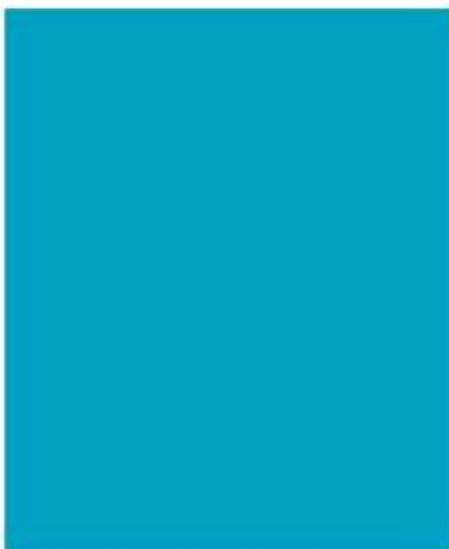


NHS England
Disciplinary Policy



Disciplinary

Policy and Procedure

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1 Introduction

- 1.1 NHS England is committed to encouraging and supporting our employees to achieve and to maintain high standards of conduct.
- 1.2 This disciplinary policy and procedure provides the process through which managers can support their staff to achieve high standards of conduct.

2 NHS England commitments and values

- 2.1 NHS England is striving to create a positive and participative working environment and culture, providing the conditions for individuals and teams to thrive and achieve the highest standard of performance and service, where contributions are fully recognised and valued by all.
- 2.2 NHS England is committed to supporting the needs of all employees, be this through formal mechanisms such as training and development or through more informal mechanisms such as the development of a productive and positive workplace environment.
- 1.3 NHS England believes that all employees should have satisfying and worthwhile jobs, with the freedom and confidence to be empowered to raise concerns where appropriate.
- 1.4 To do this, employees need to be trusted, empowered and actively listened to by those with whom they work and interact. Employees must be treated with respect at work, and be given the tools, training and support to deliver work objectives, and opportunities to develop and progress.
- 1.5 All NHS England policies support the values and pledges set out in the NHS Constitution. In particular, this policy and procedure supports the following NHS Constitution pledge:

Disciplinary	
NHS Constitution Staff Pledge	Staff Responsibility
The NHS commits to supporting all staff in raising concerns at the earliest reasonable opportunity about safety, malpractice or wrong doing at work, responding to and, where necessary, investigating the concerns raised and acting consistently with the Public Interest Disclosure Act.	You have a duty to accept professional accountability and maintain the standards of professional practice as set by the appropriate regulatory body applicable to your profession or role. You have a duty to act in accordance with the express and implied terms of your contract of employment.

3 Policy statement

- 3.1 It is the policy of NHS England that employees not achieving and maintaining expected high standards of conduct will be held accountable for their behaviours and may be subject to formal disciplinary action.
- 3.2 All parts of the disciplinary process will be conducted in a fair and consistent manner.

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4 Scope/application

- 4.1 This policy and procedure will be used to maintain clear, unequivocal standards in areas such as:
- Conduct
 - Time-keeping
 - Absence from work (unless related to ill-health)
 - Health and Safety
- 4.2 The policy and procedure applies to standards within the workplace. It may apply to conduct outside of the workplace and working time, should such conduct have a demonstrable bearing on the duties and obligations of the employee, or bring the organisation into disrepute.
- 4.3 This policy sets out the procedure for use by all employees of NHS England.
- 4.4 In the case of medical and dental staff, the framework set out in “Maintaining High Professional Standards in the Modern NHS” will be followed.

5 Purpose

- 5.1 It is necessary to have a disciplinary policy and procedure to ensure fairness and consistency in the treatment of employees and to support the effective operation of NHS England. Implicit within this policy is that any individual who participates in this process will be treated with respect and in the best interests of the organisation and its employees. It outlines the mechanisms that will be followed, in order to deliver the resolution of disciplinary matters in a fair; consistent; timely; and impartial manner, supporting the intent of assuring fairness in the treatment of individuals.

