



**Scottish
Ambulance
Service**
Taking Care to the Patient



Management of Employee Conduct Version 1.0

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1.0 POLICY STATEMENT

- 1.1 It is the aim of Scottish Ambulance Service to ensure that all employees are treated in a fair and equitable manner.
- 1.2 Employees are expected to adhere to acceptable standards of conduct in the course of their employment. Where such standards are not met, a formal process should only be followed where there is no other alternative. In all cases, the primary objective must be to assist and support the employee to improve to the required standard. Dismissal on grounds of conduct should only be considered as a last resort.
- 1.3 Where concerns arise over potential misconduct, action is required in the interests of both the Service and the employee. A failure to deal with it may adversely affect colleagues and standards of patient care, and as a result other staff may become disillusioned and dissatisfied. Some may even look elsewhere for employment. In this way, the efficiency and the quality of the service can quickly deteriorate.
- 1.4 This policy has been developed in partnership with trade unions/professional organisations. It reflects the best practice identified in, and meets the minimum standards set out in, the Management of Employee Conduct Partnership Information Network (PIN) Policy. The policy also reflects relevant current employment legislation and ACAS code of practice.

2.0 SCOPE

- 2.1 This policy applies to all directly employed staff, including bank/temporary staff and the Service staff on secondment.
- 2.2 In the case of conduct issues relating to staff groups who require to be professionally registered, the Service has in place a mechanism to ensure that relevant statutory regulatory bodies are informed, as appropriate, where such issues arise. Employees must be advised in advance of any such referral being made. Decisions in relation to ongoing professional registration as a result of such issues will be for the relevant statutory regulatory body to determine. However, this policy will apply in relation to those conduct issues in so far as they relate to an individual's employment within the Service.

3.0 AIMS OF POLICY

- 3.1 This policy will ensure that conduct issues are dealt with in a fair and consistent manner. The policy provides:
 - Assistance to employees to improve wherever possible
 - when such issues arise;
 - Firm but fair and consistent means of dealing with conduct
 - issues; and
 - A means of resolving conduct issues where improvement is unachievable.
- 3.2 In order to achieve these aims, the following principles and values apply:
 - This policy will be appropriately communicated to all employees and will be made readily accessible to them;

- All employees will be made aware of acceptable standards of conduct, and of the need to adhere to such standards;
- Good standards of conduct, and special effort by individuals and teams, will be acknowledged, encouraged and reinforced;
- Issues of conduct will be addressed at the earliest opportunity and (except in more serious cases) on an informal basis in the first instance before resorting to the formal procedure;
- Issues of conduct will be addressed fairly, consistently and confidentially, irrespective of the position/level of employees with whom such matters arise;
- Issues of conduct will be addressed in a supportive manner, with every opportunity to improve being offered.
- Termination of employment on grounds of conduct will only ever be as a last resort;
- Joint training on the policy will be provided for managers and trade union/professional organisation representatives using a partnership model, in order to ensure that relevant staff are sufficiently skilled and competent in implementing the process;
- HR advice will be available to managers involved in implementing the process;
- At all stages of the formal procedure, an employee will be entitled to be accompanied by a trade union/professional organisation representative or work colleague; and
- This policy will be subject to ongoing monitoring to ensure that it is being fairly and consistently applied and that the stated principles and values are being met. The policy will be subject to regular review, in partnership, to ensure that any new standards and/or structures are incorporated when necessary and that it remains fit for purpose.

4.0 ROLES AND RESPONSIBILITIES

4.1 Managers will:

- Ensure that all employees for whom they are responsible are made aware of the standards of conduct required;
- Ensure that such employees are made aware of and have access to this policy;
- Ensure that good standards of conduct, and special effort by individuals and teams, is acknowledged, encouraged and reinforced;
- Ensure that they are fully aware of and comply with the provisions of this policy, identifying and dealing with issues which arise in a fair, consistent, confidential, timely and supportive manner; and they are familiar with the 'Managers Guide to Handling a Disciplinary Issue' available on @SAS
- Ensure that they seek HR advice where necessary and appropriate when dealing with conduct issues.
- Treat as confidential any information communicated to them in connection with an investigation or disciplinary matter. Advice should be sought from the HR Department in relation to the secure storage and processing of any documents or electronic information relevant to disciplinary matters.

4.2 The Trade Union/professional association/representative will:

- Work in partnership with the Scottish Ambulance Service to develop joint training as part of the implementation of this policy and participate in such joint training;
- Work in partnership with the Scottish Ambulance Service to raise awareness of the benefits of, and the approach to, the management of employee conduct as outlined in this policy

- Support their members, including providing representation throughout the formal stages of the procedure, ensuring that their members are aware of their rights and responsibilities under this and other relevant policies; and
- Participate in partnership monitoring, evaluation and review of this policy.

4.3 Human Resources will:

- Develop and deliver, in partnership, training on this policy for managers and trade union/professional organisation representatives;
- Advise managers on the correct implementation of this policy; and
- Support employees by providing advice on this policy.
- Provide advice on the secure storage and processing of any documents or electronic information relevant to disciplinary matters.

