

DISCIPLINARY POLICY

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DOCUMENT CONTROL

Reference AF/Jun14/DP	Version 3	Status Final	Author Director of HR & Workforce Development
<p>Amendments Integrated former community and mental health policies.</p> <ul style="list-style-type: none"> • This policy moves managing performance (MH) to a separate capability policy • This policy delegates authority to take disciplinary action down to Team/Ward manager – see Appendix 3. • This policy introduces the requirement for the manager of the employee concerned, to agree with HR and their senior manager the most appropriate person to conduct an investigation and where necessary a disciplinary hearing. • This policy removes the automatic requirement for an investigating officer to present their findings at a hearing – introducing the default position that an investigation report will be prepared which contains the facts. • This policy includes template letters in Appendix 4 • June 2016, add ref. to Recruitment and Selection Policy in relation to secondary employment 			
<p>Document objectives: The purpose of the document is to ensure that all staff are aware of:</p> <ul style="list-style-type: none"> • the requirements of them to perform their duties at all times in adherence to Trust policies and procedures • the standards of conduct required including the requirement to follow all reasonable management instructions • the requirement to ensure their conduct is appropriate at all times • how they will be helped to achieve improvements in their conduct if necessary 			
<p>Intended recipients: All Trust staff. Staff attached from the Local Authority remain accountable under the Local Authority Disciplinary Policy and Process.</p>			
<p>Committee/Group Consulted: JPRG, JMSSC, Regulation Governance Group</p>			
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1. INTRODUCTION

- 1.1 Somerset Partnership NHS Foundation Trust (hereinafter referred to as 'the Trust' or 'we') recognises that good conduct is essential to ensuring the Trust maintains high quality services. Poor conduct has a direct impact on the ability of employees and their work colleagues, the effectiveness of the organisation as a whole, and, therefore, can ultimately impact upon the service we provide to our service users.

2. PURPOSE AND SCOPE

- 2.1 The purpose of this policy is to ensure that all staff are aware of:
- the requirements of them to perform their duties at all times in adherence to Trust policies and procedures
 - the standards of conduct required including the requirement to follow all reasonable management instructions
 - the requirement to ensure their conduct is at all times appropriate
 - how they will be helped to achieve improvements in their conduct if necessary
- 2.2 The Policy also provides a clear formal framework for managers to apply when:
- informal approaches have failed to resolve unacceptable conduct
 - informal approaches are inappropriate because of the seriousness of the situation.
- 2.3 Subject to 2.4 below, this policy and procedure applies to all Trust employees (referred to as "you" or "your" hereinafter) regardless of staff group or grade. On-site contractors, volunteers and agency workers are expected to abide by the Standards of Personal Conduct (**Appendix 1**) and the rules of the Trust.
- 2.4 For medical staff the management of all concerns regarding capability, ill health, exclusion and restriction are covered by the *Disciplinary Procedure for Medical Staff Policy*. In issues of conduct (both professional and personal) the disciplinary procedures for medical staff follow this Disciplinary Policy, once an investigation (in accordance with the procedures in Section 1 of the *Disciplinary Procedure for Medical Staff Policy*) has established that there is a genuine concern regarding conduct and any issues of exclusion or restriction have been addressed. The interface between these two Policies is described further in Section 3 of the *Disciplinary Procedure for Medical Staff Policy*.
- 2.5 In circumstances involving allegations associated with safeguarding, this policy will be used in conjunction with the **Safeguarding** policy
- 2.6 Matters of performance are not in the scope of this policy and should be managed in accordance with the **Capability Policy**.
- 2.7 Matters of sickness absence are not in the scope of this policy and should be managed in accordance with the **Absence (Management of Staff) policy**.

3. DUTIES AND RESPONSIBILITIES

3.1 The Trust will

- ensure those authorised to take disciplinary action at the appropriate stages as listed at **Appendix 3** are trained and competent
- ensure proper adherence to policy throughout the procedure by involving an HR specialist

3.2 Your manager will:

- deal with disciplinary matters in a sensitive manner which does not discriminate and in accordance with this policy and procedure.
- seek the advice of a Human Resources specialist at the earliest stages (including any informal processes)
- agree with HR the most appropriate person to conduct an investigation and where necessary a disciplinary hearing
- make sure their staff are aware of this policy and the procedures contained within
- ensure written records are kept confidential

3.3 You are responsible for:

- performing your duties in accordance with rules and contractual obligations
- treating colleagues, patients and visitors with honesty, respect and dignity
- being honest and trustworthy
- being co-operative and acting reasonably
- formally reporting the facts of any criminal charges not related to work (with the exception of minor motoring offences) to their Manager and subsequently advising of the outcome i.e. charges dropped, conviction or discharge (absolute or conditional)

4. EXPLANATION OF TERMS USED

4.1 Conduct – Standards of Personal Conduct are included in **Appendix 1**. The broader meaning of conduct means the way you behave at work, your attitude, and how you go about your work in accordance with the rules of the Trust and reasonable requests made by your manager

4.2 Professional conduct – Standards of Professional Conduct are as outlined by the relevant professional bodies and must be adhered to at all times i.e. HCPC, NMC etc.

4.3 Days – refers to working days

5. POLICY

5.1 We have a responsibility to help and encourage all employees to achieve and maintain standards of conduct, reference to which is made in the Standards of Personal Conduct (**Appendix 1**).

