

Disciplinary Policy



Please complete the table below:

To be added by corporate team once policy approved and before placing on website

Policy ref no:	03
Responsible Executive Director:	Deputy Chief Executive & Chief Finance Officer
Author and Job Title:	HR Manager/HR Business Partner
Date Approved:	05 November 2018
Approved by:	Deputy Chief Executive & Chief Finance Officer
Date of next review:	04 November 2021

	Yes/No/NA	Supporting information
Has an Equality Impact Assessment Screening been completed?	Yes	
Has the review taken account of latest Guidance/Legislation?	Yes	ACAS Code of Conduct
Has legal advice been sought?	No	
Has HR been consulted?	Yes	
Have training issues been addressed?	Yes	
Are there other HR related issues that need to be considered?	No	
Has the policy been reviewed by SPF?	Yes	
Are there financial issues and have they been addressed?	No	
What engagement has there been with patients/members of the public in preparing this policy?	No	Internal Staff only
Are there linked policies and procedures?	Yes	Grievance Policy Appeals Policy
Has the lead Executive Director approved the policy?	Yes	
Which Committees have assured the policy?	Yes	Governing Body JCC
Has an implementation plan been provided?	Yes	
How will the policy be shared with: <ul style="list-style-type: none"> • Staff? • Patients? • Public? 	Yes	Via the BNSSG internet site – The Hub and dedicated communication to CCG employees.
Will an audit trail demonstrating receipt of policy by staff be required; how will this be done?	Yes	Line Managers to check staff are aware of new policy

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1. Introduction

BNSSG recognises that from time to time employees may fall short of the standards required by the organisation or may fail to behave in an appropriate manner, either within or outside of the workplace. This policy and procedure has been developed to provide a fair, objective, effective and confidential way of dealing with such matters relating to conduct which may, following an investigation lead to a disciplinary hearing and possible disciplinary action.

This applies to all employees of the CCG and is in accordance with all legal requirements and Advisory Conciliation and Arbitration Service 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 the disciplinary policy will be instigated and this may result in disciplinary action.

This policy does not apply to those employed by other organisations and Honorary Staff.

2. Purpose and scope

In order to operate effectively, high standards for performance and conduct are expected from all employees. Cases of minor misconduct or unsatisfactory behaviour are usually best dealt with informally. This policy aims to ensure that where some form of formal action is needed, issues are dealt with promptly, fairly and consistently.

3. Supporting Principles

- a) Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- b) Employers and employees should act consistently.
- c) Informal action will be considered, where appropriate, to resolve problems
- d) Employees have a statutory right to be accompanied and supported by a fellow worker or trade union representative (see Appendix 2 for more information).
- e) The Investigating Officer will receive guidance and support throughout all stages of the procedure from a Human Resources professional.
- f) No formal disciplinary hearing will be set up until the case has been fully investigated by an Investigating Officer.
- g) Malicious allegations may be deemed as a disciplinary offence.

- h) The organisation will not normally take disciplinary action against a member of staff reporting clinical incidents involving patients and carers unless such allegations are later proved to be false and have been raised with Malicious intent.
- i) Except in a case of gross misconduct (defined in Appendix 1), an employee will not be dismissed for a first breach of conduct.
- j) Dismissals can only be sanctioned by an agreed Dismissing Officer.
- k) Where the facts are in dispute, no disciplinary penalty will be imposed until the case has been carefully investigated and it is concluded on the balance of probability that the employee committed the act in question.
- l) Disciplinary decisions will be recorded and monitored by the Human Resources Department to ensure that the Procedure is operated fairly and consistently.
- m) The process will be dealt with as swiftly as is reasonably possible.
- n) Confidentiality will be observed at all stages of the procedure by all parties including witnesses.
- o) Employees have the right of appeal against any formal sanction made at a formal hearing under the Disciplinary Procedure using the Appeals Policy.
- p) If there are concerns that the process has not been followed correctly or the policy breached, the employee is entitled to raise a grievance. However, should the grievance be against another issue this will not be investigated whilst the Disciplinary Investigation/Hearing is still ongoing.

4. Confidentiality

Our aim is to deal with misconduct and disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat any information communicated to them in connection with an investigation or disciplinary matter as confidential.

Employees will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them, unless the CCG believe that a witness's identity should remain confidential.

