
Scope

This policy applies to all employees at the Care Group and forms part of the contract of employment that applies to directly employed staff.

Definition

The standards of behaviour expected of employees are those necessary for the proper operation of the workplace, and to maintain mutual trust and confidence between the employer and employee. The Code of Conduct provides a framework for the standards of behaviour expected of employees.

Where standards of behaviour fall below what is expected, this could constitute misconduct. The Care Group takes all allegations of misconduct seriously and where necessary the disciplinary policy will be followed.

Matters that may be considered a disciplinary issue include, but are not limited to:

- persistent bad timekeeping
- unauthorised absence
- poor attendance
- failure to observe Care Group policies and procedures
- abusive behaviour [including bullying and harassment]
- unreasonable refusal to follow an instruction issued by a manager

The Formal Procedure will always be followed for allegations of gross misconduct that are acts so serious as to justify summary dismissal without notice. Examples of gross misconduct may include, but are not limited to:

- assault
- theft or dishonesty
- serious negligence
- endangering life
- gross dereliction of duty
- discrimination or serious bullying and/or harassment
- serious breach of confidence

Where an employee fails to reach or maintain the required standards of job performance through a lack of knowledge, skill or ability, the Care Group Capability Policy should be used.

The Care Group reserves the right to implement the disciplinary procedure at any of the stages set out below taking into account the relevant circumstances including the alleged misconduct of an employee.

Principles

Employees and managers should make every effort to resolve issues without recourse to the formal disciplinary procedure.

Matters should be dealt with promptly, taking into account the need for appropriate investigations to be carried out.

Employees will be informed of the allegations against them and given the opportunity to state their case before any decision is reached.

There is no presumption that a disciplinary procedure will result in a disciplinary penalty.

No disciplinary sanction will be imposed without the formal procedure being followed.

The outcome of the disciplinary is based on the hearing manager's reasonable beliefs with regard to the evidence, not what has been proved beyond reasonable doubt.

Every effort will be taken to ensure that cases are dealt with in a non-discriminatory and consistent manner.

All those involved in a disciplinary procedure are expected to respect the confidentiality and privacy of others. Where appropriate, information may be withheld or anonymised in certain circumstances, for example to protect witnesses.

At any formal meeting employees may be accompanied by an accredited trade union representative or work colleague and the employee will be advised of this prior to the meeting. The companion will be allowed to address the meeting in order to present the employee's case.

Employees must take all reasonable steps to attend formal disciplinary meetings. Failure to attend a meeting without good reason may be treated as misconduct and decisions may be made in the employee's absence.

At the start of the investigation, or because of information that becomes available during the investigation, the manager reasonably believes the matter involves a serious breach of discipline it may be appropriate to suspend the employee from work on full pay. In this case the Care Group Suspension Policy should be followed.

Medical and Dental Staff

Misconduct matters for Medical and Dental staff will be managed under the Care Group Maintaining High Professional Standards in the Modern NHS [MHPS] procedures.

Serious Untoward Incidents

Where serious untoward incidents [SUI] have disciplinary implications the fact finding investigation may be undertaken at the same time as but separate to any SUI investigation.

Informal Action

Managers should always discuss conduct issues with their staff at the earliest opportunity and where appropriate should first attempt to deal with any minor misconduct informally before using the formal procedure. This may take the form of an informal discussion.

In more serious cases where an employee commits a minor infringement of the established standards of conduct, it may be appropriate to have an advisory discussion and the manager will write to the employee after the meeting summarising the points discussed. In this case the manager will usually advise that a further breach may result in the formal procedure being instigated.

Formal Procedure

The formal procedure will be used when a manager believes that an employee may have committed a breach of conduct. This would be one of the following:

- a further minor breach of conduct that has already been subject to informal action
- a matter too serious to be dealt with by informal action
- in all cases of alleged gross misconduct

Step 1: Fact Finding Investigation

For all formal cases an appropriate manager will conduct a fact finding investigation. The employee's manager will promptly and thoroughly investigate any matter that is reasonably suspected or believed to contravene any of the Care Group policies or rules or that may otherwise be a disciplinary matter. The employee will be informed that a fact finding investigation is being carried out and when it has been concluded.

