

Disciplinary Policy (HR-006)

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Policies should be accessed via the Trust intranet to ensure the current version is used

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1. INTRODUCTION

The Trust requires high standards of conduct and behaviour from all members of staff and is committed to giving staff the opportunity to improve and learn from mistakes where necessary.

The Trust works in accordance with the principles of Just Culture (NHS Improvement, Last Updated 14/12/2018) to ensure that staff involved in any deviation to the Trust's standards, policies and/or procedures are treated in a fair and equitable manner.

Just Culture encourages accountability and responsibility. Where staff have made a mistake, error or a misjudgement, truthfulness and admission is fundamental to maximise learning and improvement.

In line with the principles of a Just Culture this policy promotes the fair treatment of staff supporting a culture of fairness, openness and learning by making staff feel confident to speak up when things go wrong, or conduct falls short of the required standards.

Managers will always attempt to resolve minor matters of concern through an improvement conversation and by offering any other support required. If informal approaches do not remedy poor conduct or if misconduct is sufficiently serious, the formal stages of the disciplinary procedure will apply.

The Trust recognises the potential impact that disciplinary procedures can have on the health and wellbeing of staff and will ensure that the correct support is put in place at an early stage.

2. SCOPE

The Trust's Disciplinary Policy and Procedure aims to help and encourage staff to achieve and maintain the required standards of conduct.

The Policy and Procedure applies to all staff employed by Humber Teaching NHS Foundation Trust

The investigation of alleged misconduct, capability and ill health concerns involving medical and dental staff will be undertaken in accordance with the national framework set out in "Maintaining High Professional Standards in the Modern NHS" (MHPS Framework 2005)

Link to MHPS Framework 2005 [\[ARCHIVED CONTENT\] \(nationalarchives.gov.uk\)](https://www.nationalarchives.gov.uk/ukiaction/ViewDetails.aspx?docId=32400)

In line with this framework capability issues will be tied in with the work of the Practitioner Performance Advisory service (PPA). Where purely personal conduct issues are identified, they will be managed under this policy and procedure.

In the case of Medical Trainees the investigation is to be conducted by the lead employer. In the case of Agency medical staff the investigation is to be conducted by the agency as the employer however exclusion can occur immediately if appropriate in the circumstances without recourse to MHPS and referral to GMC may occur.

Staff employed in a training capacity are entitled to be dealt with under the terms of the disciplinary procedure in respect of the termination of training or of student, trainee, or pupil status; but if there is a national statutory body responsible for the conduct of professional training the requirements of that body will be complied with.

In the case of Doctors in training, the Postgraduate Dean will be notified/involved as required through the Postgraduate Tutor of Foundation Programme Director.

This Procedure does not apply to situations in which the performance of an employee is unsatisfactory or in question due a lack of knowledge and/or skills. These situations should be addressed under the provision of the Capability Policy for general staff and the Maintaining High Professional Standards Policy for Medical and Dental staff as mentioned above.

DISCIPLINARY POLICY

3. DEFINITIONS

HRBP	Human Resources Business Partner
MSOC	Management Statement of Case – A pack of evidence to explain the case
W&OD	Workforce and OD Service
BIO	Bank Investigating Officer
CM	Commissioning Manager
MHPS	Maintaining High Professional Standards
Exclusion:	This relates only to Medical and Dental staff and is where an individual can be temporarily removed from the workplace or a particular duty where there is a risk to the organisation, patients or employee or where there is evidence of a risk of the individual undermining the investigation.

4. TYPES OF MISCONDUCT

4.1. General Misconduct

General Misconduct is conduct or behaviour which does not merit immediate dismissal but is of an unacceptable standard for the efficient functioning of the Trust. A list of offences that constitute General Misconduct is contained in Appendix 1, this list is not exhaustive.

4.2. Gross Misconduct

Gross Misconduct is behaviour or an offence that undermines the trust and confidence the Trust has in an employee that they cannot be retained in employment in any capacity.

Where an allegation of Gross Misconduct is upheld, the member of staff will be dismissed without notice unless there are sufficient mitigating circumstances. A list of offences that constitute Gross Misconduct is contained in Appendix 2, this list is not exhaustive.

5. DUTIES AND RESPONSIBILITIES

Chief Executive

The Chief Executive is ultimately responsible for the content of all policies and their implementation.

Executive Directors

To ensure that this policy is acted on through policy dissemination and implementation in collaboration with senior managers.

Senior Managers and Managers

Ensure all staff within their area of responsibility are informed about the contents of this and other associated policies and procedures and apply this policy and procedure in a fair and equitable manner.

Commissioning Manager (CM)

A Commissioning Manager (CM) will be a competent and trained Service Manager or Senior Manager of a division/directorate. The CM will conduct a fact-finding exercise (usually within a strategy meeting) and their role is to act as the lead manager for the investigation.

The CM will make the decision about what is to be investigated and they will set the terms of reference and objectives for the investigation. The person carrying out the investigation will report their findings back to the CM who will decide if there is a case to answer or not and take the appropriate next steps. The CM, alongside the Investigating Officer will present the management case at any subsequent hearing.

It is the CM's responsibility to ensure that anyone partaking in the investigation has adequate time and resource to do so.

Workforce and OD:

W&OD are a team of professionals who are responsible for providing specialist advice and guidance in terms of employment law and employment related policies and procedures to the CM, BIO and subsequent panel members as required. W&OD will also be present in hearings to take notes and advise as necessary.

W&OD are advisory for all parties during an investigation, therefore if there are any concerns or queries, the relevant W&OD advisor should be engaged.

The team are also responsible for ensuring that this policy is audited, monitored and updated accordingly.

Investigating Officer (IO):

An Investigating Officer (IO) is responsible for conducting a fair and reasonable investigation into the matters arising as set out in the terms of reference and investigation objectives. The IO is also responsible for ensuring that individuals subject to investigation are provided with fair and reasonable opportunity to respond to the issues being investigated.

The IO will conduct the investigation within the timescales set by the terms of reference and will also keep the CM updated of the progress of the investigation on a fortnightly basis. The IO will present the investigation findings to the CM following completion of the investigation.

The Trust has a number of fully trained and experienced investigators on the bank that can be accessed, however an external party or an appropriate internal manager can act as investigating officer following the principles of this policy.

