

Disciplinary Policy

Important Note - July 2021

In line with national requirement following release of the Harding recommendations, review and amendment of the Trusts disciplinary policy has been undertaken. This revised document and its associated procedure can be found on Microguide.

Please note. This policy refers to an associated Workforce Investigation Policy which is due to be ratified by OMB in August.

Therefore for possible disciplinary matters that arise between 28th July and the end of August 2021, please contact your Divisional People Business Partner/Advisor for further advice and support.

Disciplinary Policy

1. Quick Reference Guide

This policy provides an overview of the roles, responsibilities and monitoring practices linked to the management of disciplinary proceedings across Salisbury NHS Foundation Trust.

This Policy should be read and used in conjunction with the Disciplinary Procedure so as to ensure that the consistency of practice is promoted at all times.

2. Introduction

2.1 Salisbury NHS Foundation Trust (the 'Trust') believes that disciplinary rules and procedures are essential in the workplace if acceptable levels of conduct are to be achieved. This procedure has therefore been developed to define such standards and to emphasise the Trusts desire to support employees' at all times. This includes the development of a culture where employees' are encouraged to learn from mistakes as they occur.

2.2 This approach supports the NHS's desire to embed a culture of fairness, openness and learning and helps promote the notion that employees should feel confident to speak up when things go wrong, rather than fear blame. Therefore in all cases of concern linked to misconduct, an objective and prompt examination of the issues should be carried out to establish whether a formal investigation is warranted. Instead could training and development of the employee, coupled with further support, guidance or informal management be more suited to the situation.

2.3 This policy has been developed in consultation with the Trust's recognised trade unions and is in accordance with the ACAS Code of Practice on disciplinary and grievance procedures.

2.4 Where an employee's ability to do their job is affected by a lack of skill or knowledge, the Trust's Performance Management policy should be used.

2.5 Where an employee's ability to do their job is affected by ill health, the Trusts Attendance Management policy should be used.

Version Details

Version No.	Updated by	Updated on	Description of changes
8	Head of People Operations	May 2021	Full policy re-write

3. Purpose and Scope

3.1 This Disciplinary Policy and its associated procedure provides a framework through which concerns about an employee's behaviour (or actions) can be reviewed in a fair and timely manner.

3.2 Through clear definitions of unacceptable standards, the policy also highlights Trust expectations linked to behaviour and provides clarity as to the processes that an employee may face should unacceptable behaviours be displayed.

3.3 This policy and its associated procedure apply to all staff directly employed by the Trust. For Medical Staff and Dentists see 3.4. This includes trainees, secondees and staff on honorary contracts or joint contracts with the Trust and another employer.

3.4. Disciplinary matters relating to Medical staff and Dentists should be addressed using the Trust's 'Handling Concerns and Disciplinary Procedures for Doctors and Dentists Policy', which in certain circumstances refers matters back to this Disciplinary policy.

3.5. Cases of alleged staff misconduct committed outside of the work environment may also be managed through this policy. In such cases careful consideration will be given as to whether the alleged misconduct has damaged either Trust reputation or the reputation of the staff member's role.

4. Definitions

4.1. Conduct is defined as an individual's behaviour; therefore, misconduct can be defined as the demonstration of inappropriate or unacceptable behaviours. Appendix A provides examples of activities that the Trust would interpret as misconduct.

4.2. For the purposes of this policy and its associated procedure, misconduct is broken down into two distinct categories - misconduct and gross misconduct. These categories are defined below:

- Misconduct constitutes behaviours that transgress acceptable boundaries but which could be managed incrementally to address shortfalls. Examples of such misconduct are included in appendix A.
- Usually conduct would relate to the actions of the employee within the workplace. However in certain circumstances it may be appropriate to apply this policy to incidents outside the workplace (to include arrests or criminal proceedings) which bring the Trust into disrepute.
- Gross misconduct constitutes behaviours that exceed acceptable boundaries and which, given their nature cannot be managed incrementally. Cases can be so serious that they destroy the trust, confidence and employment relationship between employer and employee. In such instances disciplinary action up to and including summary dismissal may be required. Examples of such gross misconduct are included in Appendix A.

4.3 **Reasonable belief:** Any disciplinary action taken will be based on a reasonable belief that misconduct has occurred. This is significantly different to a criminal investigation whereby the onus is to prove an occurrence 'beyond reasonable doubt'.