6 Principles

- 6.1 It is expected that the vast majority of minor incidents of misconduct will be dealt with in an informal manner through effective communication and support between managers and employees.
- 6.2 The formal process will be used where informal resolution has failed or where matters are of a more serious nature.
- 6.3 Communication and management support should be an on-going process and should continue throughout any informal or formal procedures.
- 6.4 Where informal methods are successfully used to resolve minor problems of misconduct there will be no requirement to use the formal procedure, although a file note will be stored on the employee personal file for six months.
- 6.5 The level of any formal action will be dependent on the seriousness of the offence, the consequence to the organisation and any mitigation provided by the employee.
- 6.6 Except for incidents considered to constitute gross misconduct, no employee will be dismissed for a first breach of discipline.
- 6.7 Disciplinary action will only be taken against an employee who is an accredited trade union representative following discussion with the relevant union Full Time Officer and notification to the Regional Officer.
- 6.8 Formal disciplinary action will therefore only take place when it is decided that either:
- Other informal methods will not and/or have not brought about the improvement required;

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- The alleged misconduct warrants immediate disciplinary action, owing to the serious nature of the misconduct; or
 - There is a clear breach of professional standards and procedures.
- 6.9 Employees will always have a right of appeal against formal action.
- 6.10 NHS England actively encourages and supports employees to be accompanied by a Trade Union representative or workplace colleague. See section 8 for further details on right to be accompanied.
- 6.11 Appeal panel members will have had no prior involvement in the matter.
- 6.12 Disciplinary issues will be dealt with in as timely a manner as possible.

7 Roles and responsibilities

7.1 Everyone

Everyone involved in the application of the disciplinary policy and procedure is responsible for:

- Maintaining mutual respect and a professional approach throughout the process.
- Maintaining confidentiality throughout the process; for example not discussing the proceedings with individuals not connected with the process.
- Adhering to the spirit of this policy and procedure, and conducting themselves in an open, honest, and dignified manner throughout the process.
- Recognising their responsibility to return to business as usual, once the disciplinary proceedings have finished, acting professionally to move on from the issues that were dealt with.
- Raising any concerns which may have an impact on staff welfare and/or patient safety.

7.2 Employees

Employees are responsible for:

- Acting as role models in terms of their own conduct, and behaving in a way that is not offensive to others.
- Upholding expected standards of human dignity and behaviour, and any guidelines as set by their own professional bodies.
- Behaving in a manner that upholds the NHS Constitution, NHS England values and where appropriate, complying with the Code of Conduct for NHS Managers.
- Challenging and reporting inappropriate behaviour.

7.3 Line managers

Line managers are responsible for:

- Managing the organisation (including employees), and setting and maintaining appropriate, expected standards of behaviour.
- Ensuring appropriate training and development is available to all employees.
- Developing a culture that values diversity and shows dignity and respect.
- Treating individuals in a manner that promotes fairness and respect.
- Ensuring that in all instances disciplinary issues are dealt with in a fair, consistent and timely manner.
- Working in partnership with recognised Trade Union representatives in carrying out this procedure and discussing any amendments to it as required.

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- Addressing any problems at the earliest opportunity and encouraging the use of informal action in the first instance, where appropriate.
- Discharging their managerial duties in a way that does not demean, devalue, or intimidate employees or indeed anyone they may come into contact with as part of their professional life.
- Ensuring file notes are removed in line with this policy.

7.4 Corporate People Team within the Transformation and Corporate Operations Directorate

The Corporate People Team within the Transformation and Corporate Operations Directorate is responsible for:

- Ensuring that employment policies and procedures are legally compliant.
- Providing necessary professional guidance and advice to enable the process.

7.5 Trade unions

Trade union representatives are responsible for:

- Engaging in the development, review and monitoring of the application of this policy.
- Representing their members throughout any disciplinary process.

