

# Disciplinary Policy and Conduct Standards

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\* By selecting that this policy has undergone a full review the approving body are providing confirmation to the Policy Register Holder and King's Executive / Board of Directors that it has been reviewed in its entirety and that the review date can be extended in line with the requirements as set out within the document.

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Version	Date	Type of Change	Summary of Changes	Author
1.3	Oct 2007	Minor	Combined the policy, procedure and rules into one document	Keith Loveridge
2.0	Dec 2012	Major	Clarity on timeline of the investigation process and how formal hearings will be scheduled. Explanation on how counter allegations will be dealt with and removal of the requirement for an independent assessor in all counter claims of bullying and/or harassment. Inclusion of the rule that staff must seek consent from their manager prior to continuing with secondary employment during periods of sickness absence	Jane Matty
2.1	March 2015	Minor	Replaced 'Behaviour' with 'Conduct'	Mark Preston

3.0	February 2017	Minor	Additional section clarifying definitions of Minor and Serious Misconduct. Clarification of arrangements surrounding suspension. New section on criminal investigations. Change from informal warning to conversation of concern.	Jen Wallbank
4.0	August 2020	Periodic review and Minor changes	Clarification level of seniority able to make the decision to suspend or to be dismissed. Removal of guidance related to new staff. Increase from 7 days to 14 days to appeal.	John Wall
4.1	July 2021	Major changes	Information regarding fact-finding exercise, removal of informal warning, suspensions reviewed every two weeks, disabled staff can be accompanied by support workers or someone who has knowledge of the disability and its effects, composition of disciplinary hearing panel when the case may result in dismissal, disciplinary sanctions and appeal panel composition for appeals against dismissal	John Wall

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<b>Equality Impact Assessment :</b>	Yes
<b>Ratification Sheet*:</b>	Yes

\*Ratification sheet stored centrally by the Policy Register Holder and not included as an appendix to this policy.

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## **Foreword by Professor Clive Kay**

You may be aware that there was a deeply tragic event that occurred a few years ago involving a staff member at a London NHS Trust. This event reinforced the urgent need to improve the disciplinary procedures across the NHS. Following a review by Baroness Dido Harding, a number of recommendations were made. As a result we have made considerable changes to how we manage our disciplinary process and procedures at King's.

As part of our commitment to developing a Just and Learning Culture, our Disciplinary Policy and Conduct Standards has been revised. They now demonstrate our commitment to resolving issues informally and at the earliest opportunity, with the correct support and leadership.

Any allegations of misconduct are subject to a rigorous senior decision-making process to fully understand the concerns and mitigation, before any formal action is progressed. Where it is deemed appropriate to investigate an incident we have a team of specialist Employee Relations Investigators, who can carry out complex investigations to ensure that they are completed in a timely manner.

We also recognise the impact that formal procedures have on the health and wellbeing of our staff. For this reason we have introduced an Early Resolution and Pastoral Support Lead who will offer dedicated support to individuals involved in employee relations processes and will signpost them to the relevant support available.

At all stages of the process we must ask ourselves if our actions are reasonable and proportionate, and consider if informal management would achieve a more productive and positive outcome.

I am pleased to say that we have made significant progress in this area, however there is still more to do. We will continue to review, reflect and challenge ourselves to ensure everyone is treated fairly and we will continue to develop a culture where there is openness, transparency and learning from all cases.

**Clive Kay**  
**Chief Executive**  
**King's College Hospital NHS Foundation Trust**

## 1. INTRODUCTION

The Trust requires high standards of conduct from all members of staff and is committed to giving staff the opportunity to improve and learn from mistakes where necessary.

The Trust recognises the potential impact that disciplinary procedures can have on the health and wellbeing of staff and will ensure that the correct support is put in place at an early stage.

This policy is intended to ensure that a fair, systematic and uniform approach is taken when conduct falls short of the required standard in accordance with the principles of Just Culture. Just Culture encourages a culture of fairness, openness and learning where staff feel confident to speak up when things go wrong rather than fearing blame.

Managers will always attempt to resolve minor matters of concern through an improvement conversation and by offering any other support required. If informal approaches do not remedy poor conduct or if misconduct is sufficiently serious, the formal stages of the disciplinary procedure will apply.

## 2. DEFINITIONS

All terms are explained appropriately within the Policy.

## 3. PURPOSE AND SCOPE

The Trust's Disciplinary Policy and Conduct Standards aims to help and encourage staff to achieve and maintain the required standards of conduct. The Procedure applies to all staff employed by King's College Hospital NHS Foundation Trust, including Medical and Dental staff.

This Procedure does not cover situations in which performance in a job or a programme of training is unsatisfactory because of the knowledge and skills of a member of staff. These situations are dealt with under the Capability Policy for general staff and the Maintaining High Professional Standards Policy for Medical and Dental staff.

## 4. DUTIES (PRINCIPLES)

All staff are required to make themselves aware of and adhere to the King's disciplinary rules and conduct standards, as outlined in **Appendix 1**. Staff are also required to raise with their manager any concerns they may have about their ability to meet these standards.

Managers have a responsibility for ensuring that members of staff are aware of the conduct standards. Managers will ensure that any concerns about conduct are brought to the attention of staff at the earliest opportunity and resolved informally where appropriate and if possible.