Occupational Health

Occupational Health are responsible for responding to any referrals and ensuring that staff members feel adequately supported during this process, referring them to any services that may be of use.

Staff Members:

Staff members involved within the scope of an investigation are encouraged to participate and provide responses to any matters arising from the investigation and provide accurate accounts of their version of events.

Staff have the right to be accompanied by a Trade Union Representative or a workplace colleague (not involved in the investigation) during any formal stages of investigation.

Support Officer:

At the outset of the investigation, a Support Officer is assigned to the staff member by the CM to provide a point of contact for the affected individual. This support will continue for the duration of the case.

A welfare pack is provided to the individual who is alleged to have carried out the misconduct, which outlines support available.

Support for Medical and Dental staff is available from the Practitioner Performance Advisory Service on Tel: 020 7811 2600.

6. PRINCIPLES

- Where appropriate, employees and managers should make every effort to resolve issues without recourse to the formal disciplinary procedure. This will not be possible in the cases of alleged gross misconduct.
- Managers should engage in early fact finding as soon as possible after an incident or issue has taken place, to guide them in determining the best course of action. They should gather evidence including statements from those directly involved or witnesses to the incident, where possible and practical. They should seek to understand what has happened, where, when, why and any mitigating circumstances.
- Matters should be dealt with promptly whilst ensuring that any investigation is appropriate.
- Employees should be informed of the allegations against them and given full opportunity to state their case before any decision is reached.
- There is no presumption that an investigation or the application of the disciplinary procedure will result in a disciplinary sanction.
- The outcome of the disciplinary is based on the hearing manager's reasonable belief about the evidence, not what has been proved beyond reasonable doubt.
- All those involved in a disciplinary matter will respect the confidentiality and privacy of others. Where information is to be shared, individuals must be notified beforehand.
- If allegations are made against an employee who is also an accredited trade union representative, a Full Time Officer with the appropriate trade union will be informed as soon as the allegation (s) are raised and may represent the employee at any stage of the formal disciplinary process and/or during the preceding investigation.
- At all formal meetings employees have the right to be accompanied by a member of a recognised trade union or a workplace colleague. The representative or colleague will have the opportunity to address the meeting to present the employee's case. They cannot, however, answer a question directly asked of the employee.
- Data should be collated and reviewed on a regular basis to analyse trends and improve processes where necessary.

7. PRECAUTIONARY SUSPENSION (NON-MEDICAL AND DENTAL STAFF)

Where serious concerns are raised it may be appropriate for the employee to be suspended from work or have their professional practice restricted. Before an employee is suspended, initial decisions should be made by a manager at Grade 8b or above with no conflict of

interest (the suspending manager), with final approval from a Director, Deputy Director or Associate or Assistant Director. Suspension is a precautionary measure and does not reflect a disciplinary sanction.

A review of the suspension will take place every four weeks by the suspending manager and the employee involved. Employees will receive full pay whilst suspended.

During suspension employees will be given an appropriate named contact to direct any concerns or queries to. Whilst suspended, the employee must not otherwise contact their work area or approach anyone involved in or linked with the case. If they wish to contact witnesses to support their case this should be done via their representative or the Investigating Officer (IO).

Except in medical emergencies, they are required to remain away from Trust premises unless given express permission by the IO or nominated deputy to attend for a specific purpose e.g., medical appointment or meeting their representative. Employees must be reasonably available and contactable between 9am – 5pm Monday to Friday to attend meetings. Pre-booked annual leave will be honoured.

Please Note: Suspension does not apply to Medical and Dental staff. Exclusion will be considered where appropriate. As with suspension, under the MHPS framework exclusions must be reviewed on a regular basis, fortnightly as a minimum.

Where patient safety is not a concern, and in line with the MHPS framework, where the case involves Medical and Dental staff, the practitioner will be offered the opportunity to voluntarily exclude themselves from practice or to suggest an alternative to exclusion.

Support

Recognising the potential impact that can be caused by suspension, exclusion or restriction to practice, a communication plan should be developed by the CM to ensure affected parties are contacted on a regular basis to keep them updated on the progress of any investigation and to ensure support and review of their ongoing health and wellbeing. Typically, a communication plan will include who will be the main contact from the Trust, how contact will be maintained (telephone, email or letter) and the frequency. Communication should be two-way and suspended, excluded or restricted employees should know who they can contact with any queries.

Suspended, excluded or restricted employees will be offered a referral to Occupational Health and made aware of services which may provide support including the Employee Assistance Programme and any other counselling services available.

The Trust should appoint a point of contact to provide support and raise queries on the employee's behalf. It is likely this person would be their representative; however, that will not always be the case and could be a nominated manager.

8. INVESTIGATION

A competent IO will be appointed to carry out the investigation in a transparent and professional manner. The CM will define the scope of the investigation and provide an outline of the related issues as per the Terms of Reference.

The CM and IO need to ensure that adequate time and resources are available for them to be able to conduct a thorough and timely investigation.

The aim of the investigation is to determine the staff member's account of the incident(s) and for them to provide a statement in response to the allegation. Statements should be obtained, and investigation meetings held with relevant witnesses as determined by the ToR or as they emerge as a result of the enquiries.

The IO will produce a summary report of their findings and the CM will use the report to decide upon the next course of action. In the case of formal disciplinary action being taken, this report will form the basis of the Management Statement of Case (MSOC).

Where the employee is a registered clinical professional, the CM will ensure the summary report is reviewed by a relevant clinical professional of appropriate seniority who is unconnected to the events and with no conflict of interest. The purpose is to act as a clinical expert ensuring any relevant professional codes are considered by the CM prior to deciding upon the next course of action. The clinical expert is not a decision maker and acts in an advisory capacity only.

Medical and Dental Staff

Where allegations relate to medical and dental staff, early advice should be sought from the PPA. Written complaints received will be shared with individuals (redacted if necessary) as soon as possible.

In cases of professional conduct all serious concerns will be registered with the Chief Executive. The Medical Director or delegated senior manager will act as Case Manager and appoint a Case Investigator (or IO as above)

As prescribed in the MHPS framework a Case Manager and Case Investigator will ensure that the investigation is carried out fairly and thoroughly as agreed in the ToR document at the outset of the case and following initial fact finding.