8 Right to be accompanied

- 8.1 Taking account of the *ACAS Code of Practice*, in all cases where formal action is being taken, the employee has the right to be accompanied by a representative from a recognised trade union or appropriate professional association or by a workplace colleague.
- 8.2 However, where a manager has reasonable grounds to consider that there is an immediate or urgent need to suspend an employee from work at short notice it may not always be possible for a suitable companion to be available. If this is the case, the manager should outline the reasons for immediate action in writing, as part of the suspension letter.
- 8.3 The employee is required to confirm in writing the name and status of the companion at least two working days before any formal meeting to the manager chairing the meeting.
- 8.4 Employees are free to choose a representative from any trade union to accompany them at a formal meeting.
- 8.5 There is no duty on a fellow worker or trade union representative to accept a request to accompany an employee and no pressure should be brought to bear on an individual if they do not wish to act as companion or representative.
- 8.6 An employee or lay trade union representative employed by NHS England who has agreed to accompany a colleague also employed by NHS England is entitled to take a reasonable amount of time off to fulfil this responsibility. The time off should not only cover the hearing but also should allow a reasonable amount of time off for the accompanying person to familiarise themselves with the case and confer with the employee before and after the meeting.
- 8.7 Where the chosen companion cannot attend on the date proposed, the employee can offer an alternative time and date so long as it is reasonable and convenient for the manager concerned. This can only be rearranged on one occasion.
- 8.8 A companion may address a formal meeting to present and sum up the employee's case, ask questions and respond on the employee's behalf to a view presented.

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However, they may not answer questions asked directly to the employee. The companion will also be allowed time to confer with the employee during the meeting.

8.9 **Accredited representatives**

In cases where formal disciplinary action may be taken against an accredited representative of a recognised trade union or staff organisation, the case will be discussed in advance with a full time representative of the organisation concerned and documents shared as required

9 The procedure

9.1 Reasonable adjustments

Reasonable adjustments will be made for employees who deem themselves to have a disability or accessibility issues such as translation/interpretation, as appropriate to individual circumstances, to ensure proper participation in disciplinary processes. Employees are encouraged to discuss their requirements and any necessary adjustments with their companion, the investigating officer, or the manager chairing any meetings as appropriate and as early as possible to expedite the process.

9.2 Informal resolution

Where managers are concerned with minor breaches of conduct, they should seek to resolve these through informal processes such as supervision and training. Such issues should be dealt with informally on a one to one basis. Managers should make file notes of any informal interventions to improve conduct, which should be excluded as relevant and inadmissible for disciplinary purposes after 6 months; subject to satisfactory improvement.

9.3 Formal resolution

Where informal action has not been successful, or more serious misconduct has occurred, the formal procedure will be used.

9.4 Fraudulent or criminal behaviour

In cases of suspected or alleged fraud or criminal behaviour the relevant authorities will always be informed (for example, NHS Protect, and/or the Police), and a separate legal investigation may take place. This will not prevent NHS England from initiating or continuing its own investigation under this policy and procedure (unless so directed by the Police) and in line with the Standing Financial Instructions of NHS England. If an employee is charged with, or convicted of a criminal offence this is not necessarily in itself considered to be a reason for disciplinary action. Consideration will be given to the effect the charge or conviction has on the employee's suitability to do the job.

9.5 Suspension

9.5.1 In some cases it will not be appropriate for an employee to remain at work whilst an investigation is being carried out and employees may be placed on suspension with full pay. This is a neutral act, not disciplinary action, and does not imply that the employee has been found culpable of the alleged breach. Any discussions to suspend will not be taken lightly, and will be a last resort, only once alternative options such as; working from another location; alternative duties etc have been explored.

9.5.2 Suspension will be based on an evaluation that the employee's continued presence in the workplace:

- may not be in the best interests of himself/herself or the organisation; or
- might hinder the completion of the investigation; or
- gross misconduct may have taken place; or

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- temporary transfer to another department/ place of work is not feasible; or
- suitable restrictions to work content/supervision are not available.

9.5.3 In such instances, an appropriately designated senior manager will decide if suspension is appropriate, having consulted with HR in advance. The decision must be communicated to the employee in the presence of at least one other person. The following conditions must be explained to the employee:

