

DISCIPLINARY (CONDUCT) POLICY

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POLICY SUMMARY
<p>The Disciplinary (Conduct) Policy sets out the framework for the Trust's approach to the management of conduct, behaviour and practice concerns for managers, staff and staff representatives as well as the scope of the policy to whom it applies.</p> <p>It aims to ensure that the Trust sets out and maintains high standards of conduct, behaviour and practice by its employees and the principles to ensure any issues that may arise are dealt with in a timely, fair, reasonable and consistent manner within the legislative framework and in accordance with the ACAS Code of Practice and Guidance.</p> <p>The management of disciplinary (conduct) matters within the Trust will be built on and demonstrate the Trust's corporate values and behaviours of being open, compassionate and empowering.</p> <p>This policy should be read in conjunction with the Disciplinary (Conduct) Procedure.</p>

The Trust monitors the implementation of and compliance with this policy in the following ways:
<p>This policy is subject to the monitoring and review in accordance with the agreed review schedule of Trust HR policies and as agreed by the Trust's Partnership Committee.</p> <p>Compliance with this policy will be against the Trust's agreed minimum requirements / standards as detailed within its Auditable Standards and Monitoring Arrangements, as well as the use of internal reporting and recording within the Human Resources Department.</p>

Services	Applicable	Comments
Trust wide	✓	
Essex MH&LD		
CHS		

**The Director responsible for monitoring and reviewing this policy is
Executive Director of Corporate Governance and Strategy**

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ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

DISCIPLINARY (CONDUCT) POLICY

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ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST
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DISCIPLINARY (CONDUCT) POLICY

ASSURANCE STATEMENT

The policy aims to ensure that Essex Partnership University NHS Foundation Trust [‘the Trust’] sets out and maintains high standards of conduct and performance amongst its employees to ensure high standards of conduct, behaviour and practice.

The Policy sets out the Trust’s principles in approaching disciplinary issues relating to conduct and performance, ensuring they are dealt with in a timely, fair, reasonable and consistent manner, within the legislative framework and in accordance with the ACAS Code of Practice and Guidance.

The management of disciplinary issues within the Trust will be built on and demonstrate the Trust’s corporate values and behaviours. These values being:

- Open
- Compassionate
- Empowering

In demonstrating these behaviours and values, supporting the achievement of its strategic priorities to:

- Continuously improve patient safety, experience and outcomes, and reduce clinical variations
- Attract, develop and enable high performing individuals and teams
- Enable service improvement plans with system partners
- Achieve top 25% performance for operational, financial and productivity measures

1.0 INTRODUCTION

- 1.1 This policy introduces the Trust’s principles in relation to resolving disciplinary matters. Disciplinary rules and procedures are necessary for promoting positive employee relations and for safeguarding of patients.
- 1.2 The Trust recognises that disciplinary issues can relate to conduct (complying with Trust policy, rules and procedures), including negligence.
- 1.3 This policy is in addition to the provisions, as set out in the terms and conditions of employment. Unless otherwise stated, this policy does not form part of an employee’s terms and conditions of employment but is a statement of the Trust’s current practice and may be changed from time to time.
- 1.4 The Trust recognises its responsibility in ensuring that all employees are aware of their obligations whilst at work and the behaviour and conduct expected of them. Employees also have a responsibility to familiarise themselves with the general rules and procedures referred to in their

conditions of service and as related to their specific area of work and as required of them by their professional code(s) of conduct and NHS Constitution.

- 1.5 It is recognised that instances may arise however in which managers (or others) may be dissatisfied with the conduct or behaviour of an employee. There is therefore need for formal procedures, through which the issues can be identified and appropriate action, within given timescales, can be taken in a consistent, fair and reasonable manner.
- 1.6 It is the commitment of the Trust and responsibility of all employees in everything we do is not to discriminate on any grounds. In formulating this policy, aspects of discrimination have been considered so that particular groups are not disadvantaged.
- 1.7 This Policy applies to all employees of the Trust with the following provision:
 - a. Medical and Dental staff – this policy does not apply to issues concerning professional conduct and / or competence of Medical and Dental staff who are subject to the provisions of the Maintaining High Professional Standards Policy.
 - b. Temporary staff (including bank workers) – temporary workers are required to maintain the Trust’s expected standards of conduct, behaviour and practice. Any issues of conduct will be addressed using the relevant temporary workers procedure.
 - c. Trades Union representatives – such staff are subject to the provisions of this policy. However, in most cases no action will be taken until a senior trade unions representative or full time official has been informed.

2.0 DUTIES

- 2.1 The Trust has delegated authority to its managers to take action as appropriate under the terms of this policy and associated procedure.
- 2.2 The decision to suspend an employee from work will be taken by an appropriate manager or senior clinician, working in a more senior capacity to the individual being suspended. This must be in consultation with the on-call manager (out of hours), and with HR having been informed at the earliest possible opportunity.