- 5.2 If breaches of codes of conduct occur, we expect managers to deal with these breaches firmly but with sensitivity and in accordance with the disciplinary policy. Breaches should, wherever appropriate, be dealt with informally in the first instance - this does not constitute part of the formal disciplinary procedure.
- 5.3 The nature and extent of an investigation will depend on the seriousness of the matter and the more serious it is then the more thorough the investigation should be. Investigations will be confined to establishing the facts of the case.
- 5.4 No disciplinary hearing or disciplinary action will take place until the case has been fully investigated, and all parties have been given an opportunity to state their case, except in circumstances where all the facts have been fully established e.g. an employee has admitted to theft.
- 5.5 Where formal disciplinary action is used, it should encourage improved standards of conduct. Its purpose is to record the expectations, action and/or training agreement on how improvements can be made.
- 5.6 We encourage a no-blame culture. Involvement in an incident will not necessarily lead to disciplinary action. An investigation of the incident is a fact-finding exercise, which will be conducted in an impartial and sensitive manner.
- 5.7 The policy recognises the wide diversity of the Trust's workforce and its use will not discriminate against anyone involved in the disciplinary process on the grounds of their disability, sensory impairment, faith or belief, ethnicity, gender, sexual orientation, transgender status or age. The Trust will monitor the use of this policy in the context of these diversity strands and this form part of its annual equality and diversity workforce report
- 5.8 Reasonable adjustments will be made if you tell us about your disability or your first language is not English e.g. an interpreter can be arranged to ensure you understand the allegations against you and any potential disciplinary action.
- 5.9 At all stages of the Disciplinary procedure you are entitled to be represented by a recognised full-time or local Trade Union/ Professional organisation representative, or a workplace colleague. If your representative is an employee of the Trust, they will be given reasonable time off with pay in accordance with their duties. The Trust does not allow legal representation at disciplinary hearings.
- 5.10 Any stage of the Disciplinary procedure may be implemented, if the alleged conduct is of a serious nature and warrants such action.
- 5.11 Whenever professional conduct is involved the manager holding the hearing will always seek advice from the Senior Professional Lead. The facility to request an independent expert from outside the Trust will be available when necessary.
- 5.12 No member of staff will be dismissed without a disciplinary hearing including cases of gross misconduct, when the outcome may be summary dismissal without notice or payment in lieu of notice (**Appendix 2**).
- 5.13 For each stage of this procedure, there are clear time scales (**Appendix 5**) specified for completion. Under certain circumstances, extensions to the time scales may be agreed between you and your manager. However, it is

expected that every effort should be made to ensure that timescales are reasonably complied with.

6. SUSPENSION

- 6.1 There may be circumstances where it is considered that in the best interests of all, staff remain away from their normal place of work, pending investigation and/or disciplinary hearing. Suspension is *only* to be undertaken where there is a risk that continued presence in the workplace poses a risk to the member of staff being suspended, patients, other members of staff or jeopardises the conduct of an investigation. In addition, the risk must be such that changing working practices, or making alternative arrangements, could not remove it. If any other reason necessitates suspension, this will be discussed with the member of staff before the suspension takes place
- 6.2 In these circumstances the member of staff would be suspended on full pay (including enhancements), as if they had remained at work. Every effort will be made for a suspension to take place in private, in the presence of a trade union representative or workplace colleague. The member of staff will be told the reason for your suspension and written confirmation will be sent to them within 2 days **(Appendix 4. L.1)**
- 6.3 The manager responsible for the suspension will ensure that the member of staff leaves the premises and informs them that they are only allowed to return with management permission for the purpose of investigating the allegations or for another specified reason with management permission. Permission will not be unreasonably withheld.
- 6.4 Suspension is not a form of disciplinary action and is without prejudice. There is no right of appeal against suspension.
- 6.5 Suspension from work will last no longer than is reasonably practical to investigate the facts of the allegation against you. In most cases suspension will not last longer than 28 days, however if this is necessary then weekly contact will be made with the member of staff.
- 6.6 If during the period of suspension the member of staff needs to access work related records, they should contact the HR department who will consider the request and arrange for supported access. Should the request involve access to patient records, advice should be sought from the Caldicott Guardian.

7. INFORMAL APPROACH TO ISSUES

- 7.1 Minor breaches of conduct may result in an informal meeting with the member of staffs line manager detailing what improvements are necessary within timescales. The meeting will be informal and they are encouraged to take this opportunity to have an open discussion with their manager so that all relevant issues can be addressed. This should be followed up with written confirmation from the manager of the behavior/standard expected.
- 7.2 We expect that in most cases this informal approach will resolve concerns without recourse to the formal Disciplinary Procedure (S8). If the breach is more serious or there is a failure to maintain the improvement, the formal Disciplinary Procedure may be implemented.

8. DISCIPLINARY PROCEDURE – STAGES OF ACTION

Investigation

- 8.1 Your line manager (or appointed manager if appropriate in certain cases) will gather all the facts about the alleged conduct. This may include gathering statements and other evidence and in most cases will involve arranging a formal investigation meeting with you to discuss the facts. A formal investigation will not be necessary if 1) the manager believes the facts have been established **and** 2) you agree that it is reasonable to proceed directly to a disciplinary hearing.
- 8.2 The manager will write to you (**Appendix 4. L.2**) inviting you to an investigation meeting and provide you with any details of the alleged conduct and copies of any statements. A reasonable amount of time, mutually agreed, will be given to you in advance of the meeting to prepare. You may be accompanied by a trade union representative or a workplace colleague at the investigation meeting. An HR representative must also be involved at this stage.
- 8.3 Having investigated all the facts the manager will inform you in writing within a maximum of 2 working days (**Appendix 4. L.3 or L.4**) their decision. The decision will be either to close the matter with no further action or to proceed to a disciplinary hearing.
- 8.4 To maintain impartiality, the manager conducting the investigation will be different to the manager holding the disciplinary hearing. In certain circumstances, you may agree for the same manager to investigate the facts and hold the disciplinary hearing.
- 8.5 In the event that an employee resigns from the employment of the Trust prior to completion of an investigation, the investigation will be concluded in order that appropriate referral to a Professional Body or the Disclosure and Barring Service takes place.