- (S)he must reasonably be available to attend disciplinary meetings
- (S)he must provide contact details covering the period of suspension
- (S)he must not enter NHS England premises without prior authorisation from a named point of contact
- The suspending manager will seek HR advice about which workplace equipment should be returned to NHS England for the duration of the suspension and advise the employee accordingly. (S)he must not contact and discuss any work related issues with any employee of NHS England other than the relevant Trade Union Representative or manager, without prior authorisation from the suspending manager.
- (S)he will maintain full pay, right to accrue holidays, sick pay, etc.
- The reason for the suspension will normally be confirmed in writing within 24 hours.
- Every attempt will be made to ensure the period of suspension is kept to a minimum and will be reviewed on a regular basis.
- Suspension from duty should not normally extend beyond 10 working days without further contact with the employee to explain the need for a further extension. If a suspension lasts more than 10 working days, a formal review should be carried out every 10 working days, by a senior manager with no previous direct involvement, to ascertain whether a continuation can be justified. A letter will be issued to confirm the extension and the reasons at each 10 working day review period.
- If, during a period of suspension, the employee has annual leave booked, the annual leave will override the suspension. For extended periods of suspension, if the individual intends to go on leave and thereby not be available for hearings/meetings, annual leave must be requested and approved by the line manager in advance.

9.6 Informing the employee

9.6.1 When it is clear that there is serious cause for concern about an employee's conduct, the line manager should:

- Meet with the employee to share the allegations and to outline the next steps and potential outcomes.
- Offer appropriate support.
- Write to the employee to confirm the nature of the allegations and next steps within 5 working days.

9.7 Levels of authority

9.7.1 Hearings should always be chaired by a person more senior than the person subject to the disciplinary hearing.

9.7.2 Authority to impose all sanctions up to and including dismissal and to hear appeals:

- Chief Executive and National Directors
- Central Team Directors and the Directors reporting to them
- Regional Directors and the Directors reporting to them

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- Directors of Commissioning Operations and the Directors reporting to them
- 9.7.3 Authority to impose all sanctions up to and including first written warning:
- Line Managers
- 9.7.4 Where the individual against whom the action is being taken is of a seniority level which makes the above levels of chairing unfeasible, then advice shall be sought from the HR Directorate.

9.8 The investigation

- 9.8.1 Throughout the investigation process, the investigating officer will be supported by a member of the relevant HR team, who will request a written outline of the allegation, from the line manager. The investigation is a fact-finding process only, in order to produce an account of events, and to determine whether there is a case to answer. It should be carried out in a timely and impartial manner, although the investigation should allow the employee and any witnesses to seek any reasonable support they require. In order to ensure the independence of the investigation, the investigating officer would not normally be the line manager.
- 9.8.2 The investigating officer should obtain written statements from, and interview separately, the employee and any witnesses at the earliest opportunity. Witnesses may wish to take support from their trade union representative when preparing and checking their statement.
- 9.8.3 The investigating officer should interview the employee and obtain a written statement. All employees should be given reasonable notice of any planned meeting, taking into account the level of preparation required.
- 9.8.4 NHS England actively encourages and supports employees to be accompanied by a trade union or workplace colleague. See section 8 for further details on the right to be accompanied.
- 9.8.5 Upon completion of the investigation, the investigating officer must complete an investigation report, summarising the key findings. This report will include recommendations based on the evidence collated. The investigating officer may conclude or suggest any of the following:
- The allegation(s) is/are unfounded and there is no case to answer. In this instance, the line manager will meet with the employee and representative (if applicable), to outline the outcome.
 - The case is not referred to a hearing, but remedies such as mediation, coaching and/or training maybe put in place. It is important that these remedies are not treated or applied in a manner that could be interpreted as an alternative disciplinary process.
 - There are grounds to suggest that there is a case to answer. The investigation will be referred to a formal hearing, or an agreed outcomes framework will be used (see 10 below).
- 9.8.6 In all instances, the outcome must be put in writing to the employee within 10 working days.

10 Agreed outcomes

- 10.1 It is recognised that lengthy disciplinary proceedings can create anxiety for all those involved in the process. It is further recognised that lengthy processes, can create

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additional pressure on service delivery; as such an 'agreed outcomes' option is available to support the process.