Managers will ensure that all action taken in line with this policy and procedure is reasonable. Staff will be given the opportunity to know the reasons and the nature of evidence for any potential disciplinary action. Staff will be given the opportunity to be represented at all formal stages of the procedure. Staff will have the opportunity to respond fully to allegations before disciplinary action is taken. Managers will ensure that the main points of a formal meeting are summarised in an outcome letter. Staff have the right to appeal against any formal disciplinary action. With the exception of offences, which constitute gross misconduct, employees will not normally be dismissed for a first offence.

If an employee is charged or convicted for a criminal offence, whether committed on or off duty, the Trust will consider whether the offence renders the employee unsuitable for continued employment and may dismiss the employee following a full investigation and properly constituted disciplinary hearing.

The Trust reserves the right to take action independently of any legal proceedings.

Dismissal due to professional misconduct will be reported to the employee's professional body as appropriate.

## **5. ROLES AND RESPONSIBILITIES**

### **Line Manager**

- It is a fundamental responsibility of managers to take appropriate action to address conduct issues using the Trust Disciplinary Policy and Conduct Standards. This will be taken following a thorough investigation and consideration of the facts and any mitigating circumstances presented by both management and employee. Managers should always attempt to resolve matters immediately and informally in the first instance in line with the principles of Just Culture, reserving formal action for serious cases and/or where an informal approach has been tried and failed.
- Support staff subject to disciplinary proceedings to ensure that the appropriate support is put in place.
- Adopt a person-centered approach to managing staff.
- Consult with the Employee Relations team before taking formal action, including suspension.
- Allow accredited trade union representatives to attend formal meetings and disciplinary hearings in accordance with the Trust's Partnership Agreement.
- The line manager may be the Investigating Officer or the Commissioning Manager. Where there is a possible conflict of interest, for instance, the line manager is a witness to the incident then they may ask another senior manager to commission the investigation (Commissioning Manager) or to be the Investigating Officer.

### **Investigating Officer**

- The Investigating Officer is responsible for undertaking the fact-finding as appointed by the Commissioning Manager who will be a Senior Manager (generally Band 8A or above).
- Scoping their investigation and identifying the appropriate witnesses guided by the Terms of Reference set by the Commissioning Manager.
- The Investigating Officer will determine relevant witnesses to interview as part of the investigation and collate the relevant evidence
- It is incumbent upon the Investigating Officer to write up the report and findings and submit to the Commissioning Manager.
- Should the matter be referred to a disciplinary hearing, the Investigating Officer will present the findings.
- The Investigating Officer should not make recommendations regarding a potential sanction but confine themselves to establishing the facts.
- The Investigating Officer may be an appropriately trained and experienced line manager or senior doctor, a specialist Employee Relations (ER) Investigator from the ER team or if required, a suitable external investigator.
- The Investigating Officer must declare any conflicts of interest.



## **Commissioning Manager**

- Is responsible for appointing an Investigating Officer following an initial assessment.
- Providing the Investigating Officer with clear Terms of Reference to guide the investigation.
- Complete the pre-investigation checklist to examine and record consideration of other options, such as informal resolution.
- Review the investigation report received from the Investigating Officer and decide whether or not the case should be considered at a formal disciplinary hearing.
- Chair the disciplinary hearing and consider the case in accordance with this procedure and ensure that any decision taken is fair and reasonable.
- The Commissioning Manager must declare any conflicts of interest.

## **The Employee**

- Employees have a responsibility to ensure they abide by the Trust standards of conduct and behaviour at all times.
- Employees must be available to attend investigation meetings, provide statements/evidence in a timely manner and nominate witnesses if appropriate.
- To attend the disciplinary hearing, provide answers to questions and arrange a companion.

## **Trade Union Representative**

- To accompany the employee at the disciplinary hearing when required.
- Cannot act in any legal capacity.
- May respond to any views expressed at the disciplinary hearing.
- May confer with the employee.
- May question witnesses if required.
- Cannot answer questions on the employees' behalf
- May address the hearing in accordance with the wishes of the employee.
- Cannot prevent the management/Investigating Officer from explaining their case.

## **ER Team**

- Ensure that this policy and process are correctly followed.
- Advise staff, managers and trade union representatives on the application of this policy and relevant procedures.
- Advise on Employment Law, ACAS code, best practice, relevant policies and procedures and professional codes of conduct (where appropriate).
- Promote and encourage informal resolution where appropriate
- Accompany, advise and assist managers at formal meetings and hearings.
- Will ensure that written notes are taken at formal meetings and hearings. (**See Management Guidance**)

## **6. SUPPORT TO STAFF**

The Investigating Officer is responsible for agreeing a communication plan with a member of staff who is suspended or subject to a formal investigation. The communication plan ensures that staff are contacted on a regular basis to keep them updated on the progress of any investigation and to check on their health and wellbeing.

Staff who are suspended and/or subject to investigation must be referred to the Occupational Health department by their line manager for support regarding health and wellbeing and advice regarding reasonable adjustments if applicable.

All staff should be made aware of the support available to them to ensure that they feel safe to speak up throughout the process such as trade union support, Freedom to Speak Up Guardian, Occupational Health, Early Resolution and Pastoral Support Lead, the Occupational Health department and the Employee Assistance Programme.