Disciplinary Hearing

- 8.6 The manager holding the disciplinary hearing will ensure it is conducted in a formal and polite manner. You will be encouraged to speak freely with a view to establishing the facts. An HR representative will attend the hearing and you may be accompanied by a trade union representative or a workplace colleague.
- 8.7 The disciplinary hearing will be arranged for a mutually convenient date, and your manager (or an appointed manager if appropriate), will write to you (**Appendix 4. L.4**) inviting you and giving you the following details:
- The date, time and venue of the hearing
 - The reason for the hearing giving a description of the allegation against you
 - The stage that the hearing represents within the disciplinary process
 - Your right to be accompanied by a union representative or work colleague during the hearing and to present evidence/ call witnesses
 - The names and job title of those hearing and assisting at the disciplinary hearing

- A list of any witnesses to be summoned
 - Any documents including statements, which were gathered during the investigation which may/may not be used during the hearing.
- 8.8 If your chosen representative cannot attend on the date proposed, you can offer an alternative time and date. The alternative date must be within 21 days from the day you receive your letter. If you are unable to arrange a suitable alternative within this time the hearing will proceed within the 21 days and you will need to find an alternative representative.
- 8.9 Throughout the disciplinary hearing, you or the manager may call an adjournment for a reasonable length of time.
- 8.10 Once all the facts have been discussed, the disciplinary hearing will be adjourned for all the facts to be given full consideration prior to any decision being made. The length of the adjournment will vary in each case.
- 8.11 The manager holding the hearing will reconvene the hearing and ideally inform you of their decision immediately. It may be necessary in some circumstances to inform you of their decision in writing within 2 days. The decision reached by the manager will include:
- **No formal action** of any kind.
 - **Verbal Warning** for concerns not addressed by an informal approach or of a more serious nature.
A file note will be placed on your file with the following detail:
 - Confirming the findings
 - An explanation for the decision, confirming you have been issued with a verbal warning
 - The timescale of the warning
 - Identifying what corrections must take place and explaining the consequences should these not be achieved, i.e. a further disciplinary hearing may be held
 - Right to appeal (see S.9)
 - **First Written Warning** for concerns not addressed by a verbal warning or of a more serious nature.
A letter is sent to you (**Appendix 4. L.5**) by the manager holding the hearing with the following detail:
 - Confirming the findings
 - An explanation for the decision, confirming you have been issued with a first written warning
 - The timescale of the warning
 - Identifying what corrections must take place and explaining the consequences should these not be achieved, i.e. a further disciplinary hearing may be held
 - Right to appeal (see S.9)
 - **Final Written Warning** for concerns not addressed by a first written

warning or of a more serious nature.

A letter is sent to you (**Appendix 4. L.5**) by the manager holding the hearing with the following detail:

- Confirming the findings
 - An explanation for the decision confirming you have been issued with a final written warning
 - The timescale of the warning
 - Identifying what corrections must take place and explaining the consequences should these not be achieved, i.e. a further disciplinary hearing may be held, the outcome of which may be dismissal.
 - The right to appeal (see S.9)
- **Dismissal** for concerns not addressed by a final written warning or of a more serious nature.

A letter is sent to you (**Appendix 4. L.6**) by the manager holding the hearing with the following details:

- Confirming his/her findings and confirming the reason for the dismissal
 - An explanation for the decision
 - The entitled period of notice or payment in lieu of notice
 - The right to appeal (see S.9)
- **Summary Dismissal.** This could be appropriate where a serious breach of conduct has occurred through gross misconduct (**Appendix 2**). Payment to you will cease immediately and no payment in lieu of notice shall be made. A letter will be sent to you (**Appendix 4. L.6**) by the manager holding the hearing with the following details:
 - Confirming his/her findings and confirming the reason for the dismissal
 - An explanation for the decision
 - The date of the dismissal
 - The right to appeal (see S.9)
 - **Other Action Short of Dismissal.** The manager has no obligation to consider action short of dismissal but in individual circumstances may discuss with you and your representative either Demotion or Transfer/Redeployment. These alternatives will not attract protection of earnings.

8.12 Any **notes** of the hearing will be sent to you and your representative to check for accuracy if required. The notes should represent a true reflection of what was said at the meeting and are not intended to be a verbatim report. If agreement cannot be found on the accuracy of the notes it may be necessary to reconvene the original hearing to clarify what was said.

8.13 **Failure to Attend a Disciplinary Hearing.** You are expected to attend a disciplinary hearing. Where you fail to do so, without an acceptable reason, the manager holding the hearing has the discretion to continue the hearing in your absence. If you are absent through sickness at the time of the hearing, you may be referred to Occupational Health for an opinion on whether you are fit to attend the hearing.

8.14 **Life span of warnings.** The length of time the warning remains “live” on your personal file, and be referred to in subsequent disciplinary action, is as follows:

- verbal warning – 6 months
- first written warning – 1 year
- final written warning – 1 year

In exceptional cases, e.g. when a Final Written Warning is given instead of Dismissal due to mitigating circumstances, it may be appropriate for the warning to continue to be regarded for an extended period or indefinitely. The timescale for reviewing the warning will be made clear to you in writing.

8.15 Once expired, a copy of the warning will be kept on file but be disregarded for future disciplinary purposes. Upon request, you will have the opportunity to witness the expired warning letter placed in a sealed envelope on your personnel file.

9. RIGHT OF APPEAL

9.1 You have the right of appeal at every stage of the formal disciplinary procedure. An appeal hearing is not intended to repeat the detailed investigation of the disciplinary hearing, but to focus on specific factors which you may feel have been dealt with unfairly or which you have received insufficient consideration, such as:

- an inconsistent, inappropriate or excessively harsh sanction
- extenuating circumstances
- bias of the manager holding the disciplinary hearing
- unfairness in the conduct of the hearing
- new evidence subsequently coming to light
- the disciplinary action constitutes potentially unlawful discrimination
- the disciplinary action taken was for a different reason than the reason given

9.2 You must write to the HR representative who was present at the hearing (Director of HR if appealing against a dismissal), stating your grounds of appeal, within 21 days of the date of the decision. An appeal hearing will be set up within 21 days (or a mutually convenient date) where a different manager, usually in a more senior position will hear your appeal case.

9.3 The manager hearing the appeal will be a more senior manager unless appeal is against dismissal which will be heard by an appeal panel.

9.4 For appeals against dismissal, an appeal panel will be established which will include at least one Executive and Non-Executive Director.

- 9.5 Under no circumstances can the outcome of the Appeal hearing be to increase the disciplinary sanction decided at the original disciplinary hearing.
- 9.6 Any grievance raised which relates to on-going disciplinary action where the disciplinary action being taken may result in dismissal will be dealt with under the appeal process. The manager hearing the grievance and appeal together at the same meeting will be impartial and be a different manager, usually in a more senior position.