5. Roles and Responsibilities

5.1. Trust

5.1.1. Through regular communications, appraisal and training opportunities the Trust is committed to develop a skilled and knowledgeable workforce who fully understands the behaviours expected of them.

5.1.2 The Trust is also committed, through the development of policies and procedures, to ensure all employees are treated fairly and in a consistent manner.

5.2 Line Managers

Line Managers will be expected to:

5.2.1. Promote awareness of Trust policies and procedures and cascade how such documents will be used to manage situations as they arise.

5.2.2. Use the Trust's policies and procedures to ensure fairness and consistency across their service and hence the wider Trust.

5.2.3 Ensure staff have current job descriptions which accurately reflect their roles and responsibilities.

5.2.4. Ensure that annual appraisals are completed within their areas of responsibility and that these appraisals, through objective setting, reinforce the Trust's values and behaviours.

5.2.5. Where conduct issues start to emerge the Line Manager must discuss these with the individual at the earliest possible opportunity so as to promote corrective action.

5.2.6. Ensure that conduct issues are managed effectively so as to minimise impact on patient safety, service delivery and staff morale.

5.2.7 Maintaining confidentiality during and after the application of this policy.

5.2.8 Notify the Trust of any investigations undertaken by an external authority such as the General Medical Council, the Nursing and Midwifery Council or the Information Commissioners Office.

5.3 Employees

Employees will be expected to:

5.3.1 Familiarise themselves with the Trust policies and procedures to ensure they understand Trust expectation associated with appropriate behaviour.

5.3.2. Ensure they have current job descriptions, which accurately reflect their role and responsibilities. Where this is not the case, they should discuss with their Line Manager at the earliest opportunity.

5.3.3. Ensure they have an annual appraisal with their Line Manager which, through objective setting reinforces responsibilities for the upcoming year.

5.3.4. Raise concerns with the Line Manager if they feel they are struggling in their role or within their team.

5.3.5. Raise concerns with the Line Manager if they believe the behaviour of others is inappropriate or unacceptable.

5.3.6. Where issues are raised engage with the Line Manager to bring about a resolution as quickly as possible.

5.4. OD and People

5.4.1 The Chief People Officer has delegated responsibility from the Trust Board to ensure this policy and its associated procedure are properly implemented and monitored.

5.4.2. The People Operations Team have a responsibility to ensure that the policy and its associated procedure are used in a fair and consistent manner. This will involve:

- Providing advice and guidance to Managers linked to the interpretation and application of this policy.
- Providing expert advice at formal disciplinary hearings and appeals.
- Providing access to training and coaching for managers in the handling of disciplinary matters
- Monitoring and reporting disciplinary outcomes and actions to ensure both consistency and the highlighting of emerging trends.
- Reviewing and amending this policy as necessary.

5.5. Trade Unions

5.5.1 The Trust recognises the important role Trade Unions play in the resolution of disciplinary matters and members are encouraged to approach their representatives to discuss any concerns.

5.5.2 The Trust will work collaboratively with Trade Unions to address unacceptable and inappropriate behaviours.

6. Policy Principles

6.1. The Trust encourages Managers and staff, wherever possible, to resolve conduct concerns as quickly and informally as possible.

6.2. It is acknowledged that conduct is related to behaviour and as such staff may feel that a Manager is criticising them personally when a conduct matter is raised.

Therefore and wherever possible, Managers and staff are encouraged to use established guidelines which detail the Trusts expectations for appropriate behaviour/s. These include

- This and other Trust policies
- The Trust's values and beliefs
- Professional competency frameworks where applicable

6.3. Should Managers pursue formal disciplinary action they must ensure that the staff member/s are fully informed of the allegations made against them, the processes that will be followed and the ongoing progress of the investigation.

6.4. Dependant on the nature of the disciplinary issue the Trust may be obliged to inform the staff member's professional body.

6.5 If an individual chooses to resign from the Trust and refuses to engage during the disciplinary process there may be occasions e.g. safeguarding concerns, where the case will continue and be heard in their absence. If the case is found against the former member of staff the Trust may be obliged to refer the case to the relevant professional body. We therefore encourage staff to maintain engagement with the disciplinary process at all times.

6.6. Wherever possible the Trust will attempt to preserve the staff member's employment and alternative solutions such as redeployment may be considered

6.7 All managers who chair or sit on hearing panels must have completed appropriate Trust training or have equivalent experience in such matters.