## **7. INFORMAL PROCEDURE**

### **7.1 Fact-Finding Exercise**

The line manager will carry out a fact-finding exercise in line with Just Culture to review the whole event and make a decision regarding the next steps. The fact-finding exercise will aim to establish dates and time of the incident, individuals involved in the event and witnesses. The line manager will also gather any other relevant information such as patient's notes, rotas, emails, file notes, policies, etc.

A fact-finding exercise is not part of a formal process and should start with a conversation with the individuals involved in the event. Statements should be obtained including witnesses if appropriate. Managers should consider all the information and any mitigation or contributing factor before deciding on next steps.

**(See Management Guidance)**

### **7.2 Improvement Conversations**

In cases where minor misconduct is established for the first time, the line manager will meet with the employee in private to discuss the unsatisfactory conduct at the earliest opportunity. The manager will hear any reasons or mitigation put forward, and will advise the employee of the expected standards of conduct and, where appropriate, assistance will be offered to help the employee achieve those standards and the timescale for them to be met. If necessary, further training, counselling, coaching, mentoring, supervised practice, team facilitation and mediation will be agreed with the staff member, which will be followed up by the line manager.

The employee will also be informed that if there is a repeated act of minor misconduct, further action will be considered i.e. formal disciplinary procedure being invoked.

The details of the Improvement Conversation will be confirmed to the employee in writing who will be entitled to register their response. A copy of the details of the Improvement Conversation will be placed on their personal file. **(See Management Guidance)**

## **8. FORMAL PROCEDURE**

### **8.1 Formal Investigation**

A fact-finding exercise will be carried out before formal disciplinary action is taken. Please refer to section 6.1 for further guidance.

The Commissioning Manager will complete the pre-investigation checklist to examine and record consideration of other options, such as informal resolution.

In the event that the Commissioning Manager considers that a formal investigation is the way forward, this case will be discussed at the Triage panel, which is chaired by the Head of Employee Relations. If the Head of Employee Relations considers that the case meets the criteria for a formal investigation, the Senior Oversight Group who is attended by the Chief People Officer, Director of Equality, Diversity and Inclusion, Associate Director of Workforce and Head of Employee Relations will ratify the final decision to progress the case to a formal investigation.

Clear terms of reference should be given to the Investigating Officer by the Commissioning Manager, which will outline what allegations are to be investigated and the timeframe to conclude the investigation.

As part of the investigation, it will usually be necessary for the Investigating Officer to meet with the employee to establish their version of events. Where this is not possible then the employee under investigation may be permitted to give their explanation by other means.

The staff member has the right to be accompanied by an accredited Trade Union representative or a workplace colleague employed by the Trust. In addition, a disabled staff member may also be accompanied by a suitably qualified individual such as a support worker or someone with knowledge of the disability and its effects who can advocate on their behalf.

Investigations should be completed as quickly as possible and not delayed without good reason. If an Investigating Officer is unable to obtain relevant information in a reasonable timeframe, consideration may be given to concluding an investigation based on the information available. The Investigating Officer must be mindful of the need for a fair and balanced investigation and give the employee every reasonable opportunity to give their explanation and views. The Investigating Officer should keep staff informed of the progress of an investigation on a regular basis. It is noted that Trust CCTV and other evidence will be utilised where there is a specific and legitimate aim relating to the disciplinary investigation and allegations.

Investigations by the Counter Fraud Team, Police or other agencies are in addition to and separate from investigations under this Procedure. The Trust will only delay proceeding with or concluding disciplinary investigations because of other investigations if proceeding would jeopardise or hinder the outcome of the other investigation. The decision to proceed should be made following consultation with other agencies, but will always be made in the best interests of the Trust.

## **8.2 Agreed Outcomes**

Where the staff member has admitted and accepted the allegations against them, the manager in consultation with the Employee Relations team will consider whether it is appropriate to conclude the matter without the need for a formal investigation and disciplinary hearing by agreeing an outcome with the staff member. It is open to either party, without prejudice, to suggest an agreed outcome at any stage of the disciplinary process.

This approach is only considered where the alleged conduct is likely to result in a formal warning and therefore, it excludes cases where the potential outcome is summary dismissal or dismissal with notice. If the staff member consents to an agreed outcome, a meeting will be held with the relevant Manager supported by a member of the Employee Relations team, the employee and their representative. The agreed outcome will be confirmed in writing within 7 days by the Manager.

Any disciplinary sanction issued in this way has the same status as one issued after a disciplinary hearing. There is no right of appeal or of grievance against this decision once it has been agreed at the meeting with the Commissioning Manager.

## **8.3 Criminal Matters (Inside or outside the Trust)**

In cases where criminal activity is suspected for example theft, assault, etc. consideration needs to be given to informing the Police, Security Team, Counter Fraud Service or Health and Safety Executive in the first instance as well as seeking legal advice in order that a proper investigation can be conducted. The Employee Relations team should be contacted at the earliest opportunity.

Where an employee is arrested, subjected to a criminal investigation, is charged, or has received a caution / sentence for a criminal offence inside or outside of work, it is the employee's responsibility to inform their manager of the circumstances. Failure to do so could result in a disciplinary action up to and including dismissal.