A Non-Executive Director will be appointed by the Chief Executive to oversee progress of the case. Information will be provided to the individual subject of the concern as soon as is reasonably practicable to do so.

Where a case involving issues of professional conduct proceeds to a hearing under the Trust's Disciplinary policy the panel must include a member who is medically qualified and who is not currently employed by the organisation.

Under MHPS, investigations for Medical and Dental staff should be concluded within four weeks.

9. REFERRALS TO PROFESSIONAL BODIES

In the event that an employee has allegations against them regarding their fitness to practice, their professional body may need to be informed.

When making a referral, the following factors should be considered:

- The severity of the allegation
- Mitigating circumstances
- Willingness to admit and rectify the mistake
- The likelihood of reoccurrence

If the allegation is due to a safeguarding concern, the professional body should always be informed at the investigation stage. In all other circumstances, the professional body should be informed as soon as practicable following an appeal. It is the responsibility of the CM to ensure that the professional body and the Executive Director of Nursing, Allied Health and Social Care Professionals has been informed.

10. PERSONAL RESPONSIBILITY FRAMEWORK AS AN ALTERNATIVE TO THE DISCIPLINARY PROCEDURE

The Framework for Personal Responsibility is intended to allow an alternative approach to achieving improved behaviour and recognises that during people's work they may on occasion make inadvertent errors.

The Framework seeks to provide a route for avoiding a blame centred culture and to establish a supportive approach for changing attitude, behaviour and practice and a positive care and work environment.

Any staff member may use the Framework for Personal Responsibility to bring forward concerns or issues in confidence that will be dealt with appropriately and without over-reaction. These might include:

- An incident or practice you have committed which you feel unhappy about,
- Acting in accordance with instructions you feel were inappropriate and detrimental to the care of service users.
- Failure to follow Trust protocols or procedures even where outcomes have not been serious (to date).
- Practice or delivery of care where an individual is aware this falls short of that expected.
- Acting in accordance with Professional Codes of Conduct or standards to highlight behaviours or practices that require action or improvement.

Personal responsibility means sharing responsibility for a situation yourself and the organisation also shares responsibility and based on this, acting to change or improve the issue. In line with this principle, you should also get a share or recognition or credit for achieving a change or improvement.

There is a range of options available to assist individuals in achieving the required improvement in performance or attitude. These must be embedded within the appraisal processes and/or within supervision and developmental action plans. Managers will need to consider how best the appropriate support and improvement may be achieved.

The manager should follow the Personal Responsibility Framework & Procedure document available on the intranet.

Example of where this framework would not apply

Where the matter falls within the parameters of the Disciplinary Procedure and/or the Performance Management Procedure or in circumstances where an individual is unable to demonstrate an improvement in performance the framework for personal responsibility cannot be applied. For example, where an employee is unfit for duty which includes unauthorised consumption of alcohol or drugs which could seriously jeopardise the service and the level of care provided.

Where a line manager is unsure, they should consult with HR to seek advice.

DISCIPLINARY PROCEDURE

11. INFORMAL PROCEDURE

Managers should address conduct issues with their employee at the earliest opportunity and where appropriate, should first attempt to deal with any minor misconduct issues informally before resorting to the formal procedure. If an employee commits a minor infringement the manager will usually issue words of guidance and advise that any further breach may result in the formal procedure being initiated. A note of the discussion should be placed on the employee's file for reference purposes.

A letter summarising the concerns and expectations will be sent to the employee by the manager and a copy will be placed on the employee's file. If adequate improvements are not made or the misconduct is regarded too serious to be classed as minor, formal disciplinary action will be considered.

12. FORMAL PROCEDURE

Once the matter has been thoroughly investigated and it has been established that there is a case to answer, a disciplinary hearing will be arranged at the earliest opportunity.

Once the Commissioning Manager has determined that there is a case to answer, they must inform the relevant Executive Director who will appoint a hearing manager who can reasonably conduct the hearing within 21 days.

Hearings should be conducted within 21 calendar days of the conclusion of the investigation, however where this is not the case the staff member should be contacted and informed of the reason for any delay.

It is the CM's responsibility to ensure that there are no conflicts of interest between the employee and any involved party within the disciplinary process.

Arrangements for the hearing will be given in writing at least 7 calendar days' prior to the event and will detail who will be present, the time, date, and location. Where the CM presenting the case intends to call witnesses, these details should also be shared with all parties in advance of the hearing. The MSOC should be with W&OD at least 10 calendar days prior to the hearing date along with any witness statements and supporting documents for them to finalise and distribute to all parties. Employees, managers, and representatives should make all reasonable steps to attend.

The employee will be given the opportunity to respond to the MSOC and may provide a written or verbal submission. In the case of a written submission, this should be provided to the panel members and management allowing reasonable time to review prior to the hearing. This should be no less than 3 calendar days prior to the hearing.

If the employee or the representative intends to call witnesses to the hearing, it is the responsibility of the employee / Trade Union Representative to arrange their attendance. Any issues with release of the employee to attend should be raised with W&OD.

Where the employee or their representative feel that witnesses relevant to the case are not being called, they should raise this matter formally with the chair of the hearing, preferably in advance. Alternatively, they can seek to call these witnesses themselves.

If necessary, the manager hearing the case may be accompanied by a subject matter expert / professional advisor. If the employee is a registered clinical professional, see section 12.1. A Workforce & OD representative will attend all hearings and take notes.

If dismissal is a potential outcome, the chair of the hearing must be a Senior Manager Grade 8B and above with no conflict of interest.

At the meeting the CM and IO will state the nature of the allegations and outline the case by presenting the MSOC. The employee will be given full opportunity to respond to the allegations. In considering the sanction, the manager will take account of the employee's work history and other mitigating factors.

Witnesses will be called into the meeting at appropriate times as agreed with the Chair.

The outcome of the meeting will be delivered verbally where possible and confirmed in writing within 7 calendar days. If disciplinary action is to be taken, the letter will include details of the misconduct, the sanction imposed and the right to appeal. It will also state that further disciplinary action may be taken if there is not a satisfactory improvement.

Summary notes of the hearing will be taken.