- 10.2 Where the employee has admitted and accepted the allegations, the agreed outcomes framework may be used at any point in the process. The manager will consider whether it is appropriate to conclude the matter without the need for a disciplinary hearing, by using an agreed outcomes procedure. The employee may request that the agreed outcome framework be followed. This should be done in consultation with a member of the relevant HR team.
- 10.3 Where the manager feels it is not appropriate to proceed to an agreed outcome they will provide the individual with written reasons for this. There will be no right of appeal or of grievance against this decision. It may not always be appropriate to use agreed outcomes (e.g. in cases of gross misconduct where dismissal is a potential outcome), although it may be appropriate where the employee has expressed admission of the alleged offence(s) and contrition for it/them. Where the employee is already subject to a current final written warning for similar or related misconduct the agreed outcome process will not be followed. This approach should therefore only be considered where the alleged conduct is likely to result in some level of warning, and only following receipt of advice from a member of the relevant HR team.
- 10.4 Agreed outcomes will only proceed if the employee and their representative (if they have one) are agreeable to the process, i.e. there must be mutual consent. It is open to either party, without prejudice, to suggest an agreed outcome at any stage of the disciplinary process.
- 10.5 The possible agreed outcomes are those contained in section 13.3 of this policy, excluding those of dismissal or summary dismissal.
- 10.6 The agreed outcomes process can be utilised where the employee has accepted that there is substance to the allegations and where the facts gathered support this. If the employee, their representative, or their line manager, do not agree with a proposal for an agreed outcome then the formal disciplinary process must be followed.
- 10.7 If the agreed outcomes process is to be used, a meeting should be held at which the manager plus another manager, as well as the employee and their representative, are present. The supporting documents, and investigation report, where applicable, will be provided to the employee and their representative 5 working days prior to the meeting, or lesser period, if agreed.
- 10.8 At the meeting all available relevant information must be available to those attending.
- 10.9 The agreed outcome will be confirmed in writing to the employee within 5 working days, by the manager.
- 10.10 The employee will be required to confirm in writing that they accept and understand the agreed outcome. There is no appeal against an agreed outcome which by definition should be mutually agreed. If an employee refuses to accept the outcome, or decides to withdraw from the agreed outcome process at any time, then the manager will arrange for matters to be considered at a formal disciplinary hearing in accordance with this policy. In all such situations further advice should be sought from HR.
- 10.11 Any disciplinary sanction issued in this way has the same status as one issued after a disciplinary hearing.
- 10.12 Any decisions taken as part of this process will impact upon future disciplinary issues in the same ways as a sanction issued after a full disciplinary hearing. For example, if a

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first written warning is an agreed outcome, any further repetition of the behaviour (or similar behaviour) that led to that level of warning may result in more serious action being taken.

11 Disciplinary hearing

- 11.1 If an agreed outcome is deemed inappropriate or is not mutually agreed, a disciplinary hearing should be convened as soon as is reasonably practicable, and the employee should be informed within 10 working days from completion of the investigation report that a hearing will be convened (although it could take up to 20 working days until the hearing takes place). It is expected that all attempts will be made to convene the disciplinary hearing well within the 20 working day limit.
- 11.2 The hearing will be chaired by a manager, who has the appropriate authority to take action in relation to the allegation and the level of the employee. Levels of authority to act, are set out in section 9.7 of this document. The manager will be supported and advised by a member of the relevant HR team. Arrangements will be made for a suitable alternative manager, of sufficient seniority, should the proposed chair be conflicted in any way. The final decision regarding the sanction is that of the hearing manager.
- 11.3 It is the responsibility of the hearing manager to coordinate the disciplinary hearing and all the necessary paperwork; ensuring letters are sent in line with this policy (with advice and guidance available from HR, and template letters available on the NHS England intranet). The employee must receive at least 5 working days' written notice of the disciplinary hearing including a copy of the investigation report and any supporting evidence, which should include the names of witnesses to be called. The notification letter will detail the hearing members, and offer the employee the opportunity to present a written statement in response and request the attendance of witnesses, which should be submitted to the hearing manager, at least three days before the disciplinary hearing. It will be the responsibility of the employee to confirm arrangements for their witness(es) and/or Trade Union representative and to submit details at least three working days before the hearing.
- 11.4 Should the employee be reasonably unable to attend the hearing (e.g. for reasons of annual leave; ill health; planned medical appointments), they must inform the hearing manager as soon as feasibly possible, and the meeting should be re-arranged. If the employee fails to attend due to unforeseeable circumstances, another hearing will be rescheduled. Failure to attend a rearranged hearing without good reason could result in the hearing taking place in the employee's absence. If an employee's representative cannot attend the proposed hearing, the hearing should be rearranged to a time suggested by the employee or representative within 5 working days from the proposed date. This may be extended through mutual agreement.
- 11.5 Employees called as witnesses will be supported to give evidence at a disciplinary hearing.