Where the misconduct is the subject of a criminal investigation or legal process internally or externally, the Trust has the discretion to proceed with its own internal investigation and disciplinary in accordance with this procedure, without awaiting the outcome of any criminal investigation or prosecution. However, consent should be sought from the investigating team/Police in order not to prejudice any criminal investigation/prosecution.

A criminal offence outside employment will not automatically be regarded as a reason for disciplinary action or dismissal. The main consideration will be whether the conviction has clear implications for the performance of the employee's duties i.e. imprisonment, driving ban where driving is a requirement of the role, etc. or is such that it damages the reputation of the Trust.

If this is the case, disciplinary action up to and including dismissal may be taken.

If it is decided that the offence could affect the performance of the individual or bring the Trust into disrepute, then a formal investigation may need to commence.

Where matters of a potentially criminal nature emerge in the course of an investigation then reference may need to be made to the Police, Security Team, Counter Fraud or Health and Safety Executives as appropriate and legal advice should be sought through the Employee Relations Team.

Where someone is unable to attend work due to being detained by the authorities, the Trust may continue with the process in the employee's absence. If an employee is unable to attend meetings and /or hearings, then they may send a representative on their behalf and or provide a written statement.

#### **8.4 Conduct issues that occur outside the workplace**

There may be occasions where misconduct occurs outside the workplace, for instance on social occasions, in public places, in the home and / or on social media etc. In these cases, if the misconduct affects or could affect colleagues, patients, the reputation of the Trust then this policy and the potential sanctions within will apply.

**(See Management Guidance)**

### **9. SUSPENSION/EXCLUSION**

Suspension is a last resort and should only be considered in cases of alleged serious misconduct where there is

EITHER a need to protect patients, staff or the business interests of the Trust pending a full investigation of allegations of gross misconduct

OR the presence of the member of staff in the workplace is likely to hinder an investigation

AND there is no workable alternative to suspension

Suspension will be for the minimum time necessary and will only be used after alternative ways of managing risk have been considered. All suspensions will be reviewed every two weeks.

Suspension is a neutral act and is not a form of disciplinary action, but breaches of any conditions attached to suspension may lead to disciplinary action.

Prior to suspension, approval must be sought from the Employee Relations Team and all suspensions must be notified to the Head of Employee Relations. Where suspensions have to be undertaken out of hours, they should be notified at the earliest possible opportunity by the relevant Senior Manager on site/on call. Suspension is a last resort and the decision to suspend, following consultation with the Employee Relations Team, should be made by the appropriate senior manager (usually Band 8B plus unless in exceptional circumstances, where explicit delegated authority is given to a more junior manager).

If an investigation relates to an allegation of fraud, the Trust's local Counter Fraud specialist will be informed and will investigate as required.

Suspension is on full pay i.e. the pay staff member would have received if they had been at work.

However, if the suspension is because of lapsed professional registration, ineligibility to work due to visa expiry/restrictions, statutory bar, for instance a Trust driver losing their driving license or an ongoing criminal investigation/where criminal charges have been brought etc. then the suspension will be unpaid. People on zero hours/registered on the bank will receive no pay during suspension.

During the suspension period, the employee will not be entitled to enter any Trust premises other than:

- For the treatment of themselves or their family, including attending Occupational Health appointments.
- At the request of the Investigating Officer or line manager to attend a meeting.
- To meet with their Trade Union representative by prior agreement.

Should the employee wish to meet with their Trade Union representative then this should be arranged by prior appointment. Whilst on site the employee must not make any attempt to contact their place of work or approach anyone involved, or likely to be involved in the case in accordance with the conditions attached to the suspension.

It will be a condition of the suspension that an employee does not undertake any new or related employment (including agency or bank) elsewhere and that any change of address / personal circumstances (such as leaving the country) is notified to their Manager. No work should be undertaken through King's Bank Partners whilst an employee is suspended.

The employee must be available for meetings related to the investigation during their normal working hours within reason. During suspension pre-booked annual leave will be honoured. If the employee wishes to take annual leave during the suspension period, this must be requested as per the Trust's annual leave procedure.

The suspending manager must write to the employee following suspension to state the allegation(s), reasons for suspension, confirmation of who commissioned the investigation, the name of the Investigating Officer that will contact the individual and include the terms of reference for the investigation. Management should maintain regular contact with the employee as a supportive measure for the duration of the suspension. The method and regularity of this contact should be the most appropriate for each individual and should always be a support to the employee. It is recommended that contact is made if possible on a fortnightly basis.

If a decision is reached at any point that the suspension should be lifted and the employee allowed to return to work, then this should be confirmed in writing to the employee as soon as possible, noting any specific arrangements in relation to the return to work.

A discussion should take place between the line manager and employee to discuss their return to work, before the letter is sent.