Once the hearing has concluded, the chair will complete the Disciplinary Hearing Outcome Notification (appendix 4) to ensure that all relevant parties are informed of decisions made and the sanctions imposed as a result, as well as any additional recommendations. This form should be completed within 7 calendar days of the outcome.

12.1. Where the employee is a registered clinical professional.

Where the employee is a registered clinical professional, the panel chair should be accompanied and supported at the hearing by a relevant clinical professional of appropriate seniority unconnected to the events and with no conflict of interest. The purpose is to act as a clinical expert ensuring the relevant professional codes are considered by the panel chair as part of any outcome. The clinical expert is not a decision maker and acts in an advisory capacity only.

Where the panel chair is a registered clinical professional themselves, they must still be accompanied by a relevant registered clinical professional.

13. DISCIPLINARY SANCTIONS

The seriousness of the misconduct will determine the level of disciplinary action to be taken:

- Written warning – to remain live for a 12-month period.
- Final written warning – to remain live for a minimum 12-month period.
- Dismissal with contractual notice.
- Summary dismissal (without contractual notice) – gross misconduct cases only.

Alternative Sanctions / Action Short of Dismissal

Where dismissal is a potential outcome, managers may act short of dismissal as follows:

- Transfer to another position including demotion/downgrading. This would not usually apply to Professional Registered positions at Band 5 level, however there may be exceptions to this if the misconduct warrants. Demotion must be restricted to one band

below the current band and pay protection will not apply. If the employee wishes to apply for a promotion within 24 months of receiving this sanction, they must demonstrate their improvements. A demotion will remain live for two years and should the employee wish to apply for a higher banded post thereafter, they would be required to evidence their level of competence during the recruitment process.

- Final written warning and downgrading as above (without pay protection).
- Final written warning and transfer (post of the same grade).
- Final written warning and downgrading (without pay protection) and transfer.
- Withholding pay progression.

14. EXPEDITED PROCEDURE

Following an investigation, where there are exceptional circumstances, an agreement can be reached by both parties to avoid proceeding to a formal hearing where the allegations are undisputed, and the seriousness of the infraction would not merit a sanction beyond a written warning. This can only apply where the relevant facts are not in dispute, where an employee is not already subject to a live sanction and both sides agree with a written warning as an outcome of the process.

An employee should complete an Expedited Procedure form in the presence of and countersigned by a witness (such as a Trade Union Representative or a workplace colleague) who has no connection to the allegations. The CM will arrange a meeting to ensure that the allegations are undisputed. The outcome of the meeting should be delivered the same day. If the employee, witness, and manager agree, the outcome will be confirmed in writing in accordance with the expedited procedure. The right to appeal under the expedited procedure is waived.

This approach will not apply to allegations of gross misconduct or where dismissal is a possible outcome.

15. APPEALS

Any employee has the right of appeal against a formal disciplinary sanction. Appeals against dismissal will be heard by a panel including an Executive Director or a Deputy Director, supported by a senior member of W&OD.

An appeal must be made in writing within 10 working days of receipt of the letter detailing the disciplinary outcome and must include the grounds upon which the appeal is made.

The Chair of the disciplinary panel will respond to the grounds of appeal in writing and provide copies to the appeal panel and employee, ensuring reasonable time for all parties to review prior to the hearing.

16. APPEAL HEARING

The purpose of the appeal hearing is to consider the decision made by the Chair of the previous panel. An appeal hearing is not a re-hearing of the original case. The member of staff must submit their appeal in writing within 10 working days of receipt of the outcome letter. This letter must clearly state the grounds upon which the appeal is based.

The date of the appeal will be set within 28 calendar days of receipt of the letter of appeal, where possible and practical and will be heard at the earliest possible convenience.

The member of staff has the right to appear personally at the appeal hearing either alone or accompanied by a Trade Union Representative or a Work Colleague.

If the member of staff or their representative fails to attend the appeal hearing the appeal will be considered in their absence except where an adjournment is agreed by the chair of the panel.

In all cases the manager hearing the appeal must not have been directly involved in taking the action, which is being appealed against.

The Chair of the previous panel will prepare an Appeal Pack which should include the following:

- 1 The letter of appeal
- 2 The outcome letter from the previous hearing
- 3 Notes from the original hearing
- 4 Key evidence from the MSOC that the manager feels is applicable to support the decision made and in response to the grounds of appeal

This pack will be provided to the appeal panel members and the member of staff as soon as possible, but no later than 48 hours before the appeal hearing.

17. CRIMINAL OFFENCES AND OFFENCES COMMITTED OUTSIDE OF WORK

If an employee is charged or convicted of an offence, whether committed on or off duty, they must inform the Trust. The Trust will consider whether the offence renders the employee unsuitable for continued employment and may take disciplinary action up to and including dismissal. The Trust reserves the right to act independently of any legal proceedings.

18. FRAUD, BRIBERY AND CORRUPTION

The Trust takes the issues of fraud, bribery, and corruption very seriously and any suspicious activity will be referred to the Local Counter Fraud Specialist for investigation, in accordance with the Trust's Counter Fraud, Bribery and Corruption Policy. The outcome of any investigation could lead to disciplinary action, including dismissal and/or civil/criminal prosecution proceedings against the person/persons involved.

19. PAY PROGRESSION

Staff employed on or after 1st April 2019 (or promoted to a new role from this date), who have a live formal disciplinary sanction, will NOT benefit from pay progression until that sanction is spent.

20. EQUALITY IMPACT ASSESSMENT

An Equality and Diversity Impact Assessment has been carried out on this document using the Trust-approved EIA (Appendix 10). This policy is regarded as equitable to all and as a result of its implementation no individual will suffer any form of discrimination, inequality, victimisation, harassment or bullying.

21. REVIEW AND REVISION

This policy will be reviewed every three years, however there may be some review and revision as and when needed to accommodate changes to tribunal decisions and legislation. These reviews and revisions will be in consultation with the Trust's recognised trade unions.

22. DISSEMINATION AND IMPLEMENTATION

This policy will be disseminated by the method described in the Document Control Policy.

The implementation of this policy requires no additional financial resource.