10. DISMISSAL - PERIODS OF NOTICE

- 10.1 Other than in cases of summary dismissal, where you may be dismissed without paid notice or pay in lieu of notice, the following periods of notice will be given:

Continuous NHS Service	Minimum Notice Period
Less than 2 years	1 weeks' notice or the period of notice stated on your individual contract of employment, whichever is the greater
Between 2 years and 12 years	1 week for each whole year of employment; or the period of notice stated on your individual contract of employment, whichever is the greater
More than 12 years	12 weeks' notice or the period of notice stated on your individual contract of employment, whichever is the greater

11. PROFESSIONAL CONDUCT

- 11.1 If you are subject to regulation by a professional body, you are reminded that the Trust has a duty to report any concern of possible professional misconduct to the appropriate body, which may investigate the case. For registered nurses and allied health professionals the decision to refer or not, will be made by the Director of Nursing and Patient Safety. You will be informed that the Trust has registered its concern with the regulating body. This does not preclude the Trust from separately investigating the circumstances and taking appropriate action.
- 11.2 In circumstances involving professional conduct or competence of staff registered with a professional body, the Head of Profession of the relevant profession will be involved throughout the process and provide advice and support at all stages. A professional lead will also be part of any appeal hearing panel.

12. ACTION INVOLVING AN ACCREDITED UNION REPRESENTATIVE

- 12.1 Normal standards of conduct apply to Trust employees who are accredited trade union representatives. This Disciplinary Policy and Procedure applies to trade union representatives. However, to prevent discrimination due to their position as representatives, no disciplinary action shall be taken until the circumstances of the case have been discussed with a senior trade union representative or full time official from the individual's union/professional

organisation.

13. CRIMINAL OFFENCES OUTSIDE OF EMPLOYMENT

- 13.1 You are required to advise your manager of any criminal proceedings against you, this includes police enquiries.
- 13.2 You may be suspended if you are charged with a criminal act. You may be dismissed if you are found guilty of a criminal act. The Trust will consider whether an offence is one that makes you unsuitable for your type of work, or whether the implied duty of trust between employer and employee has irretrievably broken down. Your contract may be terminated if you are imprisoned for any length of time.
- 13.3 The manager should seek advice from their Human Resources representative in any circumstances where they believe, or have evidence, that an employee may have committed a criminal offence outside of employment.
- 13.4 It should be noted that a Disciplinary investigation or hearing does not have to await the outcome of any criminal proceedings. The burden of proof for an internal disciplinary lies as *the balance of probability*.
- 13.5 In circumstances where it is necessary to suspend you from work or temporary redeploy you to an alternative area/position, your pay (including enhancements) will be paid as if you were carrying out your normal duties.
- 13.6 On occasions when serious criminal conduct, fraud or theft are alleged and the police or Counter Fraud Service request the delay of any internal investigations pending the outcome of their own investigations, this request will be abided by and any statements taken by Counter Fraud Service may be used in evidence (**Appendix 6**).

14. SAFEGUARDING

- 14.1 This policy must be read in conjunction with the Safeguarding Policies.

15. TRAINING REQUIREMENTS

- 15.1 The Trust will work towards all staff being appropriately trained in line with the organisation's Staff Mandatory Training Matrix (training needs analysis). All training documents referred to in this policy are accessible to staff within the Learning and Development Section of the Trust Intranet.
- 15.2 The Trust will ensure those authorised to take disciplinary action at the appropriate stages as listed at **Appendix 3** are trained and competent.

Training will be provided by HR for managers involved in investigations and disciplinary hearings. Training will involve working with managers to ensure they have read and understood the procedure in this policy and providing feedback after investigations and disciplinary hearings have been conducted.

16. EQUALITY IMPACT ASSESSMENT

- 16.1 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. In addition, the Trust has

identified Learning Disabilities as an additional tenth protected characteristic. If you, or any other groups, believe you are disadvantaged by anything contained in this document please contact the Equality and Diversity Lead who will then actively respond to the enquiry

17. COUNTER FRAUD

- 17.1 The Trust is committed to the NHS Protect Counter Fraud Policy – to reduce fraud in the NHS to a minimum, keep it at that level and put funds stolen by fraud back into patient care. Therefore, consideration has been given to the inclusion of guidance with regard to the potential for fraud and corruption to occur and what action should be taken in such circumstances during the development of this procedural document.

18. MONITORING COMPLIANCE AND EFFECTIVENESS

- 18.1 Monitoring arrangements for compliance and effectiveness will be by the Trust Board.

18.2 Responsibilities for conducting the monitoring

Statistics regarding formal complaints will be submitted quarterly by the Human Resources team to the Human Resources Director to feature in the Trust quarterly Board report. Monitoring will also include an annual review of cases to ascertain if there have been any issues raised regarding unfair treatment under this policy.

- 18.3 **Process for reviewing results and ensuring improvements in conduct occur.**

The HR department shall be responsible for monitoring the effectiveness of this policy, reviewing and updating it as necessary and in accordance with current legislation and best practice.

The HR department shall be responsible for monitoring the implementation of this policy in accordance with the statutory obligations applied to public sector organisations in respect of discrimination legislation.

The implementation of this policy will be monitored through the Quarterly Workforce report to the Trust Board.

19. RELEVANT CARE QUALITY COMMISSION (CQC) REGISTRATION STANDARDS

- 19.1 Under the **Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (Part 3)**, the **fundamental standards** which inform this procedural document, are set out in the following regulations:

Regulation 13:	Safeguarding service users from abuse and improper treatment
Regulation 16:	Receiving and acting on complaints
Regulation 17:	Good governance
Regulation 18:	Staffing
Regulation 19:	Fit and proper persons employed
Regulation 20:	Duty of candour
Regulation 20A:	Requirement as to display of performance assessments.