6.8 Disciplinary cases will be treated sensitively and confidentially. Information will only be shared with those who have a legitimate right to be informed in accordance with Trust procedures and the Data Protection Act 2018. Breaches of confidentiality by any party may result in disciplinary action.

7. Handling Allegations of Misconduct and Investigating the Facts

7.1 Allegations of misconduct will be carefully assessed by the relevant manager, with support from the People Operations team, to decide the next course of action i.e. whether the situation can be managed informally or whether formal investigation appears warranted.

7.2 Such consideration should involve discussion with the employee to establish their version of events and may also involve discussion with other individuals associated with the alleged misconduct.

7.3 Where an alleged safeguarding incident is reported a 'HR huddle' will be convened to determine whether the incident falls within this policy or whether processes outlined in the Trust's Allegations against Staff policy should be followed. The 'HR huddle' must include a Deputy Director of Nursing, the Head of People Operations or their nominated deputy and a Safeguarding Lead.

7.4 Where it is decided that further investigation and/or formal action is appropriate, this must be approved by the case manager and/or senior manager in the department following consultation with a member of the People Operations team.

7.5 Investigations will be carried out without unreasonable delay in accordance with the Trusts Workforce Investigation policy and procedure. The case manager will be responsible for both commissioning and determining the scope of the investigation and for monitoring the timely progress of the investigation to reduce undue delays.

7.6 Throughout the formal stages of the disciplinary procedure the employee has the right to be accompanied by their Trade Union representative or a work colleague who has had no involvement in the matter of concern. The Trust reserves the right to refuse the employee from being accompanied by a work colleague whose presence it is perceived might undermine the disciplinary process.

In exceptional circumstances it may be appropriate for the employee to be represented by a family member i.e. when acting as an advocate for an employee with a disability. Any such decision would need to be agreed by the case manager.

7.7 Once the investigation is complete, the manager will consider the findings and with support from the People Operations Team decide if further action is required i.e. whether there is a case to answer, whether the matter can be dealt with informally or whether formal disciplinary action may be appropriate. The decision to move to a formal disciplinary hearing must be approved in consultation with a member of the People Operations team.

7.8 If the case manager believes there is a case to answer at a formal hearing, they must prepare a report setting out the case and the investigation findings.

8. Referrals to Professional Bodies and Other Agencies

8.1 Depending on the allegations, where an employee is registered with a professional body, such as a registered nurse, midwife or nursing associate, it may be appropriate to notify the regulatory body. This decision will be taken by the most senior professional lead from the division, in conjunction with the relevant professional lead for the Trust such as the Director of Deputy Director of Nursing.

8.2 Where allegations concern the safeguarding of children or vulnerable adults, the Trust's Safeguarding Team must be notified without delay.

8.3 In line with the legislative requirements of the UK GDPR, incidents relating or potentially relating to a personal data breach must be reported to the Trusts Data Protection Officer (DPO) and dependent upon severity, reported to the Information Commissioners Office.

8.4 Where appropriate, investigations by the counter fraud team and other agencies such as the police or social services may be carried out separately from investigations completed under this procedure. In such instances the Trust will fully co-operate with these external investigations but will not delay its internal investigations unless absolutely necessary.

9. Informal Management of Allegations (Please refer to Procedure Document for Specific Process Details - Available on Microguide)

9.1 The Trust recognises that cases of minor misconduct can often be resolved informally through open dialogue which details both shortcomings and possible remedial action.

9.2 In many cases additional training, coaching and advice may be recommended to help resolve a situation.

9.3 When a matter arises and the Line Manager chooses to initiate an informal discussion with the employee, they must still make it clear that the meeting forms part of the disciplinary process. As such and in advance of the meeting the employee should be provided with a copy of the Disciplinary Policy and Procedure and a description of the matters that are to be discussed. This is to ensure that all parties are aware of the context of the meeting.

9.4 During such meetings the Manager must ensure that the employee fully understands the need for behavioural improvement and that failure to achieve this, following appropriate support, may lead to instigation of the formal procedure.

9.5 The informal stage of this policy is not time-bound and whilst some instances of misconduct can be managed through conversation or via the establishment of an action plan, others will need to be progressed more quickly. Any such decision on how the case might be progressed should be discussed in conjunction with the People Operations Team

9.6 Where appropriate, managers may summarise concerns and expectations in writing, a copy of which will be placed on the employee's personal file. If informal action does not bring about the required improvement, or the misconduct is too serious to be classed as minor, formal disciplinary action may be considered.