5.0 PROCEDURE

5.1 Informal approach

5.1.1 It is recommended that, prior to invoking the formal procedure, managers need to reflect on whether there are ways of dealing with alleged misconduct in a more supportive way. The emphasis should be on a two-way, open and honest discussion, with a view to determining the underlying issues and identifying potential remedies, resulting in a series of commitments on the part of the employee and their manager, with the aim of providing a supportive working environment for employees which seeks to achieve continuous improvement rather than punish mistakes. Managers are responsible for ensuring that such discussions take place promptly where such issues arise, and that they are managed confidentially. Managers should also consider the Scottish Ambulance Service Substance Abuse policy where conduct may be impacted by such issues.

5.1.2 If the issues continue, the manager will meet regularly with the employee, providing guidance on what is unacceptable, reinforcing what is acceptable and setting targets and timescales for improvement. These meetings should be recorded and a copy kept by both parties in accordance with standard record-keeping procedures, in order to ensure clarity of expectations and commitments. Where the manager has followed the principles of fair and reasonable management, providing support to the employee and monitoring improvement over a reasonable time period, and where there is still insufficient improvement, the manager will advise the employee that the formal procedure may need to be invoked.

5.2 Formal Procedure

Where there has been inadequate improvement, despite having been given initial, informal guidance and support, or in more serious cases, a more formal approach will be required.

5.2.1 Right to representation

Employees have the right to be accompanied by a trade union/professional organisation representative or work colleague at all formal stages of the procedure (including investigatory interviews). It is the responsibility of the employee to arrange this, and the employee must tell the person chairing the meeting who the chosen representative is (and whether they are a colleague or trade union/professional organisation representative) in good time before the meeting. If the employee wishes alternative representation, such as a family member or friend (not acting in a legal capacity), this should be discussed with the Head of HR. In addition to the foregoing, where agreed with the Service as an appropriate reasonable adjustment or accommodation, an employee may bring an additional person to support them (e.g. in overcoming disability, interpretation or other communication needs).

A representative is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a representative if they do not wish to do so. If the chosen representative is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards, the Service may ask the employee to choose someone else. Where possible, the Service should allow a representative to have a say in the date and time of a hearing. Staff should give adequate notice of cancelling meetings (i.e. at least 3 working days).

The representative may address the meeting to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the meeting. The representative does not, however, have the right to answer questions on the employee's behalf.

Employees should bear in mind the following guidance included in the Acas Code of Practice on Disciplinary and Grievance Procedures, concerning the right to be accompanied: "As a matter of good practice, in making their choice, workers should bear in mind the practicalities of the arrangements. For instance, a worker may choose to be accompanied by a representative who is suitable, willing and available on site rather than someone from a geographically remote location. To exercise the statutory right to be accompanied workers must make a reasonable request. What is reasonable will depend on the circumstances of each individual case."

Where the employee is a trade union/professional organisation representative, no disciplinary action should be taken without discussion with a full time official of the appropriate organisation.

In the case of witnesses, they must be offered the opportunity to be supported by a trade union/professional organisation representative or work colleague at any investigatory interview or subsequent disciplinary (or appeal) hearing which they are asked to attend.

5.2.2 Suspensions

The use of suspension is not a form of disciplinary action in its own right but does form part of this policy. Careful consideration needs to be given to appropriate circumstances for its use in situations where the allegation poses a risk to clinical, financial or staff governance, and in all cases consideration should be given to alternatives to suspension, including temporarily moving the employee to another work area, or considering other duties, where such an alternative removes the identified risk.

Suspension related to disciplinary investigations will be on full pay and for as short a time as possible. However, where an individual is suspended and subsequently reports as being sick, while the suspension will remain in place, the employee will receive occupational sick pay (according to their entitlement) during the sickness absence period.

See **Annex A** for further information and guidance.

5.2.3 Undertaking investigations

As soon as an employee's manager is aware of alleged misconduct, they should contact the HR department to discuss the matter. This is to ensure that all appropriate informal steps have been taken and to provide guidance on the fair application of this policy. In some situations, managers may feel that in order to handle the situation effectively, more information is required in order to decide whether an investigation is necessary. In these circumstances, a preliminary investigation may be necessary before moving to the formal stage and this may involve gathering appropriate evidence on the matter. (**Annex B**).

Where there is an allegation which may potentially be fraud then this must be reported immediately to the Director of Finance and Logistics prior to any investigation commencing as the counter fraud department may need to be contacted and advice sought. If counter fraud wish to investigate an issue then the Service will not investigate this issue until given authorisation by counter fraud.

Prior to any disciplinary process a full and thorough investigation must be carried out timeously in order to establish the facts of the case. (See **Annex C** for further detail on investigations) The nature and extent of the investigations will depend on the seriousness of the matter and the more serious it is then the more thorough the investigation should be.

The manager will inform the employee of the alleged misconduct and advise that there will be an investigation.

The manager will be responsible for appointing an investigating officer. The investigating officer may be supported by a representative of HR in undertaking the investigation (and in any formal hearings which subsequently result).