19.2 Under the **CQC (Registration) Regulations 2009 (Part 4)** the requirements which inform this procedural document are set out in the following regulations:

Regulation 18: Notification of other incidents

19.3 Detailed guidance on meeting the requirements can be found at <http://www.cqc.org.uk/sites/default/files/20150311%20Guidance%20for%20providers%20on%20meeting%20the%20regulations%20FINAL%20FOR%20PUBLISHING.pdf>

20. REFERENCES AND ASSOCIATED DOCUMENTS

The Trust Disciplinary Policy is linked with, and may be used in conjunction with, the following policies:

Absence (Management of Staff) Policy

Capability Policy

Dignity at Work (Anti-Bullying and Harassment) Policy

Disciplinary Policy for Medical Staff

Equal Opportunity Policy

Grievance and Disputes Policy

Managing Allegations Against Staff Policy

Recruitment and Selection Policy (in relation to Secondary Employment)

Retirement Policy

Safeguarding Adults Policy

Safeguarding Children Policy

Single Equality Strategy

Smoking Management Policy

Whistleblowing Policy

All current policies and procedures are accessible in the policy section of the public website (on the home page, click on 'Policies and Procedures'). Trust Guidance is accessible to staff on the Trust Intranet.

21. APPENDICES

Appendix 1: Standards of personal conduct

Appendix 2: Serious disciplinary offences/gross mis-conduct

Appendix 3: Levels of authority to take disciplinary action

Appendix 4: Template letters

Appendix 5: Timescales for disciplinary procedure

Appendix 6: Counter fraud framework

Somerset Partnership NHS Foundation Trust

STANDARDS OF PERSONAL CONDUCT

1. INTRODUCTION

- 1.1 This document indicates the standards of personal conduct expected of all staff employed by the Trust.
- 1.2 The Trust recognises that these guidelines cannot cover every situation which arises and that the guidelines or rules may vary according to the type of work, working conditions and size of any department. This Appendix is therefore **not** intended to provide an exhaustive list of the expectations of standards and is therefore provided by way of guidance only.
- 1.3 A serious (or wilfully negligent) breach of any of the standards of conduct as set out in this document could result in the dismissal of the member of staff committing the breach.

2. GENERAL STANDARDS

GENERAL CONDUCT

- 2.1 A high standard of conduct is expected of staff at all times. All staff are required to combine prompt and efficient service with concern and respect for the feelings of other people, including colleagues.
- 2.2 All staff are required to adhere to Trust policies and procedures
- 2.3 Staff governed by Trust and/or professional Codes of Conduct are required to know, understand and adhere to those Codes.
- 2.4 Staff should follow the reasonable instructions of their line manager or of others with authority to issue instructions.
- 2.5 Staff must engage with colleagues in a positive, courteous and collaborative manner.

ATTENDANCE

- 2.6 Staff are required to be punctual; to work their contracted hours; and to be engaged on work for the Trust during those hours. Staff who work flexibly must do so within the local rules and guidelines for flexible working.

- 2.7 In the case of sickness, sudden domestic emergency or other reason preventing a member of staff from reporting for work, the responsibility lies with the member of staff to inform the nominated person in accordance with the Absence (Management of Staff) Policy.

SMOKING

- 2.8 Whilst on duty, staff are prohibited from smoking whilst on Trust premises, including Trust grounds; and NHS premises and surrounding grounds. Staff are required to adhere to the smoking policies of other organisations which they visit in the course of their work. Staff may not smoke in Trust vehicles, including lease cars and may not smoke in their own vehicles, when these are parked in Trust car parks or on Trust grounds. Community staff or others visiting patients in their own homes or other community based premises are prohibited from smoking during such visits.

PRIVATE BUSINESS

- 2.9 Conducting private business arrangements in Trust paid time, including whilst on leave due to sickness, is not permitted. Private business arrangements are where an individual undertakes other paid work during time during which the individual is being paid to work for the Trust, the results of which provide additional personal income by way of cash or goods received by any third party.
- 2.10 Staff employed by the Trust are not prevented by their contract of employment from accepting other work outside their contracted working hours (which include stand-by, on-call and self-employed work) but any such employment must be declared and approved by your Manager in line with section 11, and specifically 11.4, of the Recruitment and Selection Policy; must accord with the Standing Financial Instructions; must not in any way hinder or conflict with the interests of the employee's employment with the Trust or, in conjunction with the hours worked for the Trust, render the employee and/or the Trust in breach of the European Working Time Directive. Failure to comply with the above may lead to formal Disciplinary action being taken.

SECURITY AND HEALTH AND SAFETY

- 2.11 The relevant policies of the Trust set out the security and Health and Safety requirements respectively. Deliberate or negligent disregard of these requirements will normally be treated as a disciplinary matter.
- 2.12 The unauthorised cutting of keys is not permitted.
- 2.13 Lending Trust keys and staff passes to any other person.

DISCRIMINATION, HARASSMENT AND BULLYING

- 2.14 The Equal Opportunities Policy and Dignity at Work (Anti-Bullying and Harassment) Policy of the Trust set out clear expectations of the conduct required by staff.
- 2.15 All staff have a duty not to act in a way which is discriminatory, abusive or which constitutes harassment. This requirement applies to interactions with all people, with whom the employee comes into contact during the course of employment, including service users, their carers and their families and the staff of other organisations as well as those of the Trust.

PRIVATE TELEPHONE CALLS, MAIL AND E-MAIL

- 2.16 Occasional urgent and brief private telephone calls are acceptable. However, excessive use of the telephone and overseas calls are not allowed.
- 2.17 Occasional urgent and brief private e-mails are acceptable, but must not include any attachments, language or images, which could be deemed to be offensive in any way.
- 2.18 Small amounts of stamped mail may be sent through the mail collection facilities of the Trust. Use, for private mail, of the franking system or of stamps provided by the Trust will be regarded as theft.

FITNESS TO WORK

- 2.19 Staff are expected to be fit for work at all times and their attendance and should not be affected by alcohol, drugs or excessive tiredness. Where there is a medical reason for any less than optimum performance, the line manager must be advised and the employee submit to examination by Occupational Health and/or other medical specialists as required by the Trust.

ACCEPTANCE OF GIFTS AND HOSPITALITY

- 2.20 Staff must adhere to the rules regarding the acceptance of gifts and hospitality. The Prevention of Corruption Acts prohibit staff from soliciting or receiving any gift or considerations of any kind from contractors or their agents, or from any organisations, firms or individuals with whom they are brought into contact by reason of their official duties; subject to the terms of HSG(93)5. Any gift or offer of hospitality should be registered in the Register of Gifts and Hospitality. See Appendix A in the event of suspected corruption or fraud.

