**DISCIPLINARY POLICY**

**Version 3**

<table>
<thead>
<tr>
<th>Summary</th>
<th>This document provides the framework for how disciplinary matters will be addressed and managed within Southern Health NHS Foundation Trust.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Keywords (minimum of 5):</strong> (To assist policy search engine)</td>
<td>Disciplinary, Conduct, Attitude, Support, Representation, Sanction, Warning, Dismissal</td>
</tr>
<tr>
<td><strong>Target Audience:</strong></td>
<td>All Southern Health Staff</td>
</tr>
<tr>
<td><strong>Next Review Date:</strong></td>
<td>February 2020</td>
</tr>
<tr>
<td><strong>Approved and Ratified by:</strong></td>
<td>Joint Consultative and Negotiating Committee</td>
</tr>
<tr>
<td><strong>Date issued:</strong></td>
<td>August 2018</td>
</tr>
<tr>
<td><strong>Author:</strong></td>
<td>Louise Jones, Senior HR Manager</td>
</tr>
<tr>
<td><strong>Accountable Executive Lead:</strong></td>
<td>Paul Draycott, Director for Workforce, Organisational Development and Communications</td>
</tr>
</tbody>
</table>

For translation of this document, an interpreter, or a version in large print or Braille or audio, please contact the Communications Team on 023 8087 4666.
Disciplinary Policy

Senior HR Manager
Version: 3
August 2018

Version Control

Change Record

<table>
<thead>
<tr>
<th>Date</th>
<th>Author</th>
<th>Version</th>
<th>Section</th>
<th>Reason for Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feb 2014</td>
<td>Rita Hawkshaw, HR Manager-</td>
<td>2</td>
<td>Section 6</td>
<td>Aligned structure/stages with other workforce (employment relations) policies - Stage 1</td>
</tr>
<tr>
<td></td>
<td>Best Practice</td>
<td></td>
<td>10</td>
<td>Informal, Stage 2 Formal, Stage 3 Appeal</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Throughout</td>
<td>Supporting references - updated</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Appendix 1 &amp; 2 moved to Disciplinary Procedure - for ease of reference during procedure.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>General update of terminology.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>General alignment of timelines and process with other workforce (employment relations) policy.</td>
</tr>
<tr>
<td>16/3/17</td>
<td>Review date extended from March to June 2017</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3/7/17</td>
<td>Louise Jones</td>
<td>2</td>
<td></td>
<td>No changes required – extend review date for 1 year to June 2018</td>
</tr>
<tr>
<td>4/5/18</td>
<td></td>
<td></td>
<td></td>
<td>Review date extended from June to December 2018 in line with Disciplinary Procedure</td>
</tr>
<tr>
<td>August 2018</td>
<td>Louise Jones</td>
<td>3</td>
<td>6.4.1.1.</td>
<td>Mandating professional advisors to sit on disciplinary and appeal panels for registrants. Updated cover page</td>
</tr>
<tr>
<td>24/10/18</td>
<td></td>
<td></td>
<td></td>
<td>Review date extended from Dec 18 to Feb 19</td>
</tr>
<tr>
<td>8/1/19</td>
<td></td>
<td></td>
<td></td>
<td>Review date extended to August 2019</td>
</tr>
<tr>
<td>28/8/19</td>
<td></td>
<td></td>
<td></td>
<td>Review date extended to February 2020</td>
</tr>
</tbody>
</table>

Reviewers/Contributors

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Version Reviewed &amp; Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human Resources Team, Staff Side and Joint Consultative and Negotiating Committee</td>
<td></td>
<td>Version 1, Jul 2012</td>
</tr>
<tr>
<td>Human Resources Team, Staff Side and Joint Consultative and Negotiating Committee</td>
<td></td>
<td>Version 2, Nov 2013 – Feb 2014</td>
</tr>
<tr>
<td>Chief Nurse Membership</td>
<td></td>
<td>Version 3, July 2018</td>
</tr>
</tbody>
</table>
CONTENTS