The investigating officer will seek to compile sufficient information and evidence for a management decision to be reached on whether a disciplinary hearing is necessary (i.e. sufficient supporting evidence regarding the allegations).

The investigation will involve interviewing the individual who is the subject of the investigation and any potential witnesses, and the gathering of any other relevant material.

The investigating officer will write to individuals providing seven calendar days notice of the investigatory interview, setting out:

- The date, time and location of the meeting;
- Who will be attending the meeting;
- The purpose of the meeting; and
- The right to be accompanied.

All those interviewed will then be asked to agree the notes of the meeting (these need not be verbatim) and be given the opportunity to consult with their representative regarding the content of the notes. All those interviewed should be advised that meeting notes and any written statements may require to be shared with the individual under investigation and their representative, and other witnesses, as appropriate.

In the case of witnesses, they should additionally be advised that such meeting notes and written statements may be used as evidence should the issue proceed to a disciplinary hearing (or subsequent appeal) and that they may be asked, by either party, to attend. Where the evidence of a witness is to be used at a subsequent hearing, they must be available to attend (although this could be waived following agreement of all parties), except in cases where such witnesses are not employed by the Scottish Ambulance Service and are not prepared, or are unable, to attend (in which case all effort must be made to obtain a written statement or signed, dated confirmation of any investigatory meeting notes as an accurate reflection of the discussion).

At the conclusion of the investigation, the investigating officer will make a recommendation as to whether the matter requires to be progressed. In some cases, following investigation, it might be determined that, while the matter does not require to be progressed to a formal disciplinary hearing, the findings of the investigation suggest that sufficient concerns remain which require informal action to be undertaken.

5.2.4 Attendance at Disciplinary and Appeal Hearings

Disciplinary hearings (including appeals) will normally comprise a Chair and two other panel members (one of whom will normally be a member of the HR department, who will provide advice to the manager). To ensure impartiality, panel members, including the Chair, must have had no prior involvement in the case.

In addition to the employee and their representative, the investigating officer (or disciplinary panel Chair in the case of appeals) will also be in attendance (who may themselves be supported by a member of the HR department). Any witnesses called, by either party, to a disciplinary or appeal hearing will additionally have the right to be accompanied.

5.2.5 Disciplinary Hearing

The Chair will be notified of the need to convene a disciplinary hearing. They will be responsible for identifying membership of the disciplinary hearing panel.

The Chair will also be responsible for ensuring that the employee and their representative are advised in writing, no later than seven calendar days prior to the hearing, of the following:

- The date, time and location of the hearing;
- The allegations to be considered; this should contain sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification.”
- The potential outcomes. Where the potential outcome may be dismissal (either summary dismissal due to the severity of the allegations or dismissal with

notice, where the allegations are less serious, but there is a relevant live final/first and final written warning on file) this must be stated;

- Who will be attending the hearing;
- The right to be accompanied;
- Arrangements for the exchange of cases; and
- Where a copy of the policy can be accessed;
- A copy of the investigatory report

Should the employee wish to provide a written statement in support of their case, this should be submitted within three calendar days before the disciplinary hearing. Such cases should include details of any witnesses which either party is calling to the hearing. It is the responsibility of the party calling the witness to inform them of the arrangements for the hearing.

5.2.6 Disciplinary Hearing Outcome

Following the hearing, the panel will adjourn to consider the case.

There are three potential outcomes:

- No case to answer;
- Informal action required; or
- Formal disciplinary sanction required.

The formal disciplinary sanctions available to the panel are as follows:

- First Written Warning – 6 months on file;
- Final/First and Final Written Warning – 12 months on file;
- Alternatives to Dismissal; or
- Dismissal (with notice, as a result of repeated misconduct, or without notice in the case of summary dismissal on grounds of gross misconduct). Dismissal must be notified to the Director of HR and OD before this sanction is given. The sanction applied by the disciplinary panel should take into account the seriousness of the allegations against the employee and any mitigation which is offered. Mitigation should be asked about, if not otherwise mentioned.

Previously issued warnings must be disregarded for disciplinary purposes after their expiry. However, consideration may be given to the circumstances which resulted in such warnings being issued where subsequent allegations of misconduct arise, where this can be shown to demonstrate a repeated pattern (although any such reference must be reasonable and appropriate, considering the severity of the earlier matter and the period of time which has since elapsed).

Where the outcome of the disciplinary hearing is such that dismissal would be an appropriate action, it may be that, following clarity around mitigating circumstances, some form of disciplinary action other than dismissal may be deemed appropriate. Any such alternatives should be based on the general principles of equity and consistency and may be subject to review, and will normally be in conjunction with an appropriate level of warning. Alternatives to dismissal may include a permanent or temporary demotion (protection of earnings would not apply in such cases), relocation to another suitable post/location or a period of re-training. Movement into another post (including demotion) will only be an option where it is identified that such a post exists. A post will not be created to facilitate such a move.

Some acts, termed 'gross misconduct', are so serious in themselves or have such serious consequences that the relationship of trust and confidence which is needed between the Scottish Ambulance Service and the employee is damaged irreparably, and therefore call for summary dismissal without notice for a first offence.