USE OF TRUST'S IT SYSTEMS

- 2.21 Staff must adhere to the Trust's policies and guidelines for the use of computers, laptops, PowerPoint presentations and the use of e-mail.

PROFESSIONAL CODES OF CONDUCT

2.22 All registered staff are required to adhere to their relevant Code of Conduct.

GROSS MISCONDUCT

Gross misconduct is misconduct of such a nature that the Trust is justified, having considered any mitigating circumstances, in no longer tolerating the continued employment of a member of staff who commits such an offence. Gross misconduct is misconduct, which, if substantiated, will normally lead to summary dismissal without notice.

The following offences are amongst those regarded as gross misconduct and will normally lead to dismissal without prior warning and without pay or paid notice. This list is not exhaustive and other examples of misconduct may be defined as gross misconduct dependent upon the circumstances.

THEFT/FRAUD/MALICIOUS DAMAGE

Removal of property from the premises of the Trust without prior approval of an appropriate person, may be considered as gross mis-conduct.

- any attempt to defraud the Trust, the wider NHS, Trust employees, contractors, patients or visitors may be regarded as gross mis-conduct. This includes but is not exclusive to:
- misrepresentation of entitlement to expenses, allowances or other payments by the Trust
- falsification of, or misrepresentation on, a flexi-time sheet or other pay roll related or similar document
- deliberate disregard of the Standing Financial Instructions of the Trust.

CORRUPTION/PERSONAL FINANCIAL INTERESTS

The receipt of money, goods, favours or excessive hospitality in respect of services rendered, for example, from contactors in anticipation or recognition of receiving orders for goods or services. This does not include trivial items clearly intended for advertising but all such items received should be advised to the line manager of the employee.

Failure to disclose any personal financial interest in outside companies, firms or other agencies with which the Trust deals, as soon as such an interest becomes known to the employee.

ASSAULT AND FIGHTING

Any verbal or physical assault on any person (be they in the employ or care of the Trust or otherwise) which takes place on or off the premises of the Trust, and regardless of whether the assault takes place during working time.

Any fighting on premises of the Trust, regardless of any comment between the parties in such an altercation.

Malicious damage to any property of the Trust, including computer equipment and information, or to the property of visitors or staff.

PERSISTENT OR SEVERE BULLYING AND/OR HARASSMENT

Persistent or severe bullying and/or harassment; or unlawful discrimination.

INAPPROPRIATE MATERIAL

Deliberately accessing Internet sites or other sources containing pornographic, obscene or offensive material, and/or transmitting such material to others (including the employee's own e-mail etc systems) inside or outside the Trust via the work systems of the Trust.

SECURITY AND HEALTH AND SAFETY

Any serious and/or deliberate contravention of the safety or security regulations and the Trust policies and procedures governing health and security.

CONFIDENTIAL INFORMATION

Any unauthorised acquisition and/or disclosure of confidential information, in breach of employee's obligations of confidentiality whether contractual, statutory or otherwise.

Much of the information to which staff have access is highly confidential. Certain actions and breaches of confidentiality may be regarded gross misconduct, which could result in disciplinary action being taken, up to and including summary dismissal. These include:

- accessing and/or reading confidential patient or Trust information without a legitimate work related reason
- communicating confidential information relating to patients/clients and staff without authority;
- failing to adhere to the provisions of the Data Protection Act 1998;
- communicating contract terms and prices; business forecasts; or information relating to tenders for/of services without authority or to unauthorised persons;
- communicating confidential information relating to other organisations;
- failing to safeguard information held on paper / moveable systems (such as lap tops and memory sticks) so that it does or may fall into the hands of unauthorised persons;
- failing to use properly the systems provided by the Trust for the confidentiality of information (Filing; key systems; visitor arrangements etc.)
- Failure to comply with the Trust's IT Policies and Procedures regarding confidentiality

BRINGING THE TRUST INTO DISREPUTE

Any deliberate action, which brings the Trust into disrepute. This could include any Disciplinary Policy

actions outside work which damage the Trust's trust in the employee, damage the good standing of the Trust or threaten the health, safety or welfare of others
(Examples might include conviction for accessing/downloading illegal material on own computer; conviction for theft or acting as a 'fence' for stolen goods; other criminal convictions).

FAILURE TO FOLLOW REASONABLE HEALTH & SAFETY INSTRUCTIONS

Failure to follow reasonable instructions, which relate to the health and safety of others, including the clinical and non-clinical treatment and care of patients.

OTHER MISCONDUCT

Attending work in a state of inebriation or under the influence of recreational and/or illegal drugs and other substances.

Breach of any statutory requirement for continuation of the employment *(Examples might include loss of driving licence, loss of registration to practice).*

LEVELS OF AUTHORITY TO UNDERTAKE SUSPENSION OR DISCIPLINARY ACTION

Authority to undertake <u>Dismissal</u>	Authority to undertake <u>Suspension</u>
<ul style="list-style-type: none"> • Divisional Head/Head of Division • Director 	<ul style="list-style-type: none"> • Divisional Manager • Human Resources Manager • Head of Division • Director
Authority to undertake <u>Final Written Warning</u>	Authority to undertake <u>Verbal / First Written Warning</u>
<ul style="list-style-type: none"> • Divisional Manager • Human Resources Manager • Head of Division • Director 	<ul style="list-style-type: none"> • Team/Ward Manager • Divisional Manager • Human Resources Manager • Head of Division • Director

The authority to dismiss/suspend an employee may be delegated to an appropriate nominated officer in their absence.

DISCIPLINARY PROCEDURE TEMPLATE LETTERS

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- L.1 Notice of suspension from duty
- L.2 Notice of investigation meeting
- L.3 Notice of outcome of investigation (if no case to answer)
- L.4 Notice of disciplinary hearing
- L.5 Written/Final Written warning
- L.6 Notice of termination of employment following disciplinary hearing
- L.7 Notice of appeal meeting
- L.8 Result of appeal meeting

L1 Template Letter - Notice of Suspension from Duty

[Date]

[Name]

[Address]

Dear [insert name]

Re: Suspension from Duty

I am writing to confirm the outcome of our meeting today. Also present at the meeting were [insert name], HR Manager/Adviser [delete as applicable], and you were accompanied by your trade union representative/ workplace colleague [delete as applicable], [insert name].