1. INTRODUCTION .................................................................................................................. 4
2. SCOPE .................................................................................................................................. 4
3. DEFINITION ............................................................................................................................ 4
4. ROLES AND RESPONSIBILITIES ......................................................................................... 5
5. POLICY PRINCIPLES ............................................................................................................. 6
6. PROCESS .................................................................................................................................. 7
7. MONITORING COMPLIANCE ................................................................................................. 9
8. POLICY REVIEW .................................................................................................................... 9
9. ASSOCIATED DOCUMENTS .................................................................................................... 10
10. SUPPORTING REFERENCES ................................................................................................. 10
DISCIPLINARY POLICY

1. INTRODUCTION

1.1. Southern Health NHS Foundation Trust (the ‘Trust’) believes that Disciplinary rules and procedures are important in any workplace to set out the boundaries of acceptable conduct and to ensure fair and equitable treatment of staff who transgress these boundaries.

1.2. The Trust believes that fairness and transparency are promoted by developing robust policies and procedures and ensuring managers and staff understand the content and how to work within the processes.

1.3. It is important for staff and managers to see this policies and procedures not as a punitive tool, rather a structured mechanism to enable managers and staff to address shortfalls in conduct in a fair and equitable manner.

1.4 The purpose of this policy is not to restrict the rights of anyone, but rather to help people work together harmoniously according to the standards we have established for efficient and effective services for all our stakeholders.

2. SCOPE

2.1. This policy and its associated procedures will apply to all staff directly employed by the Trust other when specific conditions may apply e.g. to Medical staff and Dentists. This also includes trainees, secondees and staff on honorary contracts or on joint contracts with the Trust and another employer.

2.2. Issues relating to medical staff and Dentists are dealt with in the Department of Health’s guidelines Maintaining High Professional Standards in the Modern NHS.

2.3. Cases of misconduct perpetrated outside of work by staff may also be managed through this policy. The circumstances should be considered on their merits, the managers must give careful consideration as to whether an individual’s role and/or the reputation of the Trust has been unduly affected as a result of the act of misconduct.

3. DEFINITION

3.1. Conduct is defined as an individual’s behavior, therefore, misconduct is when behaviors are demonstrated that are not appropriate or unacceptable. This policy provides examples of what the Trust interprets as misconduct and this is provided in the Disciplinary Procedure – Appendix 1. This list is not exhaustive.

3.2. For the purposes of this policy and procedure misconduct is broken down into two distinct categories, misconduct and gross misconduct.
Disciplinary Policy
Senior HR Manager
Version: 3
August 2018

- Misconduct constitutes behaviors that transgress acceptable boundaries and can be managed incrementally to address shortfalls, examples are outlined in the Disciplinary Procedure – Appendix 1.

- Gross misconduct constitutes behaviors that exceed acceptable boundaries and will be managed succinctly, potentially leading to an individual’s dismissal, examples of which are provided in the Disciplinary Procedure -Appendix 2.

4. ROLES AND RESPONSIBILITIES

4.1. Trust

4.1.1. The Trust aims to ensure consistent and fair treatment for all members of staff.

4.1.2. The Trust aims to have a skilled and knowledgeable workforce, who fully understands the behaviors expected of them, through regular appraisal and development opportunities.

4.2. Managers

Line manager’s roles, responsibilities and accountabilities require them to:

4.2.1. be aware of the Trust policies and procedures and how to use them to manage issues as they arise;

4.2.2. work within the Trust’s policies and procedures ensuring fairness and consistency across their service and the Trust;

4.2.3. ensure staff have an up-to-date job description, which reflects their roles and responsibilities;

4.2.4. ensure staff have their annual appraisal; reviewing the Trusts behavioural competency framework and setting objectives to ensure staff know what is expected of them;

4.2.5. where conduct issues start to emerge the manager must ensure that the individual is made aware at the earliest possible opportunity to allow them to correct their behavior;

4.2.6. ensure that conduct issues are managed effectively to ensure they do not effect patient care or safety, staff morale and service deliver.

4.3. Staff

Staff have roles and responsibilities to:

4.3.1. familiarise themselves with the Trust policies and procedures to ensure they understand the Trust’s expectation;

4.3.2. ensure they have an up-to-date job description, which accurately reflects the role they have been employed to do;
4.3.3. ensure they have an annual appraisal with their line manager, which assess performance against the Trust’s behavioral competencies for their role;

4.3.4. raise concerns as soon as possible, if they feel they are struggling in their role or within their team, seek support from their line manager;

4.3.5. raise concerns if they believe others behavior is transgressing Trust boundaries, especially if it may impact on patient or staff wellbeing or safety;

4.3.6. when issues are identified engage with their line manager to bring about a resolution as quickly as possible;

4.4. **Human Resources**

4.4.1. The Director of Workforce, Development and Communications has delegated responsibility from the Board to ensure this Policy and associated Procedure is implemented and monitored ongoing.