All disciplinary hearing outcomes must be confirmed in writing to the employee and their representative within 14 calendar days following the hearing. The letter should confirm the following:

- Details of who was present at the disciplinary hearing;
- The allegations considered;
- The hearing outcome (including any disciplinary sanctions issued) and the reason such a decision was taken;
- The date on which any issued warning will expire or, in the case of dismissal, the date on which employment will terminate (recognising, except in the case of dismissal on grounds of gross misconduct, the employee's contractual notice);
- In the case of warnings, the potential consequences of further misconduct prior to expiry of the warning (particularly the potential for consideration of dismissal prior to expiry of a final/first and final written warning);
- In the case of dismissal, any necessary administrative or financial arrangements; and
- Details of the right of appeal.

5.2.7 Appeals

All employees have a right to appeal against any decision taken.

Details of the right of appeal must be clearly set out within the letter confirming the outcome of a disciplinary hearing, detailing to whom such an appeal must be made and the timescale within which it must be lodged (no later than 14 calendar days following receipt of the letter confirming the disciplinary hearing outcome). The employee must clearly state the grounds for appeal.

The identified Chair will be responsible for identifying membership of the appeal hearing panel. The hearing should be heard within 14 calendar days of the appeal notification.

The Chair will also be responsible for ensuring that the employee and their representative are advised in writing of the following:

- The date, time and location of the hearing;
- Who will be attending the hearing;
- The right to be accompanied;
- Arrangements for the exchange of cases; and
- A copy of the policy.
- The written case produced by the manager who chaired the earlier hearing

The employee's appeal case will be shared with the appeal panel and Chair, and with the manager who chaired the earlier hearing and issued the disciplinary sanction against which the employee is appealing. Such cases will include details of any witnesses which either party is calling to the appeal hearing. It is the responsibility of the party calling the witness to inform them of the arrangements for the appeal hearing.

An appeal cannot result in any increase in penalty as this may deter individuals from appealing.

Following the hearing the Chair will be responsible for ensuring that the employee and their representative are advised in writing of the outcome of the appeal hearing. This should include the rationale behind any decisions taken in response to the employee's grounds for appeal. Such a letter must be issued within 14 calendar days following the appeal hearing. The outcome of the appeal will be final, with no further internal right recourse.

5.2.8 Grievances/Dignity at work complaints

Where an employee raises a grievance or dignity at work complaint during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance/complaint. Where the grievance/complaint and disciplinary case are related, however, it may equally be appropriate to deal with both issues concurrently.

If an employee is summarily dismissed, the grievance will be dealt with in line with the Service Dealing with Employee Grievances policy, section 6.0.

5.2.9 Failure to engage

There may be occasions when an employee is repeatedly unable or unwilling to attend a meeting/hearing. This may be for various reasons, including illness or a refusal to face up to the issue. In such cases, consideration will require to be given to all the facts before coming to a reasonable decision on how to proceed. Considerations will include:

- The seriousness of the disciplinary issue under consideration;
- The employee's disciplinary record (including current warnings), general work record, work experience, position and length of service;
- Medical opinion on whether the employee is fit to attend the meeting/hearing;
- How similar cases in the past have been dealt with; and
- Whether, therefore, it is considered fair and reasonable in the particular circumstances to proceed in the absence of the employee.

Where an employee continues to be unavailable with good cause to attend a meeting/hearing, it may be concluded that a decision in their absence will need to be made based on the evidence available. The employee must be informed where this is to be the case.

6.0 Criminal charges

Disciplinary action should not be taken automatically against an employee because he/she has been charged with or convicted of a criminal offence. Each situation requires to be considered individually on the basis of whether the employee's conduct warrants action because of its employment implications or because it is reasonably considered unacceptable to other employees.

In situations where it is considered that the conduct warrants investigation under the disciplinary procedure, the following should be considered:

- An investigation into the facts of the case should be undertaken, this should include meeting with the employee where possible.

- It is not usually necessary to await the outcome of any prosecution before taking any action.
- If the employee refuses to co-operate with internal disciplinary investigations, this does not stop the employer from taking action. In these situations the employee should be advised in writing that unless further information is provided a decision will be taken, up to and including dismissal, on the basis of the information available.
- In some cases the nature of the offence may have no bearing on the employee's employment but the employee may not be available for work because they are in custody or remand. In these circumstances the employer will need to decide whether, considering the needs of the Service, the employee's job can be kept open.
- Where, following a criminal conviction leading, for example, to the loss or suspension of a driving licence, the continuation of employment in a particular job would be illegal; employers should consider whether suitable alternative work is available. It is the individual's responsibility to inform the relevant governing body (i.e. Health and Care Professions Council (HCPC), Nursing and Midwifery Council (NMC) or General Medical Council (GMC)) of any potential forthcoming investigation. Individuals should refer to appropriate body guidelines.

In circumstances where it is deemed necessary, the Service also have an obligation to advise the governing body of any incident which would affect an individual's right to practice or undertake their role. It is the manager's responsibility to advise the Director of Health Professions and Nursing Care of this.