The meeting was convened following a serious allegation. It has been alleged that:

[Insert allegation]

Under the Trust's Disciplinary Policy, [insert offence, e.g. fraud] could be considered as a matter of gross misconduct. In light of the seriousness of the allegation being made against you, and the need to conduct an investigation into the matter, we consider it is appropriate for you to be suspended from duty with immediate effect in accordance with Trust's Disciplinary Policy. A copy of this policy is enclosed.

You will be suspended on full pay whilst the Trust undertakes an investigation into the allegations raised against you. As part of these investigations an investigation meeting will be confirmed to you shortly. At the investigation meeting, you will be given the opportunity to state your own case regarding the allegations against you, and will have the right to be accompanied by a work colleague or trade union representative. On conclusion of the investigation a decision will be made as to whether there is a case for you to answer at a Disciplinary Hearing. Please be aware that suspension does not constitute disciplinary action in itself, and you will continue to receive your full pay and any entitlements.

Under the terms of the suspension, you are not permitted to enter Trust premises, without my prior agreement, other than to participate in the investigation as required or to meet with your union representative.

It is normal for employers to restrict the contact between you and other members of staff (other than your union representative) by telephone, e-mail or in person, during your suspension. Restricting contact contributes to assuring the investigating manager that any statements provided by members of staff, are provided independently and not subject to outside influence.

The Trust recognises that keeping in contact with colleagues could however, contribute to supporting you during your suspension and therefore you are strongly advised to speak to HR or your union representative, before making contact with

any member of staff, in order to avoid any unnecessary or inappropriate perception of prejudicing the investigation.

As an employee of the Trust you are expected to conduct yourself in a professional manner in accordance with Trust policies. You are also required to remain contactable to assist with answering any questions or matters relating to your role.

We will endeavor to carry out the investigation as soon as possible and will regularly review your suspension. On completion of the investigation, I will contact you again to advise you of the outcome. Should the investigation result in a future disciplinary hearing, this may lead to your dismissal.

If you have any queries during the period of suspension, then please do not hesitate to contact myself or [insert name] HR Manager/Adviser [delete as applicable] on [insert phone no].

Yours sincerely

NAME
Job Title

COPY HR Representative [Insert name and job title]
 Trade Union Representative [Insert name and union]
 Personal file

L2 Template Letter – Notice of Disciplinary Investigation Meeting

[Date]

[Name]

[Address]

Dear [insert name]

Re: Disciplinary Investigation

Following the alleged conduct that [insert allegation], which resulted in your suspension from duty [delete if not relevant], I would like to invite you to an investigation meeting to gather the facts into this matter. I will be holding the meeting and [insert name of HR Advisor] from HR will also be attending. You are entitled to be accompanied by a work colleague or union representative.

The meeting will be held on [insert date time and place]. This meeting is held in accordance with the Trust's Disciplinary Policy, a copy of which is enclosed.

At this meeting you will be given the opportunity to state your own case regarding the alleged conduct. I enclose any relevant documents for your attention [delete if not relevant].

Should you have any questions, or be unable to attend this meeting, please contact me on [insert phone no] to arrange another date.

Yours sincerely

[LINE MANAGER OR APPOINTED MANAGER]
Job Title

COPY HR Representative [Insert name and job title]
 Trade Union Representative [Insert name and union]
 Personal file

L3 **Template Letter – Investigation Outcome**
[to be used when it is found there is no case to answer]

[Date]

[Name]
[Address]

Dear [insert name]

Re: Investigation Outcome

I write to inform you of the outcome of the investigation into the allegation that [insert allegation].

As part of the investigation I met with you, and with other relevant individuals to gain a thorough understanding of the allegation. I have now completed the investigation and have concluded that the allegation is unfounded/ there is no case to answer [delete as appropriate].

Your suspension from duty is immediately withdrawn, and you are invited to return to work with immediate effect/ date [as appropriate]. Any reference to the suspension will be removed from your personal file.

Yours sincerely

[LINE MANAGER OR APPOINTED MANAGER]
Job Title

COPY HR Representative [Insert name and job title]
 Trade Union Representative [Insert name and union]
 Personal file

L4 Template Letter – Notice of Disciplinary Hearing

[Date]

[Name]

[Address]

Dear [insert name]

Re: Disciplinary Hearing

Following the investigation [or After agreeing with you an investigation was not necessary] into the alleged conduct that [insert allegation], I am writing to inform you that the Trust is considering disciplinary action against you, which may include [insert the potential disciplinary stage]. [If relevant] You are reminded that [insert offence] is a matter of gross misconduct, and if proven may lead to the termination of your contract of employment with the Trust.

The meeting will be held on [insert date time and place]. This meeting is held in accordance with the Trust's Disciplinary Policy, a copy of which can be found on the Intranet. [or a copy is enclosed because you are currently suspended from work].

I will be holding the meeting and [insert name and job title of HR support] from HR will also be attending. You are entitled to be accompanied by a work colleague or union representative. At this meeting you will be given the opportunity to state your own case regarding the alleged conduct. I enclose any relevant documents for your attention [delete if not relevant].

You will continue to be suspended on full pay until further notice [delete if not relevant].

Should you wish to call any witnesses, please inform me of their details by [insert date 48 hrs in advance of hearing].

Should you have any questions, please do not hesitate to contact me.

Yours sincerely

NAME [MANAGER OR APPOINTED MANAGER]

Job Title

COPY HR Representative [Insert name and job title]
 Trade Union Representative [Insert name and union]
 Personal file

L5 Template Letter – Written Warning / Final Written Warning

[Date]

[Name]

[Address]

Dear [insert name]

Re: Written Warning / Final Written Warning [delete as appropriate]

I am writing to confirm the outcome of the disciplinary hearing convened on [insert date] under the Trust's Disciplinary Policy. The purpose of the hearing was to further investigate the allegation that [insert allegation].

I held the hearing and [insert name and job title of HR support] also attended. You were represented by [insert name]. No witnesses were called/ [insert names of witnesses] were called [delete as appropriate].