4.4.2. The Human Resources Team has a role and responsibility in ensuring that the policy is developed and implemented across the Trust consistently. Their duties will include:

   - Providing advice and guidance to managers in the interpretation and application of this procedure as appropriate;
   - Providing expert advice to panels by attendance at formal disciplinary hearings and appeals;
   - Providing access to training and coaching managers in the handling of disciplinary matters;
   - Monitoring and reporting the issuing of disciplinary outcomes/actions to ensure consistency and in relation to diversity issues; and
   - Keeping the provisions within this policy in line with employment legislation.

4.5. **Trade Unions**

4.5.1. Trade Union representatives have an important role to play generally in providing advice, support and, if required, representation to individuals and working in partnership with managers and the Human Resources Team in looking to ensure that the Trust’s Disciplinary Policy is applied reasonably and fairly.

5. **POLICY PRINCIPLES**

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

5.2. It is recognised that because conduct is related to behaviours, staff may feel that managers are criticising them personally. Wherever possible managers and staff are encouraged to use established guidance on what constitutes good conduct within the Trust e.g. this Policy, the Trust competency
framework, professional competency frameworks, as a basis for any
discussion to establish a common understanding.

5.3. Should managers pursue formal disciplinary action they will ensure that staff
are kept fully informed of the allegations against them, the progress of the
investigation and the processes to be followed.

5.4. Dependant on the nature of the disciplinary issue the Trust may be obliged
to inform professional bodies.

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

5.6. Wherever possible the Trust will attempt to preserve employment and
consider redeployment opportunities.

6. PROCESS

6.1. General

6.1.1. As already stated the Trust would encourage managers to resolved conduct
issues informally wherever possible. There are times however when this is
not possible and the policy provides an overview of the process to be
followed. The associated Procedure will provide more detail about how the
process is conducted.

6.2. Overview of Procedure

6.2.1. There are three stages to the disciplinary procedure:-

- Stage 1 - Informal Stage
- Stage 2 – Formal Stage
- Stage 3 – Appeal

An overview of the stages are provided in the following sections,

6.3. Stage 1 - Informal Stage

6.3.1. The informal stage of this policy should be used to ensure that the manager
and member of staff have established open and honest communication
about the issues. Talking about the problem, before entering a formal
process, can frequently bring about a speedy resolution.

6.3.2. The manager should recognise that staff may find this process stressful and
put in place mechanisms to monitor their wellbeing e.g. conduct a stress
assessment with the member of staff (Managing Stress and Wellbeing
Policy and Procedure and access to the Trust’s Employee Assistance
Programme – Workplace Options).
6.3.3. Whilst, at this informal stage, there is no right to representation for the member of staff, the line manager may wish to consider their involvement to facilitate an open and honest dialogue. This should not however be allowed to unnecessarily delay the informal process.

6.3.4. The manager should make clear, to the member of staff, that the meeting is forming part of the Disciplinary process, provide them with a copy of the policy and procedure and talk through how the process works. The manager should explain that they will be given every opportunity to meet the required standards.

6.3.5. The informal stage of this policy is not time-bound, whilst some instances of misconduct can be managed via a conversation or by establishing an action plan and monitoring, others will need to be progressed more quickly. The decision on how to progress should be taken following the informal discussion between the line manager and the member of staff.

6.3.6. Care should be taken to identify whether concerns raised about a member of staff’s behaviour are related to conduct or capability. If the concern is relate to capability the Managing Performance (Capability) Policy and Procedure, should be followed.

6.4. **Stage 2 - Formal Stage**

6.4.1. The decision to progress from an informal Disciplinary process into the formal Procedure will be made by the line manager. Once the decision has been made, the line manager will become the Commissioning Manager and seek an investigation into the issues of poor conduct. They will appoint an Investigating Officer, unconnected with the case, to carry out an investigation in line with the Workforce Investigation Policy and Procedure.