The Service will provide relevant information to the governing body. It is then the responsibility of the appropriate body to investigate the matter further and make any decision affecting registration etc.

6.1 Referrals to Disclosure Scotland

The Protection of Vulnerable Groups Act 2007 (PVG) places a legal duty on organisations and personnel suppliers to make a referral when certain criteria are met. Broadly speaking, the criteria are that: (a) an individual doing regulated work has done something to harm a child or protected adult and (b) the impact is so serious that the organisation has (or would) permanently remove the individual from regulated work. It is a criminal offence not to refer an individual when the duty arises.

Making a referral is very important. Failure to refer an individual may mean that an individual who is unsuitable to do regulated work does not get barred from doing that type of work and can go on and harm other vulnerable people in other settings. Please discuss any potential referrals with a member of the HR team.

7.0 Debrief and reintegration

Regardless of whether or not a matter progresses to a disciplinary hearing, it may be appropriate to undertake a debrief in order to review the case, any lessons learned and agree any further general organisational improvement actions identified during the investigation/hearing process. Involvement in such a discussion will be determined on a case by case basis.

In addition to the duty of care, referred to below, it is also critical to ensure that, where the outcome does not involve dismissal, the employee is supported in being reintegrated back into their job role and within their team (or within any new job role/team, into which they are placed as a hearing outcome).

Managers should liaise with HR and trade union/professional organisation representatives to discuss measures which might help to support reintegration.

8.0 Duty of care

In line with current health and safety legislation, the Scottish Ambulance Service has a duty of care to its employees. In the context of this policy, this means that the Scottish Ambulance Service needs to be mindful of the potential risks to health and safety associated with individuals who are involved (primarily the individual who is the subject of the case and any witnesses).

Where it is suspected that an individual's health and safety may be at risk, at any stage of the procedure, contact should be made with Occupational Health as a matter of priority. Trade union/professional organisation representatives, where they perceive any potential concerns in this regard should advise their member to seek Occupational Health support, as well as advising management accordingly.

Particular consideration needs to be given in circumstances where the decision of the disciplinary panel is to dismiss an employee (or where an appeal hearing panel has upheld a decision to dismiss). Where concerns around the individual's health and safety exist, it may be helpful to arrange for the individual to meet with Occupational Health following verbal confirmation of the outcome or, where the outcome is to be conveyed solely in writing, invite the employee to attend to receive the written confirmation, with Occupational Health on hand for immediate support.

Managers should also consider the Scottish Ambulance Service Substance Abuse Policy and what support a staff member may require in line with this.

9.0 Review of policy and procedure

This policy and procedure (s) has been updated as part of continual improvement programme within the Service focusing on ensuring best practice in partnership with Managers and staff representatives through a partnership working group. The policy will be formally reviewed on a continuing basis as part of this process, no later than the date on the front cover of this document.

Annex A

Suspension

1. Suspension is an emotive term and, although it is not in itself disciplinary action, it can be seen by both the individual and others as having negative connotations, including implied guilt. Case Law has confirmed that the courts don't view suspension as a "neutral act". This is especially true where the suspended employee has a professional role.
2. Before deciding to suspend an employee, the manager should assess the degree of risk involved (i.e. whether the employee poses a risk to clinical, financial or staff governance). As an alternative, in some situations, it might be appropriate to arrange a temporary redeployment to another work area or role during the course of the investigation, to limit the duties of the individual or to put in place additional supervision of work. Such considerations should always be given in terms of how to mitigate risk during the course of the investigation, with such options having been exhausted before determining the need to suspend as a last resort. This does not preclude circumstances as set out below where the purpose of the suspension is to take the heat out of the immediate situation.
3. If the purpose of the suspension is to take the heat out of a situation, it may not be necessary for the individual to remain on suspension until the whole investigation is complete.

The following situations provide examples where suspension might be used:

- Where a disciplinary offence is alleged to have taken place and an investigation is required. It may be that a person against whom allegations have been made could be seen to either interfere with or influence an investigation if they were at work;
 - Where it is suspected that an individual is under the influence of either alcohol or drugs;
 - Where there is a need to remove an employee from the premises to cool down (e.g. where staff have been fighting, although it may be necessary to suspend both employees in this example);
 - Where allegations are made of bullying or harassment and it is considered necessary for whatever reason that neither the accuser nor the accused attends work; or
 - Where there is an allegation of abuse of patients, especially children or vulnerable adults.
4. Where there is to be an investigation by Counter Fraud Services, CFS should normally be consulted before suspending an employee. CFS may wish to make recommendations regarding the timing of the suspension in the interests of securing the integrity of any potential evidence.
 5. A designated Contact Officer (a neutral person) should be identified in the case of employees who are suspended. The Contact Officer is a named individual with responsibility to act as a recognised point of contact for any issues the employee may wish to raise. The nature of suspension is such that the individual should not enter the premises unless requested by management or their trade union/professional organisation (subject to agreement by management), or contact others within the Service. This can isolate individuals from their normal organisational support mechanisms. Not all employees will be a member of a trade union/professional organisation and therefore receive support through such channels.

