

# Disciplinary Policy

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Version	1.1
Owner	Alison McQuillan
Approving Committee	Executive Committee
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## Version History

V.	Date	Status and/ or amendments
V1.0		First draft
V1.1	10/11/15	Final

**SUMMARY**

The Disciplinary procedure applies to all staff regardless of length of service excluding those on medical or dental contracts of employment, and is in accordance with all legal requirements and ACAS guidance. The policy aims to encourage employees to achieve and maintain the required standards of conduct, performance and attendance. It ensures fairness and consistency in the treatment of individuals.

Version Number	Review Date	Name of Reviewer	Ratification Process	Notes
0.1 (1 <sup>st</sup> draft)				
0.2				
1.0 (1 <sup>st</sup> approved version)				

**Equality statement**

Surrey Downs Clinical Commissioning Group (Surrey Downs CCG) aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account the Human Rights Act 1998 and promotes equal opportunities for all. This document has been assessed to ensure that no-one receives less favourable treatment on grounds of their gender, sexual orientation, marital status, race, religion, age, ethnic origin, nationality, or disability. Members of staff, volunteers or members of the public may request assistance with this policy if they have particular needs. If the person requesting has language difficulties and difficulty in understanding this policy, the use of an interpreter will be considered. Surrey Downs CCG embraces the six staff pledges in the NHS Constitution. This policy is consistent with these pledges.

**EQUALITY ANALYSIS**

This policy has been subject to an Equality Analysis, the outcome of which is recorded below.

		Yes, No or N/A	Comments
1.	Does the document/guidance affect one group less or more favourably than another on the basis of:		
	<b>Age</b> Where this is referred to, it refers to a person belonging to a particular age (e.g. 32 year olds) or range of ages (e.g. 18 - 30 year olds).		
	<b>Disability</b> A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.		
	<b>Gender reassignment</b> The process of transitioning from one gender to another.		
	<b>Marriage and civil partnership</b> In England and Wales marriage is no longer restricted to a union between a man and a woman but now includes a marriage between a same-sex couple. Same-sex couples can also have their relationships legally recognised as 'civil partnerships'. Civil partners must not be treated less favourably than married couples (except where permitted by the Equality Act).		
	<b>Pregnancy and maternity</b> Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.		
	<b>Race</b>		

	Refers to the protected characteristic of Race. It refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins		
	<b>Religion and belief</b> Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief (e.g. Atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition		
	<b>Sexual orientation</b> Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes		
2.	Is there any evidence that some groups are affected differently?		
3.	If you have identified potential discrimination, are there any exceptions valid, legal and/or justifiable?		
4.	Is the impact of the document/guidance likely to be negative?		
5.	If so, can the impact be avoided?		
6.	What alternative is there to achieving the document/guidance without the impact?		
7.	Can we reduce the impact by taking different action?		

For advice in respect of answering the above questions, please contact the Corporate Office, Surrey Downs CCG. If you have identified a potential discriminatory impact of this procedural document, please contact as above.

Names and Organisation of Individuals who carried out the Assessment	Date of the Assessment

**1. PURPOSE AND SCOPE**

- 1.1 Surrey Downs Clinical Commissioning Group (“The CCG”) expects our employees to adhere to the organisation’s behaviours and to conduct themselves in a professional manner at all times.
- 1.2 The primary aim of this Disciplinary Policy is to establish fair methods for dealing with disciplinary matters that will be understood and respected, so contributing to sound relationships between the organisation and its employees.
- 1.3 The steps set out in this Disciplinary Policy are a guide and the steps taken will depend upon the circumstances of each case. The point at which the Policy is entered into or the omission of any of the stages will depend entirely on the seriousness of the offence.
- 1.4 This Policy has been agreed with our Staff Forum
- 1.5 This Disciplinary Policy does not form part of the contract of employment, except for the power to suspend, demote, transfer or affect a loss of seniority or pay (of any kind). This Disciplinary Policy may be amended from time to time. The CCG may also vary any parts of this policy, including time limits, as appropriate, depending on the circumstances of particular cases.