6.4.2. In some cases the line manager may not be considered the most appropriate person to become the Commissioning Manager, in these circumstances a peer or more senior manager may take the role. HR advice should be sought.

6.4.3. The Commissioning Manager will base their decision on how to proceed on the outcome and conclusions of the investigation.

6.4.1. **Hearings**

6.4.1.1. A Disciplinary hearing panel will consist of a manager of appropriate seniority and authority, who will chair the hearing. The Chair must have had no previous connection with the case. A HR representative of an appropriate seniority and/or experience will also be present. For Registrants (eg NMC/ HCPC) an Associate Director of Nursing or Deputy Director of Nursing/ AHP must be invited to join the panel as a Professional Advisor. In certain circumstances a specialist/ technical expert may also sit on the panel to support the Chair.

6.4.1.2. Both parties will have the opportunity to present their case to the Disciplinary Panel, prior to any decisions being made.
6.4.1.3. The individual has the right to representation by a Trade Union Representative or work colleague (unrelated to the case or themselves).

6.4.1.4. Formal hearings are essentially meetings between the Trust and the individual member of staff. Discussions should therefore be principally between the Trust and the individual; the role of the Trade Union representative or work colleague should be to support the individual by offering relevant supplementary information that adds value to the hearing and, if requested by the individual, present the initial case and sum up. Any questions put directly to the individual should be initially dealt with by them.

6.4.1.5. The Trust will look to provide a maximum of two (2) alternative dates/times in the event of the individual and/or representative being unable to attend the first date set. If necessary the hearing will take place in the individual’s absence on the second alternative date.

6.5 Stage 3 - Appeal

6.5.1 The member of staff has the right to appeal against decisions made at each of the formal stages.

6.6 Counter Claims

6.6.1 Should the member of staff submit grievance or bullying and harassment claims against the line manager during the informal or formal aspects of the disciplinary processes, the allegation will not stop the Disciplinary process. The allegations will be subject to a parallel Workforce Investigation in-line with the appropriate policy and procedure. The outcome and conclusion of the investigation will also be dealt with in-line with the associated policies and procedures. If appropriate either party may use the outcome of that investigation as evidence during a disciplinary and/or appeal hearing.

7. MONITORING COMPLIANCE

7.1. Human Resources (HR) will monitor and analyse data on a quarterly basis. HR will use the data to monitor the implementation of the policy and management of cases. In addition, the data will be collated and analysed for information regarding the fairness and consistency in application of disciplinary outcomes/action and patterns and frequency of disciplinary issues occurring and in relation to diversity issues.

7.2. Subsequently, the data will be used to inform and improve policies, as well as provide recommendations for improving working practices. HR will provide relevant reports, based on this data, to the Strategic Workforce Committee (SWC), Executive Board and the Joint Consultative and Negotiating Committee (JCNC).

8. POLICY REVIEW

8.1. The policy and procedures contained within these documents will be in place for three years following approval of a review and amendments. An earlier review can take place should exceptional circumstances arise.
resulting from this policy; in whole or in part, being insufficient for the purpose and/or if there are legislative changes

9. ASSOCIATED DOCUMENTS
   - Workforce Investigation Policy and Procedure
   - Exclusion Policy and Procedure
   - Managing Performance (Capability) Policy and Procedure
   - Managing Sickness Absence Policy and Procedure
   - Grievance Policy and Procedure
   - Bullying and Harassment Policy and Procedure
   - Disclosure and Barring Service and Employment Checks Policy and Procedure
   - Code of Conduct for NHS Managers
   - NHS Constitution
   - Maintaining High Professional Standards in the Modern NHS
   - ACAC Code of Practice 1 - Disciplinary and Grievance
   - Safeguarding Vulnerable Groups Act 2006

10. SUPPORTING REFERENCES
   - [www.acas.gov.uk](http://www.acas.gov.uk) Advisory, Conciliation and Arbitration Service (ACAS) promotes employment relations and HR excellence.
   - [www.gov.uk/government/organisations/disclosure-and-barring-service](http://www.gov.uk/government/organisations/disclosure-and-barring-service) The Disclosure and Barring Service (DBS) helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children. It replaces the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).