The following guidelines should apply to suspension:

- Advice should be sought from the HR department prior to suspension;
- An individual's line manager, or the responsible manager onsite, will normally carry out suspension. Where practicable, another manager or an HR representative should be present to act as a witness to the suspension;
- Where practicable, employees should be given reasonable notice to organise representation;
- Written confirmation should be given within two working days, stating the reasons for the suspension, the designated Contact Officer and any particular restrictions on access to Board premises, return of keys and parking permits etc.;
- Suspension will always be on full pay when related to matters of alleged employee misconduct (i.e. pay the employee would have received if at work, including the average of enhancements, if applicable);
- Suspension will always be for as short a period as is possible. It should be reviewed on a regular basis to ensure that it remains necessary. The investigation should be completed, and if relevant the disciplinary hearing held, within an agreed timescale. Only in exceptional circumstances should an employee be suspended for more than four calendar weeks, and this must be discussed with HR;
- In exceptional circumstances, where an employee has to be suspended for more than four calendar weeks, there must be regular communication with the employee regarding progress and the likely timescale for completion of the investigation;
- If the individual subsequently becomes sick, then sick pay will apply;
- Employees who are suspended should be available to attend an interview at short notice if required during normal working hours, subject to the availability of support and taking into account pre-arranged leave;
- Where an employee is suspended, suspension should similarly apply to other posts held within the Service and to out of hours work (e.g. bank) where the risk of clinical, financial or staff governance being compromised also exists;
- There may be occasions where the above risk is so great that it would be appropriate to inform another employer (e.g. alleged patient abuse) where it is known that the employee also works on the bank of another Board; and
- Suspended employees must not work for another employer during their normal working hours.

Annex B

Preliminary investigation

1. Purpose

The purpose of this document is to provide guidance when it is felt necessary to conduct a preliminary investigation. This may involve gathering evidence, such as relevant data, or having an informal discussion with the staff member concerned.

This procedure does not cover clinical incidents and in these circumstances managers should contact the Clinical Directorate team for advice.

2. Background

Managers regularly deal with minor incidents, allegations and complaints. Managers may feel that in order to handle the situation effectively, more information is required. In these circumstances, managers may wish to consider whether to undertake a preliminary investigation, which will provide information on the nature and circumstances of the event, or relevant additional information or data.

3. Meeting with staff

Where it is deemed necessary to have a discussion with staff to establish facts, this should happen as soon as possible (i.e. within three working days of the incident) and the key questions may include:

- What were the circumstances
- What are the learning points
- What needs to happen next to ensure this does not happen again (e.g. system changes, procedure changes, equipment or training required)

This discussion is informal and will not be formally noted

The review should stop when information is obtained which suggests that there should be an investigation in line with the Management of Employee Conduct policy (for example if fraud is suspected). At this point, it may be appropriate to inform both HR and staff side that an investigation is being commissioned.

Annex C

Investigations – How to Get it Right

1. When to Investigate?

While this section relates to investigation of allegations of misconduct, internal investigations may also require to be carried out in other circumstances (i.e. in relation to grievances, dignity at work complaints or matters of capability). While the corresponding locally developed policies which cover these other areas should detail the procedure to be following in undertaking any necessary investigation, the following general principles will apply in all cases. The nature and extent of the investigations will depend on the seriousness of the matter and the more serious it is then the more thorough the investigation should be.

2. Why Investigate?

A fair, consistent, impartial and thorough investigation will ensure that the facts can be established and will allow managers to make appropriate informed decisions about the next steps.

3. Who Investigates?

It is normal for the employee's manager to investigate allegations (or nominate a representative to act as an investigating officer where the manager is implicated or involved in any aspect of the allegation). In the interests of natural justice the same person conducting the investigation cannot hear the disciplinary complaint against the employee if it proceeds to a formal hearing.

The investigating officer will seek to compile sufficient information and evidence for a management decision to be reached on whether a disciplinary hearing is necessary (i.e. both evidence which supports and undermines the allegations). The investigation is likely to include interviews with the key people involved and the gathering of written statements and other relevant material.

4. How to Investigate?

4.1 Before you start, identify:

- Details of the precise issue to be investigated (e.g. details of allegations made etc.);
- Suggested methodology for conducting the investigation (e.g. identification of initial witnesses, copies of relevant policy under which investigation is being held);
- For what purpose and by whom any subsequent investigation report produced would be used; and
- Techniques, such as root cause analysis, which might be helpful.

4.2 Investigatory Interviews

- As part of the investigation, it will be necessary to interview the individual who is the subject of the investigation, as well as any potential witnesses.