12 Conducting the hearing

- 12.1 The hearing manager will introduce the parties and set out the process to be followed, detailing their responsibilities; the expected timescale/time limitations for the hearing and process; and housekeeping arrangements, including that the employee may reasonably request adjournments at any point during proceedings.

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- 12.2 It is the responsibility of the hearing manager to ensure that the hearing is appropriately recorded.
- 12.3 It is the responsibility of the hearing manager to ensure they have understood everything and clarified where necessary. They may ask questions of the investigating officer, employee, and any witnesses, as appropriate.
- 12.4 The investigating officer will set out the allegation(s) against the employee. The investigating officer may call witnesses, as appropriate.
- 12.5 The employee or their representative and members of the hearing may ask questions of the investigating officer and their witnesses.
- 12.6 The employee will then set out their case; present evidence; and call witnesses, as appropriate. The employee may nominate their representative to present, but they may not answer questions on the employee's behalf.
- 12.7 The investigating officer and members of the hearing may then ask questions of the employee and/or their witnesses.
- 12.8 The hearing manager will then offer each the opportunity to sum up their case; inviting the investigating officer to go first, after which the hearing manager will adjourn to consider his/her decision. No new evidence may be raised during summing up.
- 12.9 Adjournments may be called, in agreement with the hearing manager, throughout the hearing
- 12.10 Once a decision has been made, the hearing will normally reconvene on the same day in order to deliver the outcome and the reasons upon which the decision was made and resultant action(s). It may be possible to deliver the outcome in writing, although ideally it should be in person. If the hearing manager believes that it will not be possible to deliver the outcome on the same day, a discussion must be undertaken with the employee and their representative about when and how the decision will be shared.
- 12.11 The outcome of the hearing will be confirmed in writing to the employee, within 5 working days of the hearing taking place.

13 Disciplinary outcomes

- 13.1 Where the allegations are found to be substantiated in the hearing, the hearing manager will decide the appropriate form of disciplinary action, based on:
 - The evidence provided by both sides during the hearing
 - Current disciplinary warnings of the employee
 - The employee's work position, length of service and performance record
 - Any mitigating circumstances
 - Action taken in similar cases in the past
 - Whether the action proposed is reasonable and proportionate
- 13.2 The hearing manager will be responsible for checking the proposed outcome with a member of the relevant HR team, in order to ensure consistency across the organisation.
- 13.3 There are three levels of potential disciplinary outcomes, which do not have to be issued sequentially; rather they are issued according to the severity of offence. They are as follows:

Level 1: First written warning

- If the offence is of a more serious nature, such as misconduct, or there have been repeated instances of poor performance after informal resolution has been sought, a

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written warning will normally be issued. A written warning will be recorded in the employee's personal file, and although it will physically stay on the file, it will be excluded as relevant and inadmissible for disciplinary purposes **9 months** after insertion into the file, subject to satisfactory improvement in conduct or performance.

Level 2: Final written warning

- If the misconduct is sufficiently serious enough to warrant more than a written warning but insufficiently serious enough to justify dismissal, a Final Written Warning will normally be issued. A final written warning may also be issued where an employee has persistently failed to improve performance or engaged in continued misconduct following the issuing of a written warning.
- A final written warning will be recorded in the employee's personal file, and although it will physically stay on the file, will be excluded as relevant and inadmissible for disciplinary purposes **12 months** after insertion into the file, subject to satisfactory improvement in conduct or performance. In all cases the outcome of the process will be confirmed to the employee in writing, detailing the level and duration of the sanction and the timescale for lodging an appeal.

Level 3: Dismissal

- The most serious offences, where proven, are likely to lead to dismissal or action as an alternative to dismissal. An employee may also be dismissed, following due process, where they have persistently failed to improve performance or engaged in continued misconduct following the issue of a final written warning. Dismissal will normally be with notice, except for acts of gross misconduct, which are so serious or have such serious consequences, that they may call for summary dismissal (without notice), even for a first offence. A fair disciplinary process will however still be followed, before dismissing for reasons of gross misconduct.
- The employee should be informed in writing, by the authorised manager within 5 working days, and the letter should include:
 - the reasons for the dismissal
 - the date from which the dismissal is effective
 - the date on which the employment contract will terminate
 - the appropriate period of notice and their right to appeal.