APPENDIX 1: TYPES OF OFFENCE CONSIDERED TO BE GENERAL MISCONDUCT

B1	Unauthorised absence from their place of work, including extended or unauthorised breaks during working hours
B2	Sleeping whilst on duty, including during unpaid time off, which could have an adverse effect on one's fitness for work
B3	Failure to observe Health and Safety, and/or Fire regulations or related instructions
B4	Insubordination
B5	Personal misconduct of a sufficiently serious nature as to affect their performance of duties and/or relationship between the member of staff and the Trust
B6	Negligence in job performance
B7	Unauthorised use of the Trust's resources or of information obtained during their employment
B8	Refusal, without reasonable grounds, to wear any uniform or protective clothing provided by the Trust
B9	Undertaking any other employment which adversely affects the performance of their duties
B10	Failure, without reasonable grounds, to comply with the requirements of the Trust's Policies and Procedures and Codes of Conduct
B11	Behaviour, which exposes the Trust to justifiable complaints arising out of legislation such as Equality Act, or the like
B12	Any act or omission committed by an employee that results in a financial loss to the Trust
B13	Devalues public opinion of the Trust or its customers
B14	Unauthorised use of RA smartcards and systems, including inappropriate access to clinical / staff records
B15	Failure to adhere to Trust no smoking rules

APPENDIX 2: TYPES OF OFFENCES CONSIDERED TO BE GROSS MISCONDUCT

A1	Theft or attempted theft
A2	Fraud
A3	Acceptance of gifts or hospitality in contravention of the Bribery Act 2010, and "Standards of Business Conduct for NHS staff"
A4	Failure to inform the Trust of any pecuniary interest of which the employees is aware in a contract which has been; or is proposed to be, entered by the Trust in accordance with the provision of the Business Conduct Policy
A5	Serious misrepresentation at the time of appointment and/or at any time during employment
A6	Serious incapability at work brought on by alcohol or illegal drugs including consumption during working time
A7	Physical or indecent assault
A8	Ill-treatment of and/or sexual offences against patients
A9	Any form of bullying and/or harassment, coercion or intimidation of a fellow employee, a patient, contractor and/or a member of the public
A10	Loss, damage, negligent, misuse or unauthorised use of Trust property or assets
A11	Deliberate disclosure of privileged and confidential information to any unauthorised persons
A12	Negligent or deliberate failure to comply with the legal requirement and/or the Trust's regulations concerning medicines
A13	Working whilst contravening an enactment or breach of rules laid down by any relevant statutory bodies including practising without a professional registration in a profession where there is a requirement to obtain and maintain registration
A14	Criminal offence(s) outside of the working situation, which substantially affect the performance of duties, or relationship between the member of staff and the Trust
A15	Deliberate and serious damage to property
A16	A serious breach of Health and Safety rule
A17	Any act or omission constituting serious negligence in a member of staff's performance of their duties

APPENDIX 3: EXPEDITED PROCEDURE FORM

Expedited Procedure Form	
Employee Name:	
Job Title:	
Department:	
Managers Name:	
Summary of Allegation:	
<p>By signing this form, the employee named above is confirming that the allegations detailed above are undisputed. Due to admittance, the employee will receive a written warning that will remain live for 12 months in accordance with the Disciplinary Policy.</p> <p>By signing this form, the employee named above is also waiving the right to appeal the decision of a written warning.</p> <p>It is the employee's responsibility to ensure that a Trade Union Representative or a workplace colleague (with no connection the above allegation) has understood and agreed to sign the Expedited Procedure Form as a witness.</p>	

Employee Signature:	
Date:	
Witness Signature:	
Date:	
Manager Signature:	
Date:	

APPENDIX 4: DISCIPLINARY HEARING OUTCOME NOTIFICATION

To: Line Manager/ Commissioning Manager* Name and Job Title:	
From: Chair of Disciplinary Panel	
Regarding: Employee Name and Job Title:	
Disciplinary Date:	
Disciplinary Outcome:	
No Case to Answer	<input type="checkbox"/>
Written Warning	<input type="checkbox"/>
Final Written Warning	<input type="checkbox"/>
Dismissal	<input type="checkbox"/>
Summary Dismissal	<input type="checkbox"/>
Recommendations Made:	
<p>e.g</p> <ul style="list-style-type: none"> • undertake formal mediation • undertake training • transfer to another team • demotion to a lower band 	
Actions Line Manager needs to take:	
<p>If dismissal:</p> <ul style="list-style-type: none"> • Complete leaver form with effect from date of hearing • Include applicable lieu of notice • Include any outstanding annual leave to be paid • Arrange for any Trust property to be returned and accounts closed 	
<p>If summary dismissal:</p> <ul style="list-style-type: none"> • Complete leaver form with effect from date of hearing • Include any outstanding annual leave to be paid. • Arrange for any Trust property to be returned and accounts closed 	
<p>If recommendations are made:</p> <ul style="list-style-type: none"> • Meet with the employee and put in place recommendations • Meet with the employee and set objectives • Meet with the employee and discuss training identified • Meet with employee and discuss the recommendations 	

Note: If the Commissioning manager is not the individuals line manager, only the outcome and any recommendations should be shared with them.

APPENDIX 5: DISCIPLINARY HEARING

At the hearing the following procedure shall be observed:

Introduction by the manager chairing the hearing:

- Introduce those present
- Confirm the purpose of the hearing is to consider whether disciplinary action should be taken in accordance with the Disciplinary Policy
- Confirm that all parties have received the necessary paperwork
- Outline the procedure for the hearing

The CM and BIO presents case collaboratively

- The CM and BIO outlines findings
- The CM and BIO calls any witnesses
- Staff/Representative and chair/member of the panel may question the witnesses
- The CM and BIO may re-examine the witnesses
- Staff/representative and chair/member of the panel may ask questions about the case to clarify facts

Staff/representative responds to the management case

- Staff/representative responds to the allegations, explains the alleged misconduct and / or raises any special or mitigating circumstances to be considered
- Staff//representative calls any additional witnesses
- The CM and BIO and chair/member of the panel may question the witnesses
- Staff//representative may re-examine the witnesses
- The CM and BIO and chair/member of the panel may ask questions of the staff member to clarify facts