- It may be necessary to carry out additional subsequent interviews in order to clarify details where, for example, conflicting accounts are received or where new information comes to light in the course of the investigation.
- The order in which investigatory interviews take place should, where possible, follow a logical order, in order to minimise the likely need to undertake such additional subsequent interviews. However, it is appreciated that this may not always be possible and that, indeed, further witnesses may be identified during the course of the investigation.
- Individuals should receive written notice of a request to attend an investigatory interview, which should set out the purpose of the interview and confirm the individual's right to be accompanied, and include reference to where a copy of the Management of Conduct policy can be accessed.
- In the case of the individual who is the subject of the investigation, it is important that they are made aware of the allegations being investigated at an early stage (although it is recognised that these may change during the course of the investigation).
- The investigating officer should identify what needs to be established from each investigatory interview and prepare accordingly.
- Those being interviewed should be encouraged to recall their version of events in their own words, with the use of open, rather than closed, questions being used to gain information, clarify the issues and to check understanding of what has been said.
- In the case of witnesses, they should be informed that their statement may be shared with the individual who is the subject of the investigation, that the statement may be used if further action is taken and that they may be required to give evidence if matters subsequently proceed to a disciplinary hearing. If a witness refuses to participate it is important that the investigating officer meets with them to understand their reasons and to discuss any means by which such refusal might be overcome.
- The investigating officer should make full notes of the investigatory meeting. While those interviewed may subsequently be invited to sign and date those notes as an accurate reflection of the discussion, there is no obligation on the part of interviewees to do so. However, in such cases, a separate signed and dated written statement would be required from the individual.

4.3 Gathering Other Evidence

- Do not just rely on witness statements, as this may result in other crucial evidence being overlooked.
- Files, documents, computer records, policy documents and training records can all be produced as evidence where relevant.
- If any evidence is likely to perish or be removed, gather it as a priority.

5. Preparing the Investigation Report

5.1 Review and evaluate the evidence. Particular attention should be given to the following:

- Direct witness evidence (which will usually be stronger than indirect information relating to the incident/ allegation);
- Evidence which is inconsistent with documents produced at the time;
- Evidence which is vague, omits significant details or contains inherent contradictions should be regarded with caution, as should any bias or influence individual witnesses may have.

5.2 The Report

The report should be structured in a logical format.

- Introduction – a brief introduction to the report clarifying the allegations/incidents which have been investigated, details of the person against whom the allegation has been made and the name of the investigating officer (and the member of the HR department who supported the investigating officer, if applicable).
- Methodology – detail the process of the investigation including a list of the people interviewed, specifying if written statements/notes from meetings have been taken, details of Service policies reviewed and details of any other activities undertaken as part of the investigation.
- Findings – detail the findings from the investigation, including the facts and evidence presented; any inconsistencies found, with explanations where applicable; any mitigating circumstances; and any risks identified. Where information from written statements/notes from meetings is cited, note must be made of the relevant appendices where these can be found.
- Conclusions – this section should include the conclusions drawn by the investigating officer.
- Appendices – all written statements/notes from meetings, copies of correspondence, policies cited during the report and any other relevant information should be included.

Annex D

Misconduct and Gross Misconduct

1. Misconduct

There is no legal definition of misconduct. However, it is recognised that misconduct is any type of behaviour or conduct at work that falls below the standard required by the employer or is in breach of organisational policy.

2. Gross Misconduct

If, after investigation, the offence is considered by a disciplinary hearing panel to constitute gross misconduct, it could lead to summary dismissal without notice for a first offence. Acts of gross misconduct are those which are so serious in themselves, or have such serious consequences, that the relationship of trust and confidence, which is needed between the employer and employee, has been damaged irreparably.

Examples of gross misconduct may include:

- Assault;
- Theft or unauthorised removal of NHS property;
- Abuse of a fellow employee or any other person;
- The falsification of pay sheets, clock cards or other wages or financial data; fraud or attempted fraud; or fraudulently claiming expenses or other benefits;
- Conduct likely to lead to a breach of peace, threatening behaviour, gross indecency;
- Inability to perform duties due to the influence of drink or drugs (other than those taken under medical direction), or unauthorised consumption of alcohol or drugs while on duty;
- Criminal offences committed outside working hours which affect the employee's ability to perform their duties, particularly where there is an element of trust involved or it is felt there could be danger to staff, patients, or visitors;
- Wilful failure to adhere to safety rules where this would create a measurable risk of danger to others or damage to machinery etc.; tampering with safety, fire or first aid equipment;
- Gross negligence or irresponsibility;
- Wilful or grossly negligent damage to NHS property or equipment;
- Persistent wilful refusal to perform to the required standards of the job role;
- Breaches of confidentiality;
- Unprofessional conduct as defined by reference to generally accepted standards of conduct or ethics within a staff group;
- Persistent unauthorised absence;
- Inappropriate access and use of IT systems, software or the internet/intranet;
- Wilful disregard of equality and diversity policies;
- Significant or persistent bullying or harassment of a fellow employee or any other person; or
- Wilful failure to adhere to clinical governance/infection control policies (e.g. hand hygiene).

This list is intended only to outline the types of gross misconduct which would be found unacceptable. It is not an exhaustive list of offences for which dismissal without previous warning may take place.

Annex E

Guidance for Disciplinary/Appeal Hearing Chairs

While this section relates to guidance for disciplinary hearing Chairs, individuals may also be involved in charring hearings in other circumstances (i.e. in relation to grievances, dignity at work complaints or matters of capability). While the corresponding locally developed policies which cover these other areas should detail the procedure to be following in undertaking such a role, the following general principles will apply in all cases.