**2. COVERAGE OF POLICY**

- 2.1 This policy applies to all employees regardless of length of service excluding those on medical or dental contracts of employment. It does not apply to agency workers or self-employed contractors.

### 3. PRINCIPLES

- 3.1 This Policy is designed to ensure the prompt and effective handling of disciplinary matters and disputes. This can be achieved through the application of the following principles in all cases:
- Ensure fair treatment of employees who become liable to disciplinary action and to not discriminate on the grounds of sex, transgender, marital or civil partnership status, racial group, sexual orientation, religion or belief, disability or age
  - Take reasonable steps to prevent employees from entering into situations that could render them liable for disciplinary action
  - Observe principles of natural justice
  - Allow employees to be accompanied at disciplinary meetings as set out in the policy
  - For matters to be resolved speedily and allow for information to be kept confidential
- 3.2 Cases of minor misconduct are usually best dealt with informally between the employee and the manager with the aim of providing training, guidance or advice to improve the employee's conduct and so avoid the need for formal steps. Any such discussion will not form part of the Disciplinary Policy however where appropriate, it may be useful to confirm in writing what has been decided.
- 3.3 If an informal approach has been tried previously and has not brought about improvement, formal action may need to be taken.
- 3.4 Any case which appears to warrant formal action will be dealt with, usually, by the line manager in the first instance.
- 3.5 If disciplinary action is considered for an accredited trade union representative, agreement should be sought to discuss this with a senior trade union representative or full time trade union official.
- 3.6 The line manager shall in the first instance, begin the process for disciplinary, by raising the concern with their manager or someone in an appropriate senior position and potentially external to the team in which the concern has been raised. Where there may be other or complicating factors the manager taking

charge of the disciplinary Policy may be supported by independent investigating officers or more senior managers (those operating at pay bands 8a and above, or 8d and above for very serious concerns). The manager taking charge of the disciplinary will also be supported throughout the process by the Human Resources department with regard to guidance, training and any other action pertinent to the case.

#### **4. INVESTIGATION**

- 4.1 When an incident or complaint gives rise to concern, an appropriate member of staff dealing with the complaint or concern, will decide whether to investigate the matter further; this will be done with the support of the HR provider. The purpose of the investigation will be to establish the facts of the case in hand and to ensure that steps are taken to avoid a recurrence. When a manager taking charge of a disciplinary decides to investigate, he/she will make the member(s) of staff aware that an investigation is being undertaken. This manager will then conduct confidential interviews with the member(s) of staff concerned and will emphasise that the interviews are purely investigatory at this stage and whilst they are **not** formal disciplinary proceedings, the outcome of such an investigation may result in disciplinary action being taken at a later stage.
- 4.2 The nature of any investigation will vary from case to case, depending on the concerns raised, in some cases this will:
- involve an investigatory meeting with the employee before proceeding to any disciplinary hearing or;
  - the investigatory stage will be the collation of evidence by the organisation for use at any disciplinary hearing.
  - The investigatory stage should be undertaken within a reasonable time frame, recognising that the nature of the case may impact this, however should not normally exceed 4 weeks. If an investigation takes longer than 4 weeks to complete due to unforeseen circumstances, this will be conveyed in writing to the parties' concerned setting out the new timescales.