5. Suspension

On occasions it may be necessary to consider suspending an employee. Suspension should only be authorised by member of the Executive Team. This is a neutral act which does not constitute disciplinary action and which does not imply guilt. All other options such as moving a member of staff to another role on a temporary basis should be considered before taking the action of suspension. The terms of suspension should be in

writing and provided to the individual on the day of the suspension. All suspension will be without prejudice and with full pay.

In cases where a period of suspension with pay is considered necessary, this period must be as brief as possible, must be kept under review and it must be made clear that suspension is not considered a disciplinary action nor an inference of guilt.

6. How are Investigations Conducted?

Investigations will be conducted in accordance with the Guidance on Investigating Complaints and Allegations related to Employment. Managers must ensure that they refer to the Guidance on Investigating Complaints and Allegations related to Employment before conducting any investigation into allegations.

7. Rights to Accompaniment

At informal stages it is not usually necessary for employees to be accompanied. However should an individual ask to be accompanied this should not be unreasonably refused. In such cases managers should seek advice from a HR representative.

At formal stages of the procedure, employees have the right to be accompanied by their staff side representative or work colleague not acting in a legal capacity. They must be informed of their right and then choose whether or not to exercise it. It is the employee's responsibility to make arrangements to be accompanied.

Please note, in order to minimise any potential distress for all parties, we can only accept representation from staff side representatives or work colleagues and not relatives or friends who are not employed by the organisation.

Further information on the right to be accompanied can be found in Appendix A.

8. Professional Registration

Where an individual is required to have professional registration to undertake their role and fails to maintain this registration this could be considered a disciplinary act and will be considered under this policy.

Where an individual is registered under a professional body and is being managed under the disciplinary policy consideration must be given about whether it is appropriate to make a referral to the professional body. Advice should always be sought from HR where disciplinary action is being considered for someone with professional registration.

9. Criminal Charges

Where conduct is the subject of a criminal investigation, charge or conviction, there will be an investigation into the facts before deciding whether to take formal disciplinary action. It is not necessary to wait for the outcome of any prosecution before deciding what action, if any, to take. Where the employee is unable or have been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, a decision will be made based on the available evidence.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if it is considered relevant to the employee's employment.

10. Who may Sanction Disciplinary Action

Disciplinary action shall be the responsibility of authorised levels of management to whom disciplinary powers have been delegated as follows:

Level of warning	Authorised Level of Manager
Informal Meeting	Manager at Band 7 or above
First Written Warning	Head of Department or equivalent
Final Written Warning	Associate Director or equivalent
Action short of dismissal	Director or Associate Director with delegated authority
Dismissal	Director or Associate Director with delegated authority

Should a formal hearing be convened the chair of the panel must satisfy the appropriate level of management to issue the warning.

Cases of disciplinary action involving the Chief Executive or members of the Clinical Commissioning Group Governing Body will be referred to NHS England.

11. Investigation

It is important to carry out necessary investigations of potential disciplinary and misconduct matters without unreasonable delay to establish the facts of the case and this should not take longer than one month. In exceptional circumstances, or where the case involves numerous parties, the investigation process may take a longer period of time to conclude and the employee will be notified of the delay.

The investigation will be undertaken by an independent investigating officer and is likely to involve holding investigatory meetings with the employee about the alleged misconduct, gathering evidence from the employer and potentially holding investigatory meetings with the

employee's line manager and any witnesses as identified by the investigating officer.

Where an investigatory meeting is held, this must not by itself result in any disciplinary action against the employee. The investigating officer will be supported through this process by a HR professional.

Should an employee resign during an investigation, the investigation should be completed and an inquiry held in order to reach a decision based on the evidence available. This will depend on the seriousness of the issue. It may be necessary for an inquiry to consider informing the Independent Safeguarding Authority and/or other appropriate regulatory or professional bodies.

If the alleged misconduct is of a clinical or professional nature, advice will be sought from the appropriate specialist within the CCG.

12. The Informal Procedure

This is not part of the formal disciplinary procedure and this informal stage would be relevant to minor misconduct or carelessness. The objective of such discussion is to remedy and document the matters of concern. Formal disciplinary action should follow only where such problems persist or are so serious as to warrant formal action.

An Informal Conduct Meeting is designed to improve behaviour and prevent further episodes of misconduct without issuing an employee with a formal warning or causing them stress by being subject to a formal hearing.

Cases of minor misconduct are usually best dealt with informally between the employee and the line manager with the aim of providing training, guidance or advice to improve the employee's conduct and so avoid the need for formal steps. The conversation and the outcome should be confirmed in writing and the required improvements clearly documented.