1. Who is attending?

Explain who is attending and why – please remember that although you may be familiar with all those who are attending, the employee or their representative may not. Ensure that the person accompanying the employee is acceptable in terms of the local policy (i.e. a work colleague or trade union/professional organisation representative).

2. Why are they attending?

Explain the reasons for the hearing, ensuring that the employee understands the allegations which have been made and what policy you are following. Establish at the outset if witnesses are to be called and who is responsible for ensuring that they attend. If you have a note taker explain this and what will happen in relation to the management notes (i.e. that they are management notes, not approved minutes). It is important that a note of the hearing is kept, so that it can be referred to in any subsequent appeal or employment tribunal hearing. It is recommended that arrangements are made for someone who is not involved in the case to take a note of the hearing.

3. What Process is to be followed?

If you have to deviate from your policy (e.g. the order in which the hearing is to proceed or who is hearing the case), explain this at the beginning and seek agreement to this. Explain the order in which the information will be presented, i.e.:

- The investigating officer will present their case, with the opportunity for questions from the employee and/or their representative, and then from the panel;
- The employee and/or their representative will present their case, with the opportunity for questions from the investigating officer, and then from the panel;
- Either party will call identified witnesses in the course of presenting their respective cases, with the opportunity for the other parties to ask questions of those witnesses; and
- Both parties will have the opportunity to provide a closing statement in summary (at which point no new evidence can be introduced by either party), with the employee and/ or their representative having the last word prior to the hearing being adjourned to allow the panel to consider their decision.
- Consider the setting and have appropriate breaks if necessary.

4. When to intervene?

- You need to ensure that all the relevant evidence is heard.
- You may need to intervene if you feel that relevant questions have not been asked.
- You should intervene where it is considered that statements made by either party are irrelevant or unsubstantiated. They should be asked to explain why the statement is relevant or provide evidence to substantiate it. Where such

explanation/evidence is not satisfactorily provided, it should be confirmed to all in attendance that it will not be considered when determining the outcome of the hearing.

- You should intervene if the conduct of either party during the hearing is inappropriate.

4. What must you establish?

- The facts as you find them.
- You should form a **reasonable belief** as to whether the allegations are substantiated. It is not necessary for the employer to have conclusive proof of the employee's misconduct - only a genuine and reasonable belief.
- This must be on the basis that you are satisfied that a thorough investigation was undertaken and you have sufficient evidence to reach a conclusion.

6. What must you ensure?

That there has been a fair hearing - i.e.:

- Both parties have had reasonable advance opportunity to see the case to which they are responding;
- Both parties have had the opportunity to present their case;
- Both parties have had the opportunity to ask questions of the other's case; and
- Both parties have had the opportunity to sum up, at which point they cannot introduce any new material.

7 What to do if there are facts/witnesses missing

- Seek to agree with the parties how you are going to deal with the situation (i.e. a short recess to consider information, to call a witness, or to determine if the facts/witnesses are fundamental to proceeding).
- If another witness is to be called, agree who will organise this.
- As the hearing forms a fundamental part of the overall process, you should ensure that you have sufficient information on which to make a decision.

8. What is your role once you have established all the facts?

- Determine whether, having ensured that there has been a reasonable investigation, and following full and thorough consideration of the evidence presented at the hearing, a reasonable belief can be formed as to whether or not some or all of the allegations are substantiated.
- Where such a reasonable belief exists and should you decide that there should be a disciplinary sanction, consider what is appropriate in terms of the policy, the employee's role, and fairness and consistency of application.
- Abide by your policy.
- Consider if the conduct amounts to gross misconduct – this occurs in the case of acts which are so serious in themselves or have such serious consequences that the relationship of trust and confidence which is needed between the employer and employee has been damaged irreparably.
- A decision about the above involves more than just seeing if the type of conduct falls within the list of examples of possible misconduct. Therefore you should seek the advice of HR.

9. When to Hear About any Mitigating Factors?

- Where conduct has been admitted, you should consider all factors put before you which are relevant as to why the conduct has taken place.
- You should ask about mitigating factors, if they have not otherwise been put before you.
- Mitigating factors may include previous work record, work pressure, health, domestic circumstances, dependency issues or team dynamics.

Annex F

Scheme of Delegation

1. Formal Warnings

The authority to issue a formal warning to an employee is vested in the employee's immediate manager or above.

2. Dismissal

The authority to dismiss an employee is vested in direct reports to Directors (or the Chief Executive in the case of dismissal of Directors).

3. Appeals

Appeals against a formal warning will be heard by a line manager at least one level above the manager who issued the formal warning.

In instances of dismissal, the right to appeal will be to a panel which should consist of senior managers of the Service – e.g Chief Executive or Executive Director.

If the employee dismissed is a direct report of the Chief Executive and the Chief Executive made the decision to dismiss, the Appeal Panel will consist of 3 non-executive Directors of the Board. Likewise, in the event of the dismissal of the Chief Executive, the appeal panel will consist of three non-executive Directors of the Board.

A senior member of the Human Resources function will be in attendance to provide advice and support to the panel.