9.7 The Manager must recognise that the staff member may find this process stressful and as such put in place mechanisms to monitor their wellbeing e.g. referral to Occupational Health, conduct a stress risk assessment, signpost to other Trust support services, hold regular meetings etc.

10. Formal Procedure (Please refer to Procedure Document for Specific Process Details - Available on Microguide)

10.1 The decision to enter straight into or progress to the formal stage of this policy should be made by the Line Manager in conjunction with a member of the People Operations team

10.2 Once such a decision is made, it is usual for the Line Manager to become the Case Manager with responsibility to appoint an Investigating Officer. These activities should be undertaken in line with the Trust's Workforce Investigation policy and procedure.

10.3 In some instances it may not be appropriate for the Line Manager to become the Case Manager. In such cases and following advice from People Operations team, a peer or more Senior Manager should be appointed.

10.4 The Case Manager on review of the investigation report and following discussion with the People Operations team will decide on the next course of action i.e. no case to answer or advancement to a disciplinary hearing.

10.5 The disciplinary hearing should be held as soon as possible following conclusion of the investigation. As such Managers, employees and their representatives must make every effort to attend scheduled meetings.

11. Disciplinary Hearing (Please refer to Procedure Document for Specific Process Details - Available on Microguide)

11.1 A disciplinary hearing should be chaired by a Manager of appropriate seniority and authority to make necessary decisions i.e. up to and including dismissal. Such authority to dismiss is explained further in appendix B. The Chair should have no previous connection with the case.

An OD and People representative of appropriate seniority and/or experience should also be appointed For Registrants (eg NMC/ HCPC) a Divisional Head of Nursing or Deputy Director of Nursing/ AHP must be invited to join the panel as a Professional Advisor. In certain circumstances a specialist/ technical expert may also sit on the panel to support the Chair.

11.2 Throughout the formal stages of the disciplinary procedure the employee has the right to be accompanied by their Trade Union representative, a work colleague who has not been involved in the matter of concern or where agreed by the case manager, a family member.

11.3 The Trust reserves the right to refuse the staff member from being accompanied by a work colleague whose presence it is perceived might undermine the disciplinary process.

11.4 Formal hearings should be considered as meetings between the Trust and the individual employee and as such discussions should primarily be undertaken between the Trust and the individual; however we recognise the important function of a Trade Union representative, or work colleague, and in such hearings they can support the individual by making representations, offer relevant supplementary information that adds value to the hearing, raise points of order and, if requested by the staff member, sum up the case. Any questions put directly to the individual should initially be answered by the individual

11.5 The employee and the Case Manager will be provided with the opportunity to present their cases to the Disciplinary Panel prior to any decision or sanction being made. Further details associated with this process can be found in appendix C

11.6 Where an employee or their representative are unable to attend the first set date for the disciplinary hearing, the Trust must postpone to a time proposed by the employee, providing that the alternative time is both reasonable and not more than 5 working days after the date originally proposed.

If that second date proves problematic the Trust would offer one further date that is again not more than 5 working days after the date proposed by the employee.

If necessary the hearing would take place in the employee's absence on the second alternative date.

11.7 It is the Trust's policy to audio record all formal hearings. Audio recordings can be made available on request to employees who are subject to formal disciplinary/capability proceedings and, with their consent, to their representative. Audio recordings will be destroyed after one year.

12. Preparation for the Hearing

12.1 All parties will be given at least 5 working days' notice of the hearing in order to have time to prepare. Every effort must be made to give as much notice as possible and 5 working days should be seen as the absolute minimum.

12.2 The employee will be provided with two copies of the management report (investigation report) and any related documents including witness statements to be presented at the hearing. Any personal patient information will be redacted.

12.3 Prior to the hearing, the employee will be advised that they may be subject to disciplinary action up to and including dismissal.

13. Appeal (Please refer to Procedure Document for Specific Process Details - Available on Microguide)

13.1 The employee has the right to appeal against any decision made during the formal stage of this process.

14. Counter Claims

14.1 This disciplinary process will not be stopped should the employee submit grievance or dignity at work (bullying and harassment) claims against the Line Manager during the informal or formal stages of the process.

Instead the allegations would be subject to a parallel workforce investigation in accordance with the relevant Trust policy. If appropriate either party could then use the outcome of the parallel investigation as evidence during the disciplinary and/or appeal hearing.