Meetings to investigate an issue are not formal meetings at which the employee has the right to be accompanied, however provided it does not result in undue delay, the employee may request that an accredited trade union representative or work place colleague be present at the meeting.

When the fact finding investigation has been completed the investigating manager will judge whether a disciplinary meeting is required, based on the information gathered. Alternatively action may be taken under the informal part of this policy, or there may be no case to answer.

Step 2: The Disciplinary Meeting

Where there are reasonable grounds to believe that an employee may have committed an act of misconduct the manager will write to the employee notifying them of the allegations against them and the basis of those allegations and invite them to a meeting to discuss the matter. In cases where the outcome may be dismissal the letter will warn the employee of this. The employee has the right to be accompanied at the meeting by an accredited trade union representative or work place colleague.

At least one week's notice of the meeting would usually be given to allow the employee sufficient time to contact and brief their companion if they have one.

If the companion will not be available at the meeting time arranged the employee can request that it is rearranged to an alternative time and date and this should not usually be more than one week after the original date.

Relevant documents and information to be discussed in the meeting will be forwarded to the employee at the same time. Where such disclosure is inappropriate, for example, in cases where managers believe there could be a risk of intimidation, documents may not be shared. In this case anonymised documents may be provided.

The employee may submit evidence to support their case and should provide this ahead of the meeting, usually at least one week ahead.

The formal disciplinary meeting is chaired by a manager with appropriate level of seniority and experience for the concerns being considered and the possible outcomes. They will be a different person from the one that conducted the fact finding investigation. Where dismissal could be an outcome of the meeting the chair must have dismissing authority. At least one other appropriate person will support the chair. This may be a special adviser with appropriate clinical knowledge if required. The *disciplinary meeting guide* describes how the meeting will usually be conducted.

Summary notes will be taken at the meeting either by a member of the panel or a note taker as appropriate. A copy of the summary notes will be sent to the employee and their representative [if appropriate] for comment. Provided comments are received within a reasonable timeframe, as defined by the hearing manager, they will be held with the original notes from the meeting.

The employee has the right to state their case at the meeting before any decisions are reached.

Following the meeting, the hearing manager will review the evidence and decide the outcome.

If the allegations are upheld the penalties that may be imposed are:

- written warning
- final written warning
- redeployment to another position, including demotion
- dismissal (with contractual notice)

- summary dismissal (without contractual notice).

A written or final written warning will be disregarded for disciplinary purposes after 12 months or such other period as specified at the time it is issued. In exceptional circumstances a warning may remain in force for more than 12 months but no more than a maximum of 24 months.

Following the meeting the hearing manager will inform the employee of their decision in writing, outlining the basis of the decision reached and any action that is involved. This will usually be sent to the employee within two weeks of the meeting.

Before a disciplinary penalty is imposed on an accredited representative of a trade union recognised by the Care Group, the disciplinary proceedings will be discussed with a full time officer of the union concerned.

Step 3: The right to Appeal

The employee has the right to appeal against the outcome of the disciplinary process. All appeals will be conducted in accordance with the Care Group Appeals Policy.

Grievance raised during a disciplinary case

If an employee raises a grievance during a disciplinary process the disciplinary may be suspended if the complaint is relevant to the disciplinary matter. The grievance should then be addressed before the disciplinary case is recommenced. Alternatively, the two issues may be dealt with jointly if this is appropriate.

Referral to other bodies

REFERRAL TO PROFESSIONAL BODY

Referral to a professional body will be made where the case warrants this and will be at the discretion of the relevant senior lead in the Care Group. The employee will be informed if a referral is made.

REFERRAL TO THE DISCLOSURE AND BARRING SERVICE

Referral to the Disclosure and Barring Service will be made where the case warrants this. Further guidance is given in the Disclosure and Barring Policy. The employee will be informed if a referral is made.