If an informal resolution is not successful or appropriate, disciplinary action may need to be taken.

13. The Formal Procedure

If informal discussions have not led to the required improvement in conduct, or the CCG consider the misconduct more serious the formal procedures will begin.

Where an alleged incident of misconduct has happened, the line manager or other authorised manager will appoint an Investigatory Officer to investigate the incident further. The Investigating Officer is impartial and

conducts an investigation to establish the full facts and determine if there is a case to answer which therefore need a Disciplinary Hearing.

Following the investigation and consideration of the facts and evidence a conclusion will be made as to whether there is a disciplinary case to answer, or not. This decision will normally be made by the investigating officer. The employee must be notified of this outcome in writing.

Where it is concluded there is a case to answer, the employee shall be notified that a disciplinary hearing shall take place, be provided with a copy of the management report produced as part of the investigation and be given the right to be accompanied at the hearing. The individual should be given the opportunity to respond to the investigation report and submit a response report to the panel and management side prior to the disciplinary hearing.

Where it is concluded that there is no case to answer, the employee shall be informed of this outcome in writing, and advised that there will be no further action taken, and a hearing shall not be arranged.

No sanction can be issued without a formal hearing being convened to consider the facts of the case. A disciplinary panel can decide to issue a first written warning, a final written warning, or dismiss on the grounds of misconduct. When considering the type of sanction to issue the panel will consider:

- The information presented by management and staff side
- Any mitigation provided i.e. a very good record of conduct within the organisation
- The seriousness of the allegations
- The implications of the allegations on the organisation or individuals
- Any previous informal action to address the conduct
- The circumstances surrounding the conduct or issue presented

The panel will provide reasons for the sanction issued to the individual as part of the outcome letter.

14. The Disciplinary Hearing

Who should be on the panel for a formal disciplinary hearing?

- A Chair of the Panel who should normally be more senior than the Investigating Officer
- A Human Resources professional.
- One other senior manager of an appropriate level may also attend.
- When necessary an appropriate professional advisor should be included.

Who will present the Management Case?

The Investigating Officer will present the Management Case to the panel. Witnesses may be called in support of the Management Case. The Investigating Officer must notify the Panel and the subject of the disciplinary investigation if they wish to call any witnesses in support of their case, prior to the disciplinary hearing.

Who will present the Employees Case?

The employee who is the subject of the hearing will present the case. They may also be accompanied by a representative of a recognised trade union or a fellow worker (not acting in a legal capacity) who may present on their behalf.

Witnesses may be called in support of the employee's case. The employee must notify the Panel in advance if they wish to call any witnesses in support of their case. It is the employee's responsibility to arrange the attendance of their witnesses at the hearing.

How will the hearing be arranged?

Once the decision has been made to convene a formal hearing under the Disciplinary Procedure this must be confirmed in writing.

The letter to the member of staff should include the following information

- The date, time and venue of the meeting. [At least 10 days' notice will be given].
- The fact that this is a formal hearing under the Disciplinary Procedure.
- The nature of the allegation.
- Who will be on the Panel to hear the evidence
- Who will be presenting the Management Case (including any witnesses attending)
- The fact that the outcome of the formal hearing may be a disciplinary warning, and may [if appropriate] include dismissal.
- That they may be accompanied by a representative from a recognised Trade Union or by a fellow worker, not acting in a legal capacity.
- A copy of the Management Case [Report of the Outcome of the Investigation] will be enclosed with the letter. This will include copies of statements relating to the case.

- Ask if there any special requirements such as the need for language facilities (interpreter), etc.
- The date that their response to the allegations (their case) if they wish to submit a response must be submitted to the panel by (5 working days before the hearing).

If an employee's companion cannot attend on the proposed date, another date may be suggested within 5 working days of the original hearing date.

If the employee refuses to attend the hearing, or cannot provide a substantial reason why they are unable to attend, it must be made clear to them that the hearing will still continue in their absence and a record kept of the reasons for this non-attendance.

The employee should seek guidance on how to compile a response to the allegation (their case). This may be sought from the Trade Union Representative if they are a member or from a work colleague

The member of staff should include within their case a specific response to the allegation. This should be concise and refer to any supporting documents or statements in the appendices. Where possible, Pages should be numbered and a contents page added at the front of the pack for ease of referencing at a meeting

No new information should be provided at this stage.