Anyone included in the decision to suspend an employee from work cannot be included on any Disciplinary Hearing, Agreed Outcome Meeting or Appeal Panel to determine any related formal disciplinary action.

2.3 The Disciplinary Hearing Panel (or Agreed Outcome Meeting) will comprise the minimum of:

- a. The 'Hearing Officer', a designated senior manager to conduct the proceedings and determine and sanction formal action.
- b. An 'HR Adviser', a representative of the HR service to advise the Hearing Officer on employment matters.

Where allegations concern matters of professional conduct a 'Professional Adviser' with the relevant professional background and knowledge will advise the Hearing Officer. This will not necessarily be required where the 'Hearing Officer' has the relevant professional background and knowledge themselves.

The make-up of each panel should be free from any perceived or actual conflicts of interest. As such panel members may be asked to provide declarations of interest, including any relations with other Trust staff.

In cases where the formal sanction being considered is no less than a written warning, a 'designated senior manager' is deemed as being normally not less than the equivalent of a Band 8a manager.

2.4 **Managers**

It is a fundamental management responsibility to take disciplinary action when this becomes appropriate. Managers have an obligation to investigate complaints or allegations received concerning a member of staff where their conduct may be called into question. In instances relating to theft, fraud, bribery or corruption this will be in conjunction with the LCFS or LSMS as directed by the Executive Chief Finance and Resources Officer.

In accordance with Regulation 18 and 19 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 the Trust will need to ensure persons employed as Directors are fit and proper (namely of good character, have the requisite qualifications, be able by reason of their health (after consideration of reasonable adjustments) to carry out tasks intrinsic to their work.

Managers are required to ensure that all employees within their area of work receive appropriate training, supervision, monitoring and feedback to ensure that they are equipped to carry out their duties effectively and with due diligence.

2.5 **Employees**

It is a fundamental responsibility of all employees to perform to the best of their ability, and to behave in a responsible, professional manner at all times. Where clarification is required regarding the application of the disciplinary procedure, this should usually be from the line manager in the first instance. Assistance may also be sought from the HR service or Trades Union representative as appropriate.

Employees are expected at all times to conduct themselves in a manner commensurate with the values and behaviours of the Trust which are:

- Open
- Compassionate
- Empowering

All employees of the Trust have a 'duty of candour' and must be open and honest with patients when something that goes wrong with their treatment or care causes, or has the potential to cause, harm or distress.

2.6 Human Resources Service

The HR role is to ensure fairness and consistency in approach and application and includes provision of advice and assistance to managers on disciplinary matters. Managers should consult the HR service in all cases where formal disciplinary action may be contemplated.

2.7 Trade Unions

The role of Trade Unions is to represent and support employees in order to:

- a. Ensure the effective operation and success of the Trust in the interests of patients and service users, the organisation, all employees and commissioners of services
- b. Maintain excellent management / employee relations and communications
- c. Work together with the Trust to raise standards across the Trust
- d. Ensure staff are treated in accordance with the Trust's policies and relevant legislation

Professional Regulators

- 2.8 Managers in Nursing, Medical and certain other professional fields are required, in addition to their responsibilities to the Trust, to report details of professional misconduct to the appropriate statutory body in accordance with the relevant code of professional conduct.
- 2.9 Employees are responsible for complying with the relevant codes and standards set by their regulatory and / or professional body.
- 2.10 The Trust is able to deal with alleged breaches of the relevant professional code by a healthcare professional, independently of any action which the relevant professional body may take. In addition to meeting its obligations in reporting any such incidents, the Trust will investigate and take any action it deems appropriate with its own policies and any subsequent recommendation from the professional body.

- 2.11 It is a requirement that employees bring to the Trust's attention any investigation or action taken by either their professional body, or any other statutory body, regarding their conduct, behaviour or practice where these are called to question or where concerns are raised. Failure to notify the Trust of any of these actions within a reasonable time period may result in suspension and further action in accordance with the Trust's Disciplinary (Conduct) Procedure.

Registration

- 2.12 These standards include a requirement in statute to maintain registration in certain professions, for the duration of an individual's employment. To practice without registration will be considered as a direct breach of the relevant code of professional practice and conduct, as well as a breach of the employee's terms and conditions of employment, as it will render the employee unable to perform the duties for which they are employed.
- 2.13 Where an employee's registration has lapsed, or revalidation is not approved, for whatever reason it will be treated as a disciplinary matter.