Summing up – no new evidence presented at this stage

- The CM and BIO sums up
- Staff//representative sums up

Adjournment for the Chair/members of the panel to consider the case

- NOTE: Agree with all parties how and when the decision will be notified to the staff/representative if time does not permit the decision to be given in person following the adjournment (Where the conduct of more than one member of staff is being considered in relation to the same incident, the adjournment between the Disciplinary Hearing and the Decision meeting may be a few days, until all the Disciplinary Hearings have been completed)

Reconvene for decision – Chair verbally informs staff/representative of:

- The outcome of the hearing / disciplinary action
- The right of appeal
- The outcome of the hearing to be confirmed in writing within 7 calendar days of the date of the hearing

APPENDIX 6: APPEAL HEARING

At the appeal hearing the following procedure shall be observed:

Introduction by the manager chairing the appeal:

- Introduce those present

- Confirm the purpose of the appeal is to review those aspects which the staff member believes gave rise to an incorrect or unfair conclusion

- Confirm that the meeting is being held under the appeal section of the relevant procedure in this case the Disciplinary Policy and Procedure

- Check that everyone present has the relevant documentation

- Check whether either the manager (responding to the grounds of appeal) or the staff member, wish to submit further documentation

- Summarise the grounds of appeal. Check with the staff member that the summary is accurate

- Outline the procedure for the hearing

Staff Member/Representative states the grounds for appeal

- Staff member states reasons why the procedure was felt to be unfair, the sanction too severe, the decision was unreasonable or give details of any new evidence that needs to be considered

- The manager can ask questions to clarify points

- The Chair/panel members can ask questions to clarify points

Manager responds to grounds for appeal

- The manager responds

- The staff member can ask questions to clarify points

- The chair/panel members can ask questions to clarify points

Summing up – no new evidence presented at this stage

- Manager sums up

- Staff member sums up

Adjournment for the Chair/members of the panel to consider the case

(If practical) Reconvene and inform the staff member of the decision verbally

Confirm the decision in writing within 7 calendar days of the appeal hearing

The decision of an appeal panel is final

APPENDIX 7: STAFF NO SMOKING RULES & GUIDANCE

1. INTRODUCTION

The Health Act 2006 stipulates that smoking in all enclosed public spaces and workplaces is forbidden in England from July 2007.

The law was introduced to protect employees, service users, visitors, contractors and the public from the harmful effects of second-hand smoke.

The legislation backing the Trust's No Smoking ensures a supportive environment for those who wish to quit smoking and promotes non-smoking as the norm.

Smoking is prohibited, including the use of electronic cigarettes, including vaping, on and in all Trust premises, including company vehicles, and is considered to be a disciplinary offence.

Further advice and support can be accessed by contacting the local stop smoking service on 0800 324 7111 or text QUIT to 61825 and a member of the stop smoking team will contact you. For East Riding please contact 0800 9177752.

These Rules reflects the following legislation and guidance:

- The Smokefree (Premises and Enforcement) Regulations (2006) that requires virtually all enclosed public places and workplaces in England to be smoke free. The legislation in full can be viewed at <http://www.smokefreeengland.co.uk/thefacts/the-regulations.html>
- Guidance from Department of Health 'Reducing Exposure to Second-hand Smoke', 29 October 2009
- Royal College of Nursing Guidance 'Protecting Community Staff from Exposure to Second-hand Smoke', 2006

2. SCOPE

These rules apply to all staff employed by Humber Teaching NHS Foundation Trust and includes students.

For the Smoke Free Policy that relates to patients and carers please refer to the Trust intranet for the latest version.

3. STATEMENT

The Trust as a healthcare provider must set an example to other organisations, promote public health and create an environment that minimises the health risks to members of the public who access the service.

In order to achieve this, the organisation will:

- Promote health and healthy lifestyles.
- Provide a smoke free environment on all its sites.

- Commit to helping staff who wish to stop smoking.
- Ensure that all buildings have been designated as smoke free.
- Provide clear signage at all main entrances to ensure that anyone entering a building understands that smoking is not permitted.
- Ensure that staff do not smoke whilst on duty including electronic cigarettes.
- Ensure that relatives and visitors to Trust premises do not smoke in any areas.
- Ensure that guidance is available to staff working within community settings or visiting people who may smoke within their own homes.
- Ensure that written information is available to staff and visitors regarding the No Smoking Policy and the services available to support stopping smoking.
- Ensure staff will be informed of the No Smoking Rules via induction and the Intranet.
- Smoking Cessation awareness and No Smoking Rules to be included in all induction programmes.

3.1 Employees

- Have a duty to comply with the requirements of the no smoking rules by not smoking on Trust premises, including the grounds of Trust premises.
- All employees will, in adherence to these rules, be expected to adhere to the no smoking policies of any external premises at which they are working, based or visiting.
- Report promptly to their manager any circumstances which resulted in being subjected to passive smoking in the course of any duties which includes visiting service users/patients in their own home or community based residence.
- Smoking is not allowed in any vehicle owned, leased or rented by the Trust; this includes cars leased through the Trust. In addition, vehicle owners who utilise their private vehicles for work, transportation of patients and/or equipment will not be permitted to smoke or allow passengers to smoke whilst on Trust business.
- Smoke breaks are not permitted whilst on duty and must be incorporated within allocated breaks, i.e. lunch breaks.
- Staff are expected to have consideration for local residents. This includes but is not limited to; avoiding smoking directly outside local residents' homes and ensuring that all litter is disposed of appropriately.
- Staff will refrain from smoking at all times when on duty or representing the Trust including electronic cigarettes and vaping.
- Comply with this and any associated policies.
- Must be aware that non-compliance with any particular element of the no smoking rules may result in disciplinary action, in accordance with the Trust's Disciplinary Policy.

3.2 Occupational Health Department

- Use the existing screening programme, for new staff, to raise awareness and identify appropriate support.
- Use existing and develop new information and public health programmes for all staff, in conjunction with public health specialists.
- Advise and identify appropriate support for any employee requesting help to stop smoking.
- Ensure links are maintained and developed with staff in the Hull and East Riding Stop Smoking Services.