For Medical & Dental Staff refer to the Maintaining High Professional Standards (MHPS) policy for Medical and Dental Staff. **(See Management Guidance)**

## 10. FORMAL PROCEDURE FOR DISCIPLINARY HEARINGS

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

Reasonable notice (normally 7 calendar days) must be given of the arrangements for the hearing, including who will be present at the hearing. The Chair of the disciplinary hearing will provide the employee in advance with written details of the allegation(s) and any witness statements or supporting documentation that will be referred to at the hearing. The employee must take all reasonable steps to attend the hearing, but if this is not possible, they may submit a written statement or ask a representative to attend on their behalf. If the employee has an exceptionally strong reason that prevents them from attending the disciplinary hearing, then they should ask (in email or writing) the Chair of the disciplinary hearing if they would be prepared to reschedule the hearing. However, the decision on when the hearing should be held rests with solely the Chair. If an employee fails to attend a scheduled hearing without prior notification, a decision may be taken for the hearing to proceed in the employee's absence.

The staff member has the right to be accompanied by an accredited Trade Union representative or a workplace colleague employed by the Trust. In addition, a disabled staff member may also be accompanied by a suitably qualified individual such as a support worker or someone with knowledge of the disability and its effects who can advocate on their behalf. Where action is proposed involving an accredited Trade Union representative, the appropriate full time officer will be contacted before action is invoked. It is the responsibility of the employee to arrange representation.

The representative's role can include addressing the hearing on the employee's behalf, putting forward the employee's case and summing up, responding on behalf of the employee to any views expressed at the meeting and to confer with the employee. Representatives cannot answer questions on the employee's behalf.

Cases that may result in dismissal will be heard by a Chair who will be banded at band 8C or above supported by an additional panel member who can be an independent/specialist adviser. The panel will be advised by an Employee Relations representative.

The panel members will have no previous involvement in the case or any conflict of interest that could influence decision-making and will be diverse in representation. Panels must be diverse in representation and cater for factors such as BAME status, disability status. Panel members will be selected to achieve this, and where appropriate additional panel members will be recruited

At the meeting, the Chair will state the nature of the allegations and outline the case by going through the available evidence. The employee will be given full opportunity to respond to the allegations. Whilst the employee has to respond directly to any questions, the employee's representative has the right to outline the employee's case and ask questions on the employee's behalf. In considering the sanction, the Chair will take account of the employee's previous record and other relevant factors.

Witnesses will be called in person only if they have a significant contribution to make to the case. It is the decision of the Chair if witnesses are required. Where it is impossible for a significant witness to be present on the day of the meeting, then the Chair, the ER Advisor and the Trade Union representative may arrange to meet with the individual in advance, and a note of that preliminary meeting will be included in the case papers. **(See Management Guidance)**

The outcome of the hearing will be confirmed in writing within 7 calendar days. If disciplinary action is to be taken the letter will include details of the complaint, the improvement required (if appropriate), the timescale for this to be achieved and the right to appeal. It will also state that further disciplinary action may be taken if there are any further allegations of misconduct.

If the employee is professionally registered, the Chair of the Hearing will consider if the situation is such that a referral to the staff member's professional body is required. If they agree that a referral is to be made, the staff member should be advised of this.

**(See Management Guidance)**

### **10.1 Counter-Allegations during a Disciplinary Process**

If an employee makes a counter-allegation that is relevant to a disciplinary proceeding, these allegations may be considered as part of the disciplinary process and not separately under another procedure. If appropriate, it may be necessary to consider the counter allegations as part of mitigation submissions during the disciplinary hearing.

## **11. FORMAL DISCIPLINARY SANCTIONS**

The severity of the breach of conduct will determine the level of disciplinary action to be taken and Formal Disciplinary Sanctions may accordingly be entered at any stage.

It is noted that any previous formal disciplinary warnings can be considered as part of the employee's overall disciplinary record and any that are "live" at the time of the offence may be taken into consideration when considering the level of sanction required.

### **Stage 1 –Formal First Written Warning**

If the employee fails to meet the required standards following informal action or if the offence is sufficiently serious to warrant moving straight to the formal stages, a **Formal First Written Warning** may be given. Formal First Written Warnings are confirmed in writing and apply for a period of six months after which time they lapse.

### **Stage 2 –Formal Final Written Warning**

If the failure to meet required standards continues or if the offence is one of sufficiently serious (but not gross) misconduct, a **Formal Final Written Warning** may be given. Formal Final Written Warnings are confirmed in writing and apply for a period of twelve months after which time they lapse.

**Note:** *In exceptional circumstances, the duration of a Formal Final Written Warnings may be for twenty-four months where the Warning is an alternative to dismissal.*

### **Withholding Pay Steps**

Staff who have been issued with a **Formal First or Final Written Warning** will have their pay step withheld for the period the warning is active.

The line manager will arrange a meeting before the expiry date of the warning and if the conduct expectations have been met, the member of staff will progress to the next pay step from the date after the warning expires.



### **Stage 3 - Dismissal**

If the conduct or performance remains unsatisfactory or if the offence constitutes gross misconduct, dismissal will normally result. The Chair of the disciplinary hearing (who will be a Band 8C or above) has the authority to dismiss. Dismissal will be with pay in lieu of notice. However, cases of gross misconduct will result in summary dismissal without notice.

#### **Alternative and / or additional action**

The Chair also has the discretion to impose other sanctions short of and as an alternative and / or addition to a formal warning or dismissal, for instance demotion, redeployment, etc.

**(See Management Guidance)**

## **12. APPEALS**

Employees have the right to appeal against formal disciplinary action to a level of management not previously involved in the initial disciplinary decision. Appeals will be heard under the Appeals Procedure.