- 43 An investigation may involve interviewing and taking statements from the employee and any witnesses and/or reviewing relevant documents. Employees are requested to fully co-operate with any investigation, including (by way of example only) providing names of relevant witnesses and any relevant documents and attending interviews. Where practicable, the investigation will be carried out by a different but appropriate, individual to that holding the disciplinary hearing.
- 6.4 Depending on the seriousness of the facts revealed by the investigation, the outcome would be one of the following: case closed (no further action) or proceed to a disciplinary hearing.
- 6.5 A disciplinary meeting must take place before any disciplinary action is taken. For the avoidance of doubt, “disciplinary action” shall not include any investigation or investigative meeting.
- 6.6 If the misconduct is admitted, and in other suitable cases, the person dealing with the investigation may hold a disciplinary meeting straightaway and issue a warning.
- 6.7 In instances which appear to be particularly serious, or where having the employee still in the workplace would hamper further investigations, the employee may be suspended from work temporarily, with pay, pending the hearing of the case. Any precautionary suspension of this kind should be as brief as possible and kept under review. Suspension is not considered a disciplinary action and there is no need for a disciplinary hearing to be held in order to suspend the employee. Suspension is not a prejudgement of the outcome of any investigation or any hearing. If suspended under the terms of this clause, the employee is required to stay away from the organisation’s premises until further notice and they must not speak with employees or patients. If any employees or patients try to contact them, they should immediately notify their manager.
- 6.8 For any staff undertaking investigations training and support will be provided by the Human Resources department. Staff must consult with and receive training prior to commencing investigations.

## 5. REPRESENTATION

- 7.1 At all formal stages of this Policy, employees have the right to be accompanied by a work colleague or an appropriate trade union representative. There is no statutory right for employees to be accompanied at an investigatory meeting.
- 7.2 If the employee wishes to be accompanied to a disciplinary or appeal meeting, they should confirm the identity of their companion to HR in writing in good time before any meetings. The CCG reserves the right to refuse a companion whose presence would prejudice the hearing.
- 7.3 The employee and their representative (if any) should make every effort to attend disciplinary meetings (including any appeal). Failure to attend without good reason may be treated as misconduct. If the employee and their companion (if any) cannot attend at the time specified, they should let us know immediately and the CCG will seek to agree a reasonable alternative time. They may suggest another time and, so long as it is reasonable and is not more than five working days after the day proposed by the organisation, The CCG should postpone the meeting to the time proposed. This five day limit may be extended by mutual agreement. If the employee fails to attend without good reason, or are persistently unable or unwilling to do so, the CCG may have to take a decision based on the available evidence.
- 7.4 The employee's companion should be allowed to address the disciplinary or appeal hearing to put and sum up their case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the meeting. Their companion does not have the right to answer questions on the employee's behalf, address the hearing if they do not wish it or prevent us from explaining our case.
- Our aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter. Electronic recordings of any meetings conducted under this Disciplinary Policy will not be allowed unless a physical or mental impairment would put an individual at a disadvantage. If recording

the meeting would not remove any disadvantage or there is a reasonable alternative way of preventing the disadvantage, the meeting need not be recorded.

## **6. FORMAL PROCESS**

- 6.1 If it is decided that there is a disciplinary case to answer, the employee will be required to attend a disciplinary hearing. The organisation will write to them:
- (a) Setting out sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at a disciplinary hearing;
  - (b) if appropriate, enclosing copies of any written evidence, which may include any witness statements (except where a witness's identity is to be kept confidential, in which case the organisation will give as much information as possible while maintaining confidentiality);
  - (c) To ask the employee to provide details of any witnesses they wish to call;
  - (d) Invitation to attend a disciplinary hearing to discuss the matter, giving details of the time, date and venue for the hearing; and
  - (e) Advising of the right to be accompanied by a workplace colleague or appropriate trade union representative at the hearing.
- 6.2 The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case.
- 6.3 At the disciplinary hearing, the panel will consist of the manager who will act as Chair, a Human Resources representative and an independent third party. The Chair should:
- Explain the allegation against the employee and go through the evidence that has been gathered.
  - Provide every opportunity for the employee to set out their case and to answer any allegations that have been made.
  - Give the employee a reasonable opportunity to ask questions, present evidence and call relevant witnesses.