I considered all the evidence very carefully and found the following [insert findings/conclusions – in bullet form if necessary]:

Therefore, I decided to give you a written warning/ final written warning [delete as appropriate] in line with the Trust's Disciplinary policy.

This warning will be placed in your personal file but will be disregarded for disciplinary purposes after a period of [insert number of months] months, provided that your conduct improves and maintains a satisfactory level.

The conduct improvement expected is [insert objectives including timescales].

I need to warn you that any failure to demonstrate improvement may result in a return to a disciplinary hearing, which may result in action being taken against you which may include [insert appropriate stage].

You do have the right of appeal against my decision and this right can be exercised by writing to [insert name of HR Manager] within 21 days of the date of the decision.

Yours sincerely

NAME [manager holding the hearing]

Job Title

COPY HR Representative [Insert name and job title]
 Trade Union Representative [Insert name and union]
 Personal file

L6 Template Letter – Notice of Termination

[Date]

[Name]

[Address]

Dear [name]

Re: Termination of Employment

I am writing to confirm the outcome of the disciplinary hearing convened on [insert date] under the Trust's Disciplinary Policy. The purpose of the hearing was to further investigate the allegation that [insert allegation].

I held the hearing and [insert name and job title of HR support] also attended. You were represented by [insert name]. No witnesses were called/ [insert names of witnesses] were called [delete as appropriate].

I considered all the evidence very carefully and found the following [insert findings/conclusions – in bullet form if necessary]:

[if gross misconduct, use the following]

I have concluded that on the balance of probability, you did [insert allegation]. This represents an act of gross misconduct under the Trust's Disciplinary Policy. Therefore the Trust has no option but to terminate your employment.

[if stage following previous written warnings, use the following]

During the hearing it was confirmed that the Trust has had cause to speak to you on [state dates of meetings and stage of procedure] with regard to past misconduct. You were informed at the hearing on [date] that if the Trust had cause to speak to you again within [state period that final warning would be active] in connection with your conduct, the Trust would dismiss you. Despite listening to your representations at the most recent hearing, I was not able to find any mitigating circumstances and I am therefore writing to confirm that the Trust has no option but to terminate your employment.

[delete as appropriate:]

Your dismissal will take effect on [date] upon completion of your [length of notice] notice period.

[OR]

Your dismissal will take effect as of today's date [state date] and the Trust will make you a payment in lieu of notice. This will be paid to you in your final salary slip at the end of this month. All terms and benefits associated with your employment will therefore cease as of the end of today.

[OR]

Your dismissal will take effect as of today's date [state date] and you will not be entitled to any payment in lieu of notice. Your form P45 will be sent to you by Payroll.

You have the right to appeal against the decision to dismiss you. If you wish to appeal, you should do so in writing within 21 days of the date of the decision, to [insert name], stating the grounds for your appeal.

[in cases of gross misconduct, include] The Trust will be sending the investigation report and a copy of this letter to the NMC/GMC/HPC [delete as appropriate] for their own investigation.

Yours sincerely

NAME *[manager holding the hearing]*
Job Title

COPY HR Representative [Insert name and job title]
 Trade Union Representative [Insert name and union]
 Personal file

L7 Template Letter – Notice of Appeal Meeting

[Date]

[Name]
[Address]

Dear [name]

Re: Appeal Hearing

You have appealed against the verbal warning/ written warning/ final written warning/ dismissal [delete as appropriate], confirmed to you in writing on [insert date of termination letter/ warning letter].

Your appeal will be heard by [insert name and job title], who will be supported by [insert name], HR Manager. The meeting will be held on [insert date time and place]. This meeting is held in accordance with the Trust's Disciplinary Policy.

You are entitled to be accompanied by a work colleague or union representative.

The decision of this appeal hearing is final, and there is no further right of appeal.

Yours sincerely

NAME
Job Title

COPY HR Representative [Insert name and job title]
 Trade Union Representative [Insert name and union]
 Personal file

L8 Template Letter – Result of Appeal

[Date]

[Name]

[Address]

Dear [name]

Re: Appeal Hearing – [insert date]

You appealed against the decision of the disciplinary hearing that you be given a verbal warning/ written warning/ final warning/ dismissed/ subject to disciplinary action [delete as appropriate] in accordance with the Trust's Disciplinary Policy. The appeal hearing was held on [insert date].

I am writing to confirm my decision, namely that the decision to [insert original action] stands/ is revoked [delete as appropriate]. [specify if no disciplinary action is being taken or what the new disciplinary action is].

You have now exercised your right of appeal under the Trust's Disciplinary Policy and this decision is final.

Yours sincerely

NAME [person holding the hearing]

Job Title

COPY HR Representative [Insert name and job title]
 Trade Union Representative [Insert name and union]
 Personal file

Timescales for Disciplinary Procedure (Section 8)

Stage	How much time should be given?
Suspension	You will be told before you leave the premises of the reasons for your suspension. Written confirmation will be sent to you within 2 days
Length of Suspension	Suspension from work will last no longer than is reasonably practical to investigate the facts of the allegation against you. In most cases suspension will not last longer than 28 days, however if this is necessary then weekly contact will be made with you.
Invite to Investigation	A reasonable amount of time, mutually agreed, will be given to prepare for the investigation
Outcome of Investigation	The manager will normally tell you at the end of the investigation and will follow this up in writing within 2 days
Invite to Disciplinary Hearing	A reasonable amount of time, mutually agreed, will be given to prepare for the hearing. If you need to propose an alternative date, this must be within 14 days from the day you receive your letter inviting you to the hearing.
Outcome of Disciplinary Hearing	The manager will normally tell you at the end of the hearing and will follow this up in writing within 2 days (except Verbal Warnings)
Appealing against the outcome	You must submit your appeal letter within 21 days of the date of the decision.
Invite to Appeal Hearing	An appeal hearing will be set up within 21 days (or a mutually convenient date).
Appeal Hearing outcome	The panel will normally tell you at the end of the appeal hearing and will follow this up in writing within 2 days

COUNTER FRAUD PARALLEL SANCTIONS FRAMEWORK FLOWCHART