Arranging information packs for the hearing:

All members of the Panel and the Management Side will receive identical packs to that already sent to the employee and their representative containing the Management Side Case and the employee's response two days before the agreed date of the Hearing. The employee should inform the Panel Chair of the names of any witnesses who they will be calling to the hearing. Likewise, the Investigating Officer should inform the Panel Chair of the names of any witnesses who they will be calling to the hearing.

No new information can be submitted after this stage or during the hearing.

What happens at a Formal Hearing under the Disciplinary Procedure? (See also flowchart in Appendix 2)

- a) The investigating manager will be asked to summarise the key points of the written statement of case and call witnesses in the presence of the member of staff and his/her representative.
- b) The members of the panel shall have the opportunity to ask questions of the manager and witnesses.

- c) The member of staff or their representative shall have the opportunity to ask questions of the manager and his/her witnesses.
- d) The manager shall have the opportunity to re-examine his or her witnesses on any matter referred to in their examination by members of the Panel, the member of staff or the member of staffs' representative.
- e) The member of staff or their representative [i.e. Trade Union representative or fellow worker] shall put his or her case and call witnesses in the presence of the manager.
- f) The members of the panel shall have the opportunity to ask questions of the member of staff and his/her representative and witnesses.
- g) The investigating manager shall have the opportunity to ask questions of the member of staff and their representative and witnesses.
- h) The member of staff or their representative shall have the opportunity to re-examine his or her witnesses on any matter referred to in their examination by members of the Panel or the organisation's representative. They will also have the opportunity to ask the investigating manager or any witnesses called by the investigating manager any questions.
- i) The manager and the member of staff or the member of staffs' representative shall have the opportunity to sum up their cases if they so wish. The member of staff or their representative shall have the right to speak last. In their summing-up, neither party may introduce any new information.
- j) The Panel may at its discretion adjourn the hearing at any point in order that either party may produce further evidence or for any other substantial reason. At this point the manager, the member of staff and the member of staff's representative shall withdraw.
- k) The Panel advised by the Human Resources Professional, shall deliberate in private only recalling both parties to clear points of uncertainty on the evidence already given. If recall is necessary, both parties shall return, even if only one of them is concerned with the point that has given rise to doubt.
- l) Witnesses will normally be asked to leave the hearing at the conclusion of their evidence and the Panel Chair will indicate whether they should remain available for the duration of the hearing in case it is necessary to recall them.

Decisions of the Panel

The decision of the Panel, and the reasons for reaching that decision, will normally be announced at the end of the Hearing following an adjournment. If, due to reasons such as the amount of information presented or time constraints, etc., the panel may decide to adjourn the

meeting to consider their decision and inform the employee of the outcome in writing. All decisions and the reasons for those decisions will be confirmed in writing within 5 working days of the decision made.

The written confirmation, which will be from the chair of the panel, should include:

- Date, time and venue of the hearing.
- Who was present
- The nature of the allegations.
- The decision of the Panel.
- The reasons for the decision.
- Reference to previous warnings if relevant.
- The implications of the decision.
- The duration of the sanction, if appropriate.
- The right of appeal under the organisation's Appeals Procedure (and enclose a copy of the Appeals Policy).

Possible Outcome

The outcome will depend on the details of the hearing and may be as follows:

No case to answer

The panel may decide there is no case to answer if they conclude that no misconduct has taken place. No further action will be taken with the employee and the matter shall be treated as closed.

No formal action

This may include for example the requirement for the individual to attend training or informal 'coaching' sessions with their manager or other identified individual.

Following the meeting, the notes of the informal meeting and improvement that needs to be made, will be placed on the employee's file for 6 months. There is no right of appeal against this informal action. If however you feel that the policy has not been followed and applied appropriately you do have the right to raise a grievance in line with the CCG Grievance Policy.

First written warning

Appropriate in cases involving offences of minor misconduct, or where attempts at coaching have failed to secure improvement.

To remain effective for 12 months from the date it is issued.

Final written warning

Appropriate where there is a current formal warning on file, or where serious misconduct is proven.

To usually remain effective for 24 months from the date it is issued. In some instances of serious misconduct or repeated offences the panel may at their discretion issue a final warning to remain active in excess of 24 months.

Dismissal

Appropriate in cases of gross misconduct, or potentially where there is a current final warning on file. A member of staff may be summarily dismissed [without notice or a payment in lieu of notice] **only** in the event of gross misconduct.