4. PROCEDURE

The Trust no smoking rules aims to:

- Protect the health of staff
- Set an example to other employers and workforces by arranging Trust buildings and vehicles to be smoke-free and by requiring staff do not smoke whilst on duty
- Inform staff and managers of their responsibilities in respect of the no smoking rules
- Promote the culture of a Smoke Free NHS Foundation Trust
- Minimise Fire Risk within Trust properties

All staff and those included in the scope of the Trust no smoking rules, including visitors are not permitted to smoke on any part of the Trust sites, including buildings, entrances/exits, cars, car parks, pavements and walkways, and residences.

Smoking by any member of staff whilst on the Trust site and/or during working hours (e.g. whilst on escort duty off site, working in a community setting, whilst in a vehicle) will be treated as misconduct and may lead to formal action in accordance with the Trust Disciplinary Policy.

Any member of staff who smokes should ensure that they do not smell of smoke whilst on duty, in the interests of protecting the health, safety and comfort of service users, carers/relatives and colleagues.

The reference to the Trust being 'Smoke free' will be made on all job adverts and new starters will also be made aware of the no smoking rules via the Trust's Induction programme.

No facilities will be provided on site for smoking.

Staff who smoke:

- Must not smoke, use e-cigarettes or vape on any of the Trust's premises. This includes any sites owned and/or operated by the Trust
- Must not smoke, use e-cigarettes or vape in Trust owned, leased or hired vehicles.
- Must not smoke, use e-cigarettes or vape in privately owned vehicles while travelling on Trust business or anywhere on Trust premises or other sites where Trust staff and services are based.
- Must not smoke, use e-cigarettes or vape in front of patients, their families or carers
- Must not be identifiable as a staff member or healthcare worker either in uniform or with an identity badge whilst smoking, using e-cigarettes or vaping, even if not on duty.
- Staff will not be permitted to take smoking breaks in addition to normal breaks, i.e. lunch breaks. Managers can say when employees can take rest breaks during work time as long as:
 - The break is taken in one go somewhere in the middle of the day (not at the beginning or the end)
 - Workers are allowed to spend it away from their desk or workstation (i.e. away from where they actually work)
 - Must not smoke, use e-cigarettes or vape within sight or proximity of entrances/exits to Trust owned or operated premises or any signage indicating that Trust services are delivered in the vicinity.

Failure to comply with the no smoking rules may result in disciplinary action being taken.

5. REFERENCES/EVIDENCE/GLOSSARY/DEFINITIONS

The following Smoking related Public Health Guidance issued by the National Institute for Health and Clinical Excellence (NICE) are relevant to this Trust:

- PH1 Brief Interventions & Referral for Smoking Cessation in Primary Care and other settings (2006)
- PH5 Workplace Interventions to Promote Smoking Cessation (2007)
- PH23 School Based Interventions to Prevent Smoking (2010)
- PH 26 Quitting Smoking in Pregnancy and Following Childbirth (2010)
- Local Stop Smoking Services – Health Central, St Stephen’s or 0800 3247111 or text QUIT to 61825.
- www.gov.uk
- Criminal Justice and Immigration Act 2008

6. OTHER RELEVANT POLICIES/PROCEDURES/PROTOCOLS/GUIDELINES

Nicotine Management and Smokefree Procedure Proc466

APPENDIX 8: DOCUMENT CONTROL SHEET

This document control sheet, when presented to an approving committee, must be completed in full to provide assurance to the approving committee.

Document Type	Policy		
Document Purpose	This policy is intended to ensure that a fair, systematic and uniform approach is taken when conduct falls short of the required standard as outlined in this policy.		
Consultation/Peer Review	Date:	Group/Individual	
<i>List in right hand columns consultation groups and dates - ></i>	13.09.23	Workforce & OD	
	25.08.23 and 12.10.23	TCNC	
	18.09.23	EDI Networks	
	28.11.23	ODG	
	Sep-23	Director of Nursing, Allied Health and Social Care Professionals.	
Approving Committee:	EMT	Date of Approval:	13.11.23
Ratified at:	Trust Board	Date of Ratification:	N/A (minor amend)
Training Needs Analysis: <i>(please indicate training required and the timescale for providing assurance to the approving committee that this has been delivered)</i>		Financial Resource Impact:	
Equality Impact Assessment Undertaken?	Yes [<input checked="" type="checkbox"/>]	No [<input type="checkbox"/>]	N/A [<input type="checkbox"/>] Rationale:
Publication and Dissemination	Intranet [<input checked="" type="checkbox"/>]	Internet [<input type="checkbox"/>]	Staff Email [<input type="checkbox"/>]
Master Version held by:	Author [<input type="checkbox"/>]	HealthAssure [<input checked="" type="checkbox"/>]	
Implementation:	Describe implementation plans below – to be delivered by author:		
	<ul style="list-style-type: none"> • Managers newsletter • Via update at committees • Through internal networks 		
Monitoring and Compliance:	This policy will be reviewed in 3 years. Monitoring and compliance will be reported into Workforce and OD committee		

Document Change History:			
Version Number/Name of procedural document this supersedes	Type of Change i.e. Review / Legislation	Date	Details of Change and approving group or Executive Lead (if done outside of the formal revision process)
3.01	Review	Feb 2015	Supervision added
3.02	Review	April 2015	Reviewed and updated by policy group
3.03	Review	Aug 2017	Front sheet amended
3.04	Review	2019	Approved at EMT January 2019
4.0	Review	May 2022	Full re-write of the policy
4.1	Minor changes and amends	13 Nov 23	Minor changes: 5. Duties and Responsibilities; added chief executive, exec, snr mgr and mgr to be consistent with other policies. 10. Personal Responsibility Framework as an alternative to the disciplinary procedure – wording taken unchanged from the current personal responsibility framework with the intention to incorporate the personal responsibility framework policy into the disciplinary framework. Includes a signposting to a separate Personal Responsibility Framework Procedure and guidance document. 12. Formal Procedure; added at request of deputy director of WOD. Intention to avoid delays in process breaching 21 days before a hearing is held. 20. Equality Impact Assessment, 21 Review and Revision and 22 Dissemination