Appeals will be heard by two suitably experienced and trained senior managers who had not had any previous involvement in the case or any conflict of interest that could influence their decision making. For dismissals, the Chair of the Appeal hearing will be a Band 8D or above and will be more senior than the Chair of the Disciplinary hearing. A different Employee Relations representative will be present to support the panel. The panel will be diverse in representation.

For other appeals against formal warnings, the Chair will be a member of the Care Group Triumvirate (Senior Leadership Team).

The appeal must be lodged in writing/email to the line manager of the Commissioning Manager/Chair of the disciplinary hearing within 14 days of the date of the letter confirming the outcome of the disciplinary formal action, stating the grounds on which they are appealing.

**(See Management Guidance)**

## **13. IMPLEMENTATION AND TRAINING**

The Trust will ensure that managers with responsibility for disciplining staff are appropriately trained. King's makes the following training provisions:

- New staff are made aware of the disciplinary procedure and rules (**Appendix 1**).
- Training in the management of misconduct and the application of this procedure for new and existing managers, with a particular focus on the need for informal resolution where appropriate.
- Training on Equality and Diversity and its relevance to disciplinary matters

## 14. MONITORING COMPLIANCE

Measurable Policy Objectives	Monitoring / Audit Method	Frequency	Responsibility of Monitoring	Responsible Committee
To assist Managers in dealing with conduct issues and ensure consistency of	Employee Relations tracker	Annual report	Head of Employee Relations	EWDC

Managers will ensure that the disciplinary procedure is applied fairly and consistently in line with the Trust's Equal Opportunities Policy. The application of the formal procedure by ethnicity, gender, disability, sexual orientation and age is monitored by the Workforce Directorate. Factors such as directorate, occupational group and length of service are also monitored. Reports on the application of the procedure are discussed at the Joint Consultation Committee, management team meetings and at meetings within the Trust's Equality and Diversity governance structure and action taken accordingly.

## 15. ASSOCIATED DOCUMENTS

- Appeals Policy
- Capability Policy
- Early Resolution Policy
- Equal Opportunities Policy
- Induction Policy
- Professional Registration Policy and Guidance
- Sickness Absence Policy
- Suspension Policy
- The King's Values and My Promise

## Appendix 1 – Trust values

Making King's a positive and caring place according to our Trust values is the responsibility of all of us.

### **KIND**

#### **I will:**

- care for people's dignity and privacy
- treat everyone as a valued individual
- be considerate
- take the time to understand others' concerns, with empathy, putting myself in their shoes
- bring an optimistic, 'can do' attitude
- value others
- say thanks and smile if appropriate

#### **I won't:**

- be rude, uncivil, abrupt or aggressive
- undermine others, bully, belittle or shout
- fail to consider other people's perspectives
- be dismissive of others' feelings, stories or journeys
- be problem-focused
- moan without acting
- ignore others' good work or 'take the credit'

### **RESPECTFUL**

#### **I will:**

- ensure equity for everyone
- embrace diversity and difference
- be impartial and open-minded
- be approachable, welcoming, connecting and encouraging
- involve people in trusted relationships
- speak up when I need to, and be open to receiving feedback as a chance to learn

#### **I won't:**

- judge, discriminate, make assumptions or be intolerant of others' views, choices or differences
- exclude, isolate or blame people
- 'go it alone' or work in a silo
- gossip
- withhold information
- criticise mistakes
- stay silent when I need to speak up
- be closed to feedback

### **TEAM**

#### **I will:**

- be attentive, noticing when others need help and be willing to offer it
- be friendly and helpful
- communicate openly, explain clearly, share information regularly and listen with curiosity
- be responsible for my attitude: calm, polite, patient, reassuring and look to learn and improve

#### **I won't:**

- avoid helping if someone needs it
- make people feel 'a burden'
- take a 'not my job' attitude
- dictate, interrupt or lecture people
- argue rather than discuss
- use jargon
- talk over people
- accept low standards
- resist change, learning or improvement
- pass my stress on to others

## 1. General Rules and Conduct Standards

The following gives an indication (but not an exhaustive list) of the circumstances that could lead to disciplinary action. In addition, many departments have specific rules relating to the activities of that department, which failing to adhere to may also result in disciplinary action being taken. While a first breach of the following general standards of performance and conduct would not normally result in dismissal, continued breaches, after warnings and opportunities to improve, could cumulatively do so.