14 Action as an alternative to dismissal

14.1 The application of action as an alternative to dismissal is at the discretion of the appropriate manager, and may be considered in instances of misconduct, but not in all cases of gross misconduct. In addition to a final written warning, the following may be recommended:

- Development
- An extended sanction
- Mediation
- training

14.2 In some circumstances, consideration may also be given to:

- Redeployment to another post.

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- Demotion to a different role, if available and appropriate (for a performance or conduct related breach), which will result in a reduction in pay as a result of a lower job grading.
- 14.3 The above two considerations will depend on individual circumstances, and only ever as an alternative to dismissal and in conjunction with a final written warning.
- 14.4 Action as an alternative to dismissal does not remove the employee's right of appeal, nor does it impact on the outcome of the appeal.
- 14.5 The employee will be notified in writing of the decision to offer action as an alternative to dismissal on completion of the disciplinary hearing. The employee will have 5 working days from receipt of the written offer to formally accept the alternative terms. Should the employee fail to respond in time and/or accept the terms, the manager will confirm their dismissal and notice arrangements.

15 Appeals procedure

- 15.1 All employees have the right to appeal against any decision taken in this procedure. The purpose of an appeal hearing is to consider whether action taken by the hearing manager was fair and reasonable at the time, and whether the correct procedure was applied in deciding on the disciplinary action. The appeal hearing is not an opportunity to re-hear the original disciplinary hearing and should not be treated as such. New evidence may however be heard.
- 15.2 An employee who wishes to lodge an appeal against disciplinary action should write to the named person outlined in the outcome letter, within 10 working days of receiving written notification of the disciplinary action being taken, stating grounds for appeal. Any letter received after this time period would only be considered if mitigating circumstances were provided in explanation of the delay; this would be dealt with on a case by case basis, with advice sought from a member of the HR team.
- 15.3 Grounds for appeal may include:
- The severity of the sanction, given the circumstances of the case; and/or
 - A failure to adhere to agreed procedure; and/or
 - The finding of the disciplinary hearing on a point of fact; and/or
 - New, relevant evidence has come to light since the hearing that was not previously considered and was not withheld by the employee
- 15.4 Appeals against first and final formal warnings will be to an appropriate senior manager. This will be at least one level above that of the manager who issued the disciplinary sanction.
- 15.5 Appeals against dismissal will be heard by an appeal panel, which will be chaired by an appropriate Director (National, Regional or Commissioning Operations Director) from outside the region the employee was dismissed from, and will include a trade union representative and a senior HR representative. The trade union representative will not come from the trade union that the employee is a member of (if applicable).
- 15.6 It is the responsibility of the appeal panel to ensure they have understood everything and clarified where necessary. They must ensure they ask questions of the chair of the disciplinary hearing, employee, and any witnesses as appropriate.
- 15.7 Upon receipt of the appeal, the chair will invite the employee (and their representative) to attend a meeting. This meeting should take place within 10 working days of receipt of

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the appeal from the employee, and where at all possible the date will be reached by mutual consent.

- 15.8 At this meeting the chair of the disciplinary hearing will be invited to present the reasons for their decision. The employee or their representative, and members of the appeal panel will be able to ask questions as appropriate.
- 15.9 The employee or their representative will then present their reasons for appeal. The Chair of the disciplinary hearing and members of the appeal panel will be able to ask questions of the employee.
- 15.10 Once both parties have presented their cases, and questioned the witnesses, the Chair of the appeal panel will offer the opportunity to sum up their case, after which the appeal panel will adjourn to consider their decision.
- 15.11 The chair of the appeal panel will then communicate the outcome verbally to the employee, and their representative (usually on the same day) and confirm the decision in writing within 5 working days. Where the appeal is upheld, the level of disciplinary sanction can be reduced or rescinded altogether and any form of record deleted if appropriate.
- 15.12 If the appeal is not upheld the disciplinary sanction/warning will stand as from the date originally issued; the sanction shall not be increased.
- 15.13 At the final stage, the decision by the appeal panel is final, and concludes the internal processes of NHS England.