15. Suspension (Exclusion)

15.1 In most cases, suspension from work will not be necessary and the employee will be able to continue in their normal role while matters are investigated.

15.2 When considering suspension, managers must assess the risks of the employee remaining at work. In all cases advice should be sought from a member of the People Operations team.

15.3 Where a manager wishes to suspend an employee, they must seek approval from a senior manager within their Division and the Head of People Operations. A Deputy Director of Nursing must be consulted for a suspension involving a nurse.

15.4 Suspension is not a disciplinary sanction and therefore is not an assumption of guilt.

15.5 Further detailing information lined to the exclusion process can be found in the Trusts Exclusion and Restriction of Practice Policy

16. Criminal Offences and Offences Committed Outside Work

16.1 Employees are obliged to inform their manager if they are subject to a police investigation so as to allow the Trust to take any necessary steps i.e. protect the safety of others, prepare for media enquiries.

All alleged criminal offences will be dealt with in line with the Trust's Allegations against Staff policy

16.2 If an employee is charged with, or convicted of a criminal offence committed outside of the regular work environment, consideration will be given as to whether the offence renders the employee unsuitable for continued Trust employment. In such instances the Trust reserves the right to take action independently of any legal proceedings.

16.3 Where an alleged offence or police investigation relate to mistreatment of a child or an "at risk" adult, the manager should inform the trust safeguarding team as a matter of urgency.

16.4 Where allegations that occur outside of the Trust are brought to the Trust's attention by other agencies or professional bodies, and those allegations have the potential to bring the reputation of the Trust into disrepute, the Trust will investigate the matter as fully as possible. If this investigation concludes that reputational damage is a possibility, action up to and including dismissal may be considered.

17. Supporting Employees

17.1 Being subject to allegations of misconduct can be very upsetting and stressful for the employee and any other affected colleagues.

17.2 Managers are therefore responsible for maintaining communications and must ensure that the employee and any other affected colleagues receive clear, timely, and comprehensive updates under the matter in concluded. Such communications are imperative if the employee is to be informed of progress, if they are to be provided with the opportunity to raise questions and if assurances as to their general health and wellbeing are to be gathered.

17.3 Where there are concerns about an employee's health or wellbeing, Occupational Health advice will be obtained.

17.4 Employees, including those who are involved as witnesses, will be supported throughout the process by an appropriate manager and where necessary directed to the Trusts Occupational Health/counselling services.

17.5 All employees being subject to allegations will be given the contact details of the Trust Freedom to Speak Up Guardian.

18. Monitoring Compliance with, and the Effectiveness of, this Policy

18.1. The People Operations team will gather and analyse data on a quarterly basis and use this data to ensure policy compliance and the consistent management of cases. Trend data will also be identified and used to address problem areas

18.2. Subsequently, this data will be used to inform and improve policies and provide recommendations for improving working practices. The People Operations team will provide relevant reports, based on this data, to committees when requested.

18.3 Further analysis associated with the use of this policy will be available from publication of the Trust's annual Workforce Race Equality Standard (WRES) report and the Workforce Disability Equality Standard (WDES) report.

19. Policy Review

19.1. Following approval this policy will remain valid for three years. An earlier review may be necessary should exceptional circumstances resulting from this policy arise or should legislative changes mean that the policy become unfit for purpose.

20. Equality Impact Assessment for Policies

Salisbury NHS Foundation Trust aims to design and implement services and policies that meet the diverse needs of its services, population and workforce, ensuring that none are placed at a disadvantage over others

This document has been assessed against the Trust's Equality Impact Assessment Tool which was presented to the ratifying committee.

21. Associated Documents

- Workforce Investigation Policy and Procedure
- Exclusion Policy and Procedure
- Performance Management Policy and Procedure
- Attendance Management Policy and Procedure
- Grievance Policy and Procedure
- Dignity at Work (Bullying and Harassment) Policy and Procedure
- Freedom to Speak Up: Raising concerns policy
- Allegations against Staff Policy
- Disclosure and Barring Service Policy
- Maintaining High Professional Standards in the Modern NHS
- ACAC Code of Practice 1 - Disciplinary and Grievance
- Safeguarding Vulnerable Groups Act 2006

22. Supporting Websites

ACAS - <https://www.acas.org.uk/>

DBS - <https://www.gov.uk/government/organisations/disclosure-and-barring-service>

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