1. Employees are expected to combine prompt and efficient service with a concern and respect for the feelings of others, including patients, visitors and colleagues, whatever their background. As a minimum all staff are expected to:
  - Treat everyone with respect and dignity
  - Maintain privacy and confidentiality at all times
  - Introduce themselves to staff and other visitors by name and role
  - Avoid using first names of patients and other visitors without permission
  - Wear an identification badge that is visible to the public
  - Greet everyone in a friendly manner
  - Smile and speak clearly
  - Avoid using offensive or threatening language
  - Help members of the public who appear to be lost
  - Offer to assist an enquiry in a polite and helpful manner
  - Apologise and explain if someone has been kept waiting
  - Use English as their first language and only use other languages unless explicitly asked. Staff should not converse / communicate with each other in languages other than English unless they are on a designated break **and** are not in an area with patients
2. Employees are expected to attend for duty for the hours laid down in their Contracts of Employment or as agreed with management. The distance of an employee's home from work or any difficulty of access / travel problems cannot be accepted as a reason for irregularity of attendance.
3. Employees are expected to present themselves for work unless they have prior permission to be absent. In cases of sickness or sudden domestic emergency, the responsibility lies with the employee to inform their manager, as soon as possible and no later than the start of their shift, in accordance with departmental notification rules.
4. Any staff undertaking other employment outside their contractual hours (including stand-by duty and secondary employment) must ensure that this in no way hinders or conflicts with the interests of their employment with the Trust or their duty to abide by their professional code of conduct (as appropriate) or has any adverse effect upon their performance of their duties. Employees should inform their managers of employment outside working hours in order to prevent a possible conflict of interest.
5. During sickness absence, employees are expected to keep management informed of their progress and likely date of returning to work. Sickness certificates must be submitted in line with requirements laid out in the Trust's Sickness Procedure.

6. Employees should carry out the reasonable instructions of their managers.
7. Employees are expected to comply with all health and safety requirements.
8. Employees are expected to keep the hospital clean and tidy and treat the facilities with respect.
9. Employees should at all times undertake their work in accordance with Trust and departmental policies and procedures and, where appropriate, their professional codes of conduct.
10. Employees are under an obligation to inform their managers of any police arrest, investigation, charge or conviction, relating to acts committed on or off duty, at the earliest possible opportunity. Where appropriate staff should also report convictions to their professional body.
11. Staff are banned from smoking anywhere on Trust property and any on other NHS facility. Staff are prohibited from smoking anywhere if they are in uniform.

### **3. Examples of Misconduct**

Examples of the types of misconduct which may be considered as minor, serious and gross misconduct are detailed below. This list is neither exhaustive nor prescriptive and therefore does not include all types of misconduct and should only be used as a guide. It will be for the Chair of the disciplinary hearing to determine the findings based on the evidence. In all cases, the severity of the breach of conduct will determine the stage at which the disciplinary procedure is entered and the level of disciplinary action taken.

#### **Examples of Minor Misconduct**

- Failure to comply with a reasonable order
- Late attendance and/or inappropriate timekeeping
- Failure to provide a doctor's sick certificate, which may be an electronic certificate.
- Examples set out above in Section 2

## **Examples of Serious Misconduct**

- Adversarial relationships with colleague that prevents the employee or their colleague(s) from carrying out their duties satisfactorily
- Breach of confidentiality
- Ill treatment/abuse of colleague/patients
- Inappropriate use of the Trust internet, email or social networking sites
- Unauthorised and/or inappropriate use of computers and/or software, including the use of personal software on the Trust's systems. When an employee recklessly or without reasonable cause acts in a manner that damages or is likely to damage the reputation of the Trust
- Use of foul language
- Failure to comply with health and safety requirement
- Failure to comply with mandatory Trust procedures
- Failure of managers and/or individuals to ensure statutory and mandatory training is completed unless there are exceptional circumstances
- Making malicious, vindictive or deliberately untrue statements against colleagues, another employee or patients
- Absence without proper cause and unauthorised absence including leaving work early or without permission
- Loss, damage to or misuse of Trust equipment, facilities and/or property, assets or funds through negligence or carelessness
- Failure to comply with Trust information governance protocols, leading to the risk of a breach of data security

## Examples of Gross Misconduct

The following offences are among those regarded as serious enough to warrant summary dismissal, without any prior warnings, as constituting gross misconduct. (The list is not exhaustive). Summary dismissal will result in no pay in lieu of notice,

- **Theft** - any instances of theft or attempted theft from the Trust or from patients, visitors or staff. This includes unauthorised personal use of Trust property on the premises.
- **Fraud** - this includes any deliberate falsification of records or documents, such as the misrepresentation of entitlement to expenses or allowances, the falsification of time sheets. It also includes false declarations made during the recruitment process.
- **Corruption** - the receipt of money, goods, favours or excessive hospitality in respect of services rendered (for example, from contractors in anticipation or recognition of receiving orders for goods), or failure to follow the Conflicts of Interest Policy.
- **Assault** - any assault (verbal or physical) upon a patient, member of the public or fellow employee, including cases of serious harassment and bullying.

### Discrimination

- **Negligence** - any action or failure to act which could result in serious loss, damage or injury. Includes failure to give appropriate care and protection to patients.
- **Reckless Conduct** - an act of recklessness or incompetence sufficiently severe to break down trust and confidence in the employee's ability to undertake their job.
- **Deliberate damage** - to health service property or equipment, or the property of patients, visitors or staff.
- **Being unfit for duty** - through the effects of drink or drugs subject to the provisions of the Trust Policy on the Use of Drugs and Alcohol, or by being asleep on duty (unless authorised to be so e.g. on standby duty).
- **Willful failure or flagrant refusal to carry out reasonable instructions or rules** - where the employee fails to give a satisfactory reason for such a refusal.
- **Abuse or misuse of health service property** - including the unauthorised use / theft or incorrect disposal of drugs or anaesthetic gases.
- **Working in a role without the legal authority to do so** - where an employee through their own action or inaction loses their statutory right to perform the duties for which they are employed. For example, loss of professional registration, no right to work in UK / visa restrictions, loss of statutory required qualifications such as a driving license (for a driver) etc.