16 Grievances

- 16.1 Where an employee is the subject of the disciplinary process and raises a grievance that is not related to the disciplinary procedure, this should be addressed concurrently via the grievance procedure. However, where an employee raises a grievance that directly relates to a disciplinary process involving them, the disciplinary process should be paused to enable the grievance to be addressed.

17 Time limits

- 17.1 Throughout the disciplinary process it is important to recognise that excessive delay can be detrimental, both to the employee and to the organisation, so the expedient handling of resolution should be considered a priority.
- 17.2 Managers should take all reasonable steps to hold meetings within the time limits laid out in this procedure. However, where there are extenuating circumstances (e.g. lack of availability, or number of people involved) time limits may be extended by mutual agreement. Every effort must be made in such cases to ensure that extensions are kept to a minimum. The manager must ensure that the employee and their representative are informed of the delay and anticipated date of future meeting.
- 17.3 Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause, the appeal panel should make a decision based on the evidence it has available

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18 Records management

- 18.1 Written records should be kept during the disciplinary process; including the complaint, statements, interview notes, findings made, action taken, and written correspondence.
- 18.2 Records should be treated as confidential and retained no longer than necessary, in accordance with the Data Protection Act (1998). This act gives individuals the right to request and have access to certain personal data.

19 Distribution and implementation of this policy

- 19.1 This document will be made available to all employees
- via the NHS England intranet site.
 - A global notice will be sent to all employees notifying them of the release of this document.
 - A link to this document will be provided from the Transformation and Corporate Operations, People policies intranet page.

20 Development plan

- 20.1 We will undertake a learning needs analysis as part of the development of this policy. Based on the findings of that analysis, training will be developed and made available to managers and staff as necessary. Further information will be available on the HR page on the intranet.

21 Monitoring

- 21.1 The Executive Human Resources Sub-committee (EHRSC) will monitor compliance of this policy together with an independent review by Internal Audit on a periodic basis.
- 21.2 The Chief People Officer is responsible for the monitoring, revision and updating of this policy.
- 21.3 We will monitor the equality and diversity implications of this policy on a regular basis.

22 Equality impact assessment

- 22.1 This document forms part of NHS England's commitment to create a positive culture of respect for all staff and service users. The intention is to identify, remove or minimise discriminatory practice in relation to the protected characteristics (race, disability, sexual orientation, age, religious or other belief, marriage and civil partnership, gender reassignment and pregnancy and maternity), as well as to promote positive practice and value the diversity of all individuals and communities.

23 Associated documentation

- Managing capability policy
- Supporting attendance at work policy
- Grievance policy and procedure

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Appendix 1 Examples of misconduct and gross misconduct

Matters that NHS England views as amounting to disciplinary offences include (but are not limited to):

- harassment;
- persistent bad timekeeping;
- unauthorised absence;
- loss of and/or damage to NHS England property;
- failure to observe NHS England procedures;
- failure to comply with record keeping procedures and arrangements for data security;
- abuse of the organisation's IT systems, including unacceptable use of social media;
- failure to report or raise concerns in the workplace, which may have an impact on patient care and safety;
- abusive behaviour;
- unreasonable refusal to follow an instruction issued by a manager;
- poor attendance (but not for issues relating to the management of absences as a result of sickness);
- smoking on NHS England premises; and
- long unexplained and/or unauthorised absence

Gross misconduct is an act or a series of acts which result in a serious breach of contractual terms, including a breach of the implied term of trust and confidence between employees and their employer. The following list, which is neither exhaustive nor exclusive, gives examples of what NHS England would view as Gross Misconduct, which may lead to Summary Dismissal:

- theft or fraud
- physical violence or bullying
- deliberate and serious damage to property
- serious misuse of NHS England's property or name
- deliberately accessing internet sites containing pornographic, offensive or obscene material
- serious insubordination
- unlawful discrimination
- bringing the organisation into serious disrepute
- serious incapability at work brought on by alcohol or illegal drugs
- causing loss, damage or injury through serious negligence
- a serious breach of health and safety rules
- a serious breach of confidence
- bribery offences under the Bribery Act 2010
- a more extreme display of action as detailed above

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