			<p><i>and implementation – wording added to be consistent with other policies. Appendix 1; Added B15 failure to adhere to no smoking rules as general misconduct.</i></p> <p><i>Appendix 9: moved no smoking policy from a separate stand alone policy, incorporated into this policy. References to smoking rules for patients removed and ensured this is available elsewhere. Change of wording from No Smoking Policy to No Smoking Rules to reflect it is no longer a policy in its own right but an appendix.</i></p> <p><i>Amendment:</i></p> <p><i>Section 1. para 3 wording added. para 4 wording replaced.</i></p> <p><i>Section 5. Commissioning Manager. Minor removal of an abbreviation.</i></p> <p><i>Section 7. Added wording ‘...fortnightly as a minimum’.</i></p> <p><i>Changed inclusion of an expert in proceedings from optional, to mandatory where the employee is a registered professional clinician.</i></p> <p><i>Section 8, para 5 is a new paragraph and added.</i></p> <p><i>Section 12, para 7 wording added.</i></p> <p><i>(i) Added words ‘subject matter expert’ .</i></p> <p><i>(ii) added words ‘If the employee is a registered clinical professional see section 12.1)’.</i></p> <p><i>Section 12.1 is new and added.</i></p> <p><i>Approved at EMT (13 November 2023).</i></p>
4.2	Minor changes and amends	19.02.24	<p><i>Section16: Removed the below wording to reflect current custom and practice and reflect other workforce policies – “An appeal against dismissal will be heard by a panel of two members of the Trust Board at least one of who must be a Non-Executive Director”.</i></p> <p><i>Approved by director sign off (Karen Phillips - Deputy Director of WOD - 19.02.24).</i></p>

APPENDIX 9: EQUALITY IMPACT ASSESSMENT (EIA)

For strategies, policies, procedures, processes, guidelines, protocols, tenders, services

Document of Process or Service Name: **Disciplinary Policy**

EIA Reviewer (name, job title, base and contact details) **John Duncan, ED&I lead, Willerby Hill**

Is it a Policy, Strategy, Procedure, Process, Tender, Service or Other? **Policy**

Main Sims of the Document, Process or Service		
This policy is intended to ensure that a fair, systematic and uniform approach is taken when conduct falls short of the required standard in accordance with the principles of Just Culture		
Please indicate in the table that follows whether the document or process has the potential to impact adversely, intentionally or unwittingly on the equality target groups contained in the proforma		
Equality Target Group 10. Age 11. Disability 12. Sex 13. Marriage/Civil Partnership 14. Pregnancy/Maternity 15. Race 16. Religion/Belief 17. Sexual Orientation 18. Gender re-assignment	Is the document or process likely to have a potential or actual differential impact with regards to the equality target groups listed? Equality Impact Score Low = Little or No evidence or concern (Green) Medium = some evidence or concern (Amber) High = significant evidence or concern (Red)	How have you arrived at the equality impact score? f) who have you consulted with g) what have they said h) what information or data have you used i) where are the gaps in your analysis j) how will your document/process or service promote equality and diversity good practice

Equality Target Group	Definitions	Equality Impact Score	Evidence to support Equality Impact Score
Age	Including specific ages and age groups: Older people, Young people, Children, Early years	Low	No evidence identified to lead to the conclusion that there would be a differential impact on staff though age arising from the disciplinary policy and procedures as currently drafted.
Disability	Where the impairment has a substantial and long-term adverse effect on the ability of the person to carry out their day-to-day activities: Sensory, Physical, Learning, Mental Health (and including cancer, HIV, multiple sclerosis)	Low	Trust statistics over previous 3 years suggest no over representation of disabled employees involved in disciplinary cases. This is monitored through the WDES reporting. Ensure greater awareness of support in applying the policy to those who are blind or partially sighted or deaf or who have a learning disability which makes reading and understanding the documents difficult. Other than above, no evidence identified to lead to the conclusion that there would be a differential impact on disabled staff arising from the disciplinary policy and procedures as currently drafted. <i>(20.10.23; JM addition: I am reassured that there is consideration of reasonable adjustments prior to a any formal hearing where appropriate, that would accommodate any disadvantages created by a disability and allow a disabled person to participate effectively in a formal meeting / process)</i>
Sex	Men/Male, Women/Female	Low	No evidence identified to lead to the conclusion that there would be a differential impact on staff through gender arising from the disciplinary policy and procedures as currently drafted.
Marriage/Civil Partnership		Low	No evidence identified to lead to the conclusion that there would be a differential impact on staff through marriage or civil partnership arising from the disciplinary policy and procedures as currently drafted.
Pregnancy/Maternity		Low	No evidence identified to lead to the conclusion that there would be a differential impact on staff through pregnancy or maternity arising from the disciplinary policy and procedures as currently drafted.

Race	Nationality, Ethnic/national origins	Low	Trust statistics over previous 3 years suggest no representation of BAME staff involved in discipline cases. This is monitored annually through the WRES reporting. Ensure awareness of support available for those who are subject to the disciplinary policy but for whom English is not their first language Other than above, no evidence identified to lead to the conclusion that there would be a differential impact on BAME staff arising from the disciplinary policy and procedures as currently drafted.
Religion or Belief	All Religions Including lack of religion or belief and where belief includes any religious or philosophical belief	Low	No evidence identified to lead to the conclusion that there would be a differential impact on staff with differing religion or beliefs arising from the disciplinary policy and procedures as currently drafted.
Sexual Orientation	Lesbian, Gay Men, Bisexual	Low	No evidence identified to lead to the conclusion that there would be a differential impact on staff from the LGBTQ+ community arising from the disciplinary policy and procedures as currently drafted.
Gender Re-assignment	Where people are proposing to undergo, or have undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attribute of sex	Low	No evidence identified to lead to the conclusion that there would be a differential impact on staff undergoing or having undergone gender reassignment arising from the disciplinary policy and procedures as currently drafted.

Summary

<i>Please describe the main points/actions arising from your assessment that supports your decision above:</i>	
The implementation of the policy will have limited differential impact on those with protected characteristics, however special care and awareness is needed when applying the policy to those who are blind or partially sighted or deaf or who have a learning disability which makes reading and understanding the documents difficult. Similarly, support needs to be available for those who are subject to the disciplinary policy but for whom English is not their first language.	
EIA Reviewer: John Duncan ED&I Lead	(reviewed by J Marjoram 20.10.23 and satisfied this assessment is still accurate)
Date Completed: 17 February 2022	Signature: John Duncan