## Examples of Gross Misconduct continued

- **Breach of confidentiality** - disclosure of confidential patient or staff information to unauthorised persons.
- **Serious infringement of health and safety rules**
- **Failure to observe corporate compliance** - this includes failing to follow standing orders and Standing Financial Instructions, or failing to act impartially or to declare an interest in a contract or business in which the Trust is engaged or considering. This relates to situations which may be influenced by social or business relationships, where the employee's public or private interests may be furthered or the Trust's decisions, policies or business interests may be affected.
- **Failure to report serious concerns** - e.g. concerns about the mistreatment or abuse of patients or staff.
- **Bringing King's into disrepute** – this rule may be breached when an employee intentionally or recklessly acts in a manner which damages or is likely to damage the reputation of the Trust, for example through unauthorised disclosure to third parties (subject to the provisions of the Trust Policy on Raising Concerns) or through conduct incompatible with role or profession and / or is charged / convicted of a criminal offence. Staff should be extremely careful in their use of social media and ensure that their opinions on social media do not link to their position at King's and they must not allow their opinions to bring the organization into disrepute
- **Scientific Misconduct** - fabrication, falsification, plagiarism or deception in proposing, carrying out or reporting results of research or deliberate, dangerous or negligent deviations from accepted practices in carrying out research.
- **Breach of Trust** - this rule may be breached when an employee acts in such a way to fundamentally damage the relationship of trust and confidence between the employee and King's.



Appendix 2: Equality Impact Assessment

1. EQUALITY IMPACT ASSESSMENT FORM – INITIAL SCREENING

Service/Function/Policy	Directorate / Department	Assessor(s)	New or Existing Service or Policy?	Date of Assessment
Disciplinary Policy	Human Resources	John Wall	Existing Policy	1 July 2021
<b>1.1 Who is responsible for this service / function / policy?</b>				
Associate Director, Workforce				
<b>1.2 Describe the purpose of the service / function / policy?</b>				
The Trust's Disciplinary Policy, Procedure and Conduct Standards aims to help and encourage staff to achieve and maintain the required standards of conduct. The Procedure applies to all staff employed by King's College Hospital NHS Foundation Trust, including Medical and Dental staff.				
<b>1.3 Are there any associated objectives?</b>				
Trust Strategic Objectives				
<b>1.4 What factors contribute or detract from achieving intended outcomes?</b>				
Ensuring standards of conduct and behavior is maintained across the Trust.				
<b>1.5 Does the service / policy / function / have an impact in terms of race, disability, gender, sexual orientation, age and religion?</b>				
Yes				
<b>1.6 If yes, please describe current or planned activities to address the impact.</b>				
WRES Action Plan				
<b>1.7 Is there any scope for new measures which would promote equality?</b>				
WRES Action Plan and ongoing training				
<b>1.8 Equality Impact Rating [low, medium, high*]:</b>				
Race (M) Age (L) Disability (L) Gender (L) Religion (L) Sexual Orientation (L)				
<b><i>*If you have rated the policy, service or function as having a high impact for any of these equality dimensions, it is necessary to carry out a detailed assessment and then complete section 2 of this form</i></b>				
<b>1.9 Date for next review: 1<sup>st</sup> September 2024</b>				

### Appendix 3: Checklist for the Review and Approval of Trust-Wide Policies

Check		If No, why?
Is the font Arial size 12 throughout, excluding headings which are Tahoma size 12?	Yes	
Have the 'Style & Format' requirements of the 'Policy on Policies' been followed in the development and review of this document?	Yes	
Are the following headings with supporting information included?		
• Introduction	Yes	
• Definitions	N/A	
• Purpose and Scope	Yes	
• Duties	Yes	
• Implementation	N/A	
• Monitoring of Compliance	Yes	
• Associated Documents	Yes	
• References	N/A	
• Appendix: Checklist for the Review and Approval of Trust-Wide Policies	Yes	
• Appendix: Equality Impact Assessment	Yes	
Does the document clearly detail who has been involved as part of the consultation?	tbc	
Has the document received final approval from the appropriate committee / group as described in the 'Policy on Policies' prior to submission for ratification?	tbc	
Does the 'Document Location and History' section clearly state where the current document can be located, the document that it replaces and where the archived document can be found?	tbc	
Does the 'Version Control History' clearly outline the type of changes that have taken place and when?	Yes	
Have all relevant external legislative and regulatory requirements been considered and / or added with internal advice sought where necessary?	Yes	

## Appendix 4: Ratification Form

<b>Policy Title:</b>	Disciplinary Policy
<b>Version:</b>	4.1
<b>Author:</b>	John Wall, Head of Employee Relations
<b>Approval Committee:</b>	Joint Consultative Committee
<b>Approval Date:</b>	14/07/2021 (Chair's action)
<b>Responsible Executive Director:</b>	Chief People Officer
<b>Date of KE Meeting:</b>	
<b>Policy Ratified (delete as appropriate):</b>	Yes
<b>Ratified Subject to Amendments (delete as appropriate):</b>	No
<b>If Yes, Summary of the Changes Required:</b>	