- The panel will also be given an opportunity to raise points about any information provided by the employee or witnesses. Where the employee or the organisation intend to call relevant witnesses, details of these should be given in advance of the hearing.

64 The CCG may adjourn the disciplinary hearing if The CCG considers further investigations are required.

65 The Chair of the hearing will decide whether or not disciplinary or any other action is justified and will inform you of the decision at the conclusion of the disciplinary meeting or afterwards in writing if further investigation is required.

## **7. DISCIPLINARY ACTION**

Where it is considered that disciplinary action is necessary, the usual actions are set out below. Any warning should contain the details set out in 8.1 below.

### **7.1 Formal Verbal Warning**

If there is a failure to meet the organisations required standards then a formal verbal warning should be issued. This should remain on the individuals file for a period of 6 months for disciplinary purposes.

### **9.2 First Written Warning**

If there is a more serious failure to meet the organisation's required standards or a further incident of misconduct occurs, the employee should be given a first written warning.

A note of the first written warning will be made on the employee's personnel file, but will normally be disregarded for disciplinary purposes after a period of 12 months. This note will also explain the change in behaviour required and the consequences should these fail to be achieved.

### **9.3 Final Written Warning**

If the employee's misconduct continues or is repeated, or if the misconduct is sufficiently serious, but not serious enough to justify dismissal (as defined by the panel hearing the disciplinary), a final written warning will normally be given.

A note of the final written warning will be made on the employee's personnel file, but will normally be disregarded for disciplinary purposes after a period of 18 months. This note will also explain the change in behaviour required and the consequences should these fail to be achieved.

## **8. CONTENT OF WARNINGS**

Warnings will set out:

- (a) The nature of the misconduct;
- (b) The change in behaviour or improvement in performance required (with timescale);
- (c) How long the warning will remain current;
- (d) the consequences of further misconduct within the set period following a warning (for example, that it may result in a further warning/final written warning or, if the penalty given is a final written warning, that it may result in dismissal or some other penalty, such as demotion or loss of seniority); and
- (e) your right of appeal.

## **9. DISMISSAL**

If either the employee's conduct remains unsatisfactory or there is further serious misconduct before any warning is disregarded or if they are found to have committed gross misconduct or gross incompetence, dismissal will normally result. Gross misconduct or gross incompetence will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). Some examples of gross misconduct are given in 11.0 below.

Their contract of employment may include further examples of situations in which employees may be summarily dismissed.

A decision to dismiss should only be taken by a manager who has the authority to do so. This will usually be vested in a Chief Officer/Chief Operating Officer/Director or equivalent. As soon as practicably possible, the employee will be provided with written notice setting out:

- (a) the reasons for dismissal;
- (b) the date on which their employment contract will end;
- (c) the appropriate period of notice; and
- (d) their right of appeal.

## **9.1 Alternatives to Dismissal**

In some cases, the organisation may at its discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning. Examples include, but are not limited to: demotion; transfer; suspension without pay; loss of seniority; reduction in pay; loss of future pay or bonus; and (if applicable) loss of overtime.

## **10. APPEAL**

10.1 If the employee feels that a decision about disciplinary action under this Policy is wrong or unjust they should appeal in writing, stating their full grounds of appeal, to their manager within one week of the date on which they were informed in writing of the decision.

10.2 They must stipulate their full grounds of appeal in writing, which should be one or more of the following:

- New evidence that was not previously obtainable
- Failure to follow the Policy
- The level of sanction received

It is not sufficient merely to disagree with the decision made.

