.
* Selling or possession of illegal drugs on organisational premises.
* Serious negligence which causes unacceptable loss, damage or injury.
* Serious breach of health and safety rules.
* Serious misrepresentation / falsification e.g. qualifications, health declaration, criminal convictions.
* Gross negligence in the performance of duties.
* Reckless or serious misuse of equipment or premises.
* Falsification of qualifications or other documentation which are a stated requirement of employment or which may result in financial gain.
* Failure to disclose any criminal offences which occurred prior to employment and any conviction for any serious criminal offence whilst an employee of the organisation.
* Failure to disclose any sanction or reprimand from a relevant professional body or Independent Safeguarding Authority, which occurred prior to employment or whilst an employee of the organisation.
* Theft, stealing or dishonestly obtaining organisational property, or property belonging to other employees, patients, clients, service user, contractor or member of the public.
* Fraud e.g. falsification of timesheets, sickness certification or other claim forms in use.
* Deliberate falsification of records.
* Dishonest completion of timesheets, flexitime records, expense claims etc.
* Bribery.
* Money laundering.
* Acceptance of goods, favours or excessive hospitality in respect of services rendered or to influence the outcome of organisational related business.
* Bringing the organisation into disrepute including conduct in or outside of the workplace or working hours.
* Any abusive or defamatory remarks made verbally, in writing or on any social networking or website, which the organisation views to be detrimental or prejudicial regarding the organisations employees, clients or to the organisation itself.
* Misuse of the organisation’s name e.g. using the logo on ‘unofficial’ documents.
* Misuse or deliberate damage of premises or property belonging to the organisation.
* Serious breach of confidentiality or the Data Protection Act.
* Serious breach of the organisation’s Standing Orders or Financial Instructions.
* Any actions or offences which serious threaten the security of the organisation, its employees, patients, clients, service user, contractor or member of the public, or which seriously damages public confidence.
* Any other acts of misconduct regarded as sufficiently serious (or which collectively are evidenced as multiple or persistent misconduct) will come within the definition of Gross Misconduct.

## Appendix D – Conducting a Disciplinary Hearing

The Disciplinary hearing should follow the following stages:

1. Opening the meeting by Panel Chair
2. Management side present their case (summary of allegation by the investigating officer), including calling of any witnesses
3. Employee side, then the Disciplinary Panel, will have the opportunity to ask questions
4. Employee side to present their case, including calling of any witnesses
5. Management side, then the Disciplinary Panel, will have the opportunity to ask questions
6. Summing up by management side, then by employee side
7. Adjournment
8. Action to be taken (if any)
9. Establishment of a review date (if appropriate)

**Opening the Disciplinary Hearing**

All employees are entitled to be accompanied by their Trade Union representative or a work colleague. Where an employee is not accompanied, the employee must be reminded of this right, and if declined, this must be recorded.

Those ‘hearing’ the disciplinary must introduce those present and outline the reasons for the disciplinary meeting taking place (the reason/s outlined in the invite to disciplinary letter) and the format the meeting will take.

**Summary of Allegation(s)**

At this stage the investigating officer(s) must summarise the case on behalf of management. The investigating officer(s) presenting the case must adhere to the facts and not introduce opinions, hearsay or issues that have not previously been mentioned. All documentation that will be used as evidence (including previous relevant warnings and witness statements where applicable) will already have been made available to the individual prior to the disciplinary hearing taking place (copies will have been sent with the invite to disciplinary meeting letter).

Should a new matter arise during the course of the disciplinary meeting then the Disciplinary Panel should adjourn in order that consideration may be given to the appropriateness of the introduction of this new matter. To avoid unnecessary duplication of the process as well as ensuring fairness, it may be more beneficial to adjourn the disciplinary meeting in order that further investigations may be carried out in relation to the new matter.

The aim of the disciplinary meeting is to seek verification and clarification about the issues of concern, through questions. Where it is appropriate to call witnesses, either party may call and question them.

After the investigating officer has stated their case the employee will be given the opportunity to ask questions and state their case. The employee’s representative will be able to ask questions for clarification purposes.

If the disciplinary hearing is dealing with multiple issues, each issue should be addressed in turn and the employee and/or their representative be allowed to state their case in relation to each issue as it is addressed.

Exploration of any differences in facts, as they appear to the manager and employee should be carried out in a constructive manner in order to gain an understanding of the facts which are, as far as possible, acceptable to both manager and employee.

The investigating officer should remain present during the disciplinary hearing to allow for any questions.

Both parties will be given the opportunity to sum up their case if they so wish. The summing up shall not introduce any new matter. If at any stage new facts are alleged or new evidence produced, the Disciplinary Panel may adjourn the meeting (of its own volition or at the request of one of the parties) for so long as it thinks fit.

**Adjournment**

Before any decision is taken, it is necessary to adjourn the disciplinary hearing to give adequate consideration to the facts as they have been presented and the responses that have been given to the allegations, including any mitigating circumstances. At this stage both parties will be asked to leave the room and the panel must decide the facts of the case, with advice from an HR Representative, where appropriate, and whether the behaviour requires disciplinary action to be taken and if so, at what level.

Where possible, an indication of the length of time of the adjournment should be given, including the reasons for the adjournment, i.e. to consider what action to take, if any.

The disciplinary hearing may also be adjourned to consider other issues, e.g. to direct further investigations to take place or to investigate new information/facts that have been brought to light.

There is no set time for an adjournment and adjournments can be called at any time during the disciplinary meeting, by either party.

Taking disciplinary action is not a matter to be taken lightly and should only be taken if it is to be constructive in attempting to produce the desired behaviour. Managers will also need to consider, if disciplinary action is to be taken, whether any other sanctions will be attached to the warning.

**Action**

When the disciplinary hearing is reconvened the Panel Chair should explain that consideration has been given to all of the issues raised at the beginning of the hearing, and all of the facts and issues raised during the course of the hearing. The Panel Chair must then outline what action, if any, will be taken including any sanctions. It is important that where a warning / sanction is given, the employee is informed of the length of time it will remain on their record, their right of appeal, the procedure that will be followed in relation to confirming the action in writing and any arrangements for the review of sanctions imposed.

The outcomes from the hearing will be confirmed in writing within 5 working days of the decision being reached.

## Appendix D – Union Representative or Work Colleague

Employees are entitled to be accompanied by a union representative or workplace colleague, at any/all formal meetings held under this Policy. It is the employee’s responsibility to make arrangements to be accompanied.

The employee must be informed of this right at the commencement and all subsequent stages of this procedure.

A workplace colleague must always be an employee of the ICB.

Reasonable time off should be afforded to the workplace colleague, in

discussion with their Line Manager.

The representative or workplace colleague may address the meeting and confer with the employee, during the meeting, put forward the employee’s case, summarise the employee’s case and/or respond on the employee’s behalf to any view expressed at the hearing.

The representative or workplace colleague may not answer questions on behalf of the employee or prevent the employee from explaining their case.

Any union representative or workplace colleague must maintain confidentiality during and after the application of this policy.

If the reason given for failing to attend a meeting is due to the non-availability of a trade union representative or workplace colleague and there have been no earlier adjournments in the process for this reason, on only one occasion the meeting will be postponed and a new meeting will be arranged within reasonable time; normally 5 working days. Exceptional circumstances will always be considered.