Disclosure and Barring Service

- 2.14 The Disclosure and Barring Service [DBS], established under the Safeguarding Vulnerable Groups Act 2006 has responsibility for making decisions regarding referrals to the two statutory barred lists – the barred list for working with Children and the barred list for working with Vulnerable Adults.
- 2.15 The requirements of the DBS will apply to all NHS employees working within regulated activities. As a result it will be a criminal offence for an employer to allow a barred individual to work in any regulated activity.
- 2.16 The Trust has a statutory duty to make a referral to the DBS as soon as possible where an individual is, or may in the future be, working closely with vulnerable groups and has harmed, or may harm, a child or vulnerable adult, or if the Trust thinks that the DBS may consider it appropriate to 'bar' the individual.
- 2.17 Where an employee becomes barred by the DBS, it will be treated as a disciplinary matter.

Criminal Offences

- 2.18 An employee who is arrested, charged or served with a summons on a criminal charge, or is cautioned or convicted, or becomes subject to a police investigation, is required to inform his/her manager as soon as possible. Failure to notify the Trust of any of these actions within a reasonable time period may result in suspension and further action in accordance with the Trust's Disciplinary (Conduct) Procedure.

3.0 DEFINITIONS

For the purposes of applying the provisions contained in this document a glossary of terms that are used within the policy are as follows:

Conduct	The manner in which a person behaves, especially in a particular place or situation.
Misconduct	Unacceptable or improper behaviour.
Negligence	Failure to take proper care over something.
Temporary Staff	Staff engaged by the Trust on a fixed term, secondment or bank working arrangement.
Safeguarding	Protect from harm or damage with an appropriate measure.
Fraud	Wrongful or criminal deception with the intent to cause a gain for themselves or another, cause a loss to another or expose another to a risk of loss
Disciplinary Rules	Indicate the standards of conduct, behaviour and practice at work that the Trust expects from all its employees.
Theft	To dishonestly appropriate property belonging to another with the intention of permanently depriving the other of it
Bribery	The giving or receiving a financial or other advantage in connection with the "improper performance" of a position of trust, or a function that is expected to be performed impartially or in good faith.
Corruption	A form of dishonest or unethical conduct by a person entrusted with a position of authority

4.0 PRINCIPLES

- 4.1 Disciplinary procedures will be used when the conduct or behaviour of employees does not meet the required standards.
- 4.2 The Trust's policy, and associated procedure, is written in accordance with the Employment Act 2008 and is compliant with the ACAS Code of Practice on Disciplinary and Grievance Procedures (2015), which states:
- Employers and employees should raise and deal with issues **promptly** and should not unreasonably delay meetings, decisions or confirmation of those decisions.
 - Employers and employees should act **consistently**.

- Employers should carry out any necessary **investigations**, to establish the facts of the case.
- Employers should **inform** employees of the basis of the problem and give them an opportunity to **put their case** in response before any decisions are made.
- Employers should allow employees to be **accompanied** at any formal disciplinary or grievance meeting.
- Employers should allow an employee to **appeal** against any formal decision made.

5.0 MONITORING OF IMPLEMENTATION AND COMPLIANCE

- 5.1 Compliance with this policy will be against the Trust's agreed minimum requirements / as detailed within the Auditable Standards and Monitoring Arrangements.
- 5.2 The Executive Director of Corporate Governance and Strategy is responsible for ensuring there is a system in place to monitor, record and report on outcomes from disciplinary investigations, hearings and / or appeals that are conducted by the Trust. This will be shared with the Trust's Partnership Committee.
- 5.3 This policy is subject to review in accordance with the Trust HR policy review schedule and as agreed by the Trust's Partnership Committee.

6.0 POLICY REFERENCES / ASSOCIATED DOCUMENTATION

- ACAS Code of Practice on Disciplinary & Grievance Procedures 2015
- NHS Code of Conduct and NHS Constitution
- Employment Rights Act 1996 & Employment Act 2008
- Professional Codes of Conduct
- Health & Social Care Act 2008 (Regulated Activities) Regulations 2014
- Duty of Candour
- Southend, Essex & Thurrock Safeguarding Children & Vulnerable Adults Procedures
- Equality Act 2010
- Health & Safety at Work Act
- Sharing Information on Healthcare Workers 2013 (National Guidance)
- General Data Protection Regulations (2016/679EU)
- The Money Laundering Regulations 2007
- Fraud Act 2006

7.0 REFERENCE TO OTHER TRUST POLICIES/PROCEDURES

- Disciplinary (Conduct) Procedures
- Maintaining High Professional Standards Policy
- Complaints Protocol
- Capability (Performance) Policy and Procedure
- Fraud, Theft and Corruption Policy
- Appeals Procedure
- Personal Files Policy
- Incident Reporting Procedure
- Raising Concerns at Work (Whistleblowing) Policy
- Grievance Policy and Procedure
- Dignity and Respect Policy and Procedure
- Equality & Diversity Policy

END

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