- 103 If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if their appeal is successful they will be reinstated with no loss of continuity or pay.
- 104 If they raise any new matters in their appeal, The CCG may need to carry out further investigation. If any new information comes to light The CCG will provide the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing.
- 105 The CCG will give the employee written notice of the date, time and place of the appeal hearing. The appeal hearing will be held as soon as reasonably practicable, but the employee will be given a reasonable amount of time to prepare their case.
- 106 Where possible, the appeal hearing will be conducted by another manager at the same level or more senior and who has not been previously involved in the case. A member of the Human Resources Department will also usually be present. The employee may bring a representative with them to the appeal hearing (see section 5).
- 107 A hearing may be adjourned if The CCG need to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 108 Following the appeal hearing The CCG may:
- (a) confirm the original decision;
  - (b) revoke the original decision; or
  - (c) substitute a different penalty.
- 109 The CCG will inform the employee in writing of our final decision as soon as possible, usually within one week of the appeal hearing, where possible The CCG will also explain this in person. There will be no further right of appeal.

## 11. GROSS MISCONDUCT AND OTHER EXAMPLES

11.1 The following are examples of actions which constitute gross misconduct and are likely to lead to summary dismissal (this list is non-exhaustive):

- (a) refusal to carry out reasonable instructions from a superior or serious insubordination;
- (b) theft, either from the organisation, its employees, clients, customers or agents (including the unauthorised possession or use of any of the organisation's goods, materials, or products);
- (c) fraud: any deliberate falsification of records or any deliberate attempt to defraud the organisation, fellow employees, clients, customers or agents. Fraud can include falsification of time sheets, travel claims, self-certification forms etc and providing false information in connection with an application for employment;
- (d) failure to comply with the provisions of the organisation's cashing up and banking procedures or being in breach of any guidelines on business conduct, guidance on conflict of interest, trading rules, hospitality policy or other important organisation rules or procedures;
- (e) failure to comply with rules or regulatory requirements established by any regulatory body to which the organisation is subject or other conduct which causes the organisation to be in breach of its regulatory responsibilities;
- (f) introduction of unauthorised third party computer software into the working environment;
- (g) violence: any fighting or violence involving any fellow employee or any other person which takes place on the organisation's premises or those of any associated organisation or while on the organisation's business;
- (h) bullying;
- (i) indecency which is related to or affects employment with the organisation;

- (j) deliberate damage to or unauthorised removal of the organisation's property or to the property of fellow employees, clients, customers or agents;
- (k) intoxication on the organisation's premises or those of clients, customers or agents or the bringing of intoxicants or illegal drugs onto the organisation's premises at any time;
- (l) gross carelessness, incompetence or negligence, including any action or failure to act which threatens the health and safety of any fellow employee or member of the public including any disregard of safety rules which jeopardises the safety of those on the organisation's premises;
- (m) bringing the organisation into serious disrepute or breach of confidence;
- (n) carrying out work for another business during your employment with the organisation without the organisation's prior consent;
- (o) incurring expenditure on behalf of the organisation in excess of their authority;
- (p) failure to comply with the provisions of the organisation's Health and Safety Policy;
- (q) failure to comply with or abuse of the organisation's Whistleblowing Policy;
- (r) failure to comply with the organisation's Anti Corruption or Bribery Policy;
- (s) obtaining unauthorised access to, making unauthorised use of or making unauthorised amendments to information stored on computers, computer software or computer hardware or any failure to comply with the organisation's Email, Internet, Data Protection and Telephone Use Policy; and/or
- (t) failure to comply with the organisation's Equality and Diversity Policy.

112 If the employee's conduct is the subject of a criminal investigation, charge or conviction, The CCG will investigate the facts before deciding whether to take formal disciplinary action. The CCG will not usually wait for the outcome of any prosecution before deciding what action, if any, to take.

Where the employee is unable or has been advised not to attend a disciplinary hearing, or say anything about a pending criminal matter, The CCG may have to take a decision based on the available evidence. A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if The CCG considers that it is relevant to your employment. Consideration should be given to what effect the investigation, charge or conviction has on the employee's suitability to the job and their relationship with the organisation, colleagues and customers/clients.

Policy Approved by:       Governing Body  
Review:                    3 Years  
Policy Owner:             Chief Operating Officer