Action short of dismissal

In some cases of gross misconduct where dismissal was a clear possibility, but significant mitigating circumstances were presented to and accepted by the panel the decision of demotion and associated loss of pay to a more suitable job, if available, in conjunction with a final written warning can be taken. The level of demotion should be proportionate to the severity of the offence.

How to Appeal Against a Disciplinary Sanction or Dismissal

Members of staff have the right of appeal against a formal sanction made at a formal hearing under the Disciplinary Procedure. A copy of the Appeals Policy will be enclosed with the letter confirming the outcome of the formal hearing.

Appeals against informal outcomes are not permitted. If however you feel that the policy has not been followed and applied appropriately you do have the right to raise an appeal in line with the CCG Grievance Policy.

How are Records Kept?

In instances of a formal sanction being taken all current correspondence relating to the disciplinary action, including any letters confirming the outcome will be kept on the individual's personal file for the duration that the sanction is effective.

What Happens to Spent Warning?

Once the effective period of the warning is spent, all correspondence relating to the disciplinary action, including any letters confirming the outcome must be removed from the member of staff's personal file and destroyed.

How will Disciplinary Cases be monitored?

All outcomes will be monitored to ensure that the policy and procedure is applied fairly and equitably.

15. Training Requirements

Training and support will be available to all line managers in the implementation and application of this policy.

16. Equality Impact Assessment

All relevant persons are required to comply with this document and must demonstrate sensitivity and competence in relation to the nine protected characteristics as defined by the Equality Act 2010. The Act prohibits discrimination on the basis of age, disability, gender reassignment, marriage/civil partnership, pregnancy/maternity, race, religion/belief, sex or sexual orientation. It also means that each manager or member of staff involved in implementing the policy must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation; advance equality of opportunity between those who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not. If you, or any other groups, believe you are disadvantaged by anything contained in this document please contact the Document Lead (author) who will then actively respond to the enquiry.

17. Monitoring compliance and effectiveness

This policy will be reviewed every 3 years but can be reviewed at any time if the CCG deems it necessary to do so or a review is requested by management or staff.

18. Counter Fraud

The CCG is committed to reducing fraud in the NHS to a minimum, keeping it at that level and putting funds stolen through fraud back into patient care. Therefore, we have given consideration to fraud and corruption that may occur in this area and our responses to these acts during the development of this policy document

19. References, acknowledgements and associated documents

Grievance Policy, Appeals Policy, Bullying and Harassment Guidance on Investigating Complaints and Allegations related to Employment

20. Appendices

Appendix 1 - EXAMPLES OF MISCONDUCT OFFENCES

Gross misconduct refers to any breach of the CCG's rules which is so serious that it irrevocably destroys the relationship of trust between the company and the employee. The following is a non-exhaustive list of offences which, if proven, is likely to result in dismissal without notice:

- Violence, either threatened or actual;
- Willful breach of member practices' Code of Conduct resulting in the member practice deciding that you cannot work at that location;
- Theft or unauthorised removal or use of CCG property;
- Malicious and/or negligent damage to CCG property;
- Fraud, dishonesty, falsification of CCG records or documents;
- Unauthorised disclosure of confidential CCG and/or patient information;
- Acts of discrimination or harassment on the grounds of age, disability, gender reassignment, marriage & civil partnership, pregnancy and maternity, race including nationality and ethnicity, religion or belief, sex, sexual orientation against any other employee, client or other third party;
- Taking, consuming or knowingly being under the influence of alcohol or drugs (other than medically prescribed) whilst at work;
- Unlawful possession of, or dealing in, drugs;
- Unauthorised use or copying of Computer software, and/or network; abuse of the CCG's e-mail or internet policy;
- Gross negligence;
- Any acts of aggression or serious discourtesy or rudeness towards staff or patients;
- Flagrant or serious acts of insubordination or the refusal to carry out a reasonable instruction;
- Breach of health and safety rules;
- Failure to maintain required professional registration;
- Bringing the organisation into disrepute; or
- Accessing internet sites with offensive or obscene content, including downloading and / or distributing offensive or obscene material.

The following is a non-exhaustive list of the misconduct offences which, if proven, are likely to result in disciplinary action being taken.

- Persistent lateness;
- Refusal to carry out reasonable instruction;
- Absenteeism;
- Minor infringement of the CCG's policies and procedures;
- Willful poor performance; or
- Breach of professional conduct.

Appendix 2 – DISCIPLINARY PROCEDURE FLOWCHART

Summary of What Happens At a Formal Hearing under the Disciplinary

