



# Libertatem Healthcare Group

## Disciplinary

### Policy and Procedure

Notice to employees using a paper copy of this policy  
The company Policies folder on the shared drive holds the most recent version of this document and all employees must ensure that they are using the most recent guidance.

## Document Control

<b>Document Name</b>	Disciplinary Policy and Procedure
<b>Author</b>	Karen Hodgkinson
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## **INTRODUCTION**

The purpose of the Disciplinary Policy is to encourage employees to achieve and maintain high standards of conduct and behaviour in accordance with the requirements of Libertatem Healthcare Group and to provide a policy for disciplining employees in a fair and consistent manner who fail to meet these standards.

This policy is non-contractual, and sets out the procedure Libertatem Healthcare Group will normally follow, although we reserve the right, at our discretion, to vary, replace or terminate the procedure at any stage.

## **PRINCIPLES**

Any matters relating to an employee's conduct must be dealt with promptly, fairly and consistently and with due regard to Equality, Diversity and Human Rights. Every effort will be made to deal with matters in a manner that ensures confidentiality of the issues, however where there is an alleged criminal offence or identified risk to a client, or employee safety and there is a requirement to disclose information to the police, professional or statutory bodies then in such circumstances confidentiality cannot be guaranteed.

## **SCOPE AND PURPOSE**

The majority of disciplinary proceedings result either from unsatisfactory performance (capability) or unsatisfactory conduct. Disciplinary action should only be taken when every reasonable effort has been made to assist the employee who has failed to meet the accepted standards.

This policy applies to all employees of Libertatem Healthcare Group. The Disciplinary Policy has been written in accordance with the ACAS Guide and is designed to assist line managers and employees to deal with disciplinary situations in the workplace in a fair and consistent manner.

## **DUTIES AND RESPONSIBILITIES**

### **The Board of Directors**

The Board has a responsibility to oversee this policy and ensure that appropriate processes and actions are in place to ensure employees are treated in a fair and consistent manner. They will monitor timescales for disciplinary investigations, disseminate shared learning from any matters arising from the investigations. They have a responsibility for appointing investigating officers and ensuring that disciplinary matters are dealt with in a timely manner and in accordance with this policy

### **Line Managers**

Line Managers are responsible for ensuring employees are aware of this policy and its contents and that their employees understand the standards of conduct and attendance required. They are also responsible for ensuring that high standards are maintained, dealing with any concerns they may have about a particular employee in a timely and sensitive manner.

### **All Staff**

Where a formal disciplinary investigation is invoked, employees are required to participate fully in the investigation, in a timely and constructive manner.

The purpose of an investigation is to establish the facts fully and as quickly as possible and, unless all contribute appropriately, the findings may be incomplete, possibly resulting in inaccurate conclusions being drawn.

Where an employee wishes to be accompanied or represented during the formal stages of the procedure by either their trade union representative or trust employed work colleague they will be responsible for arranging this.

## **DISCIPLINARY STANDARDS**

No set of disciplinary standards can cover all circumstances that may arise during the course of employment; therefore, the following list should not be regarded as exhaustive or complete. It has been drawn up to enable employees to know and understand the types of conduct that will warrant disciplinary action and describe the company's approach to issues of staff misconduct:

### Examples of Misconduct

- Failure to obey reasonable instructions
- Acts of insubordination
- Persistent failure to wear ID badge(s) or adhere to dress codes
- Failure to administer drugs in accordance with Libertatem Healthcare Group policy
- Persistent bad timekeeping
- Unauthorised absence
- Unauthorised work outside Libertatem Healthcare Group which would be prejudicial to Libertatem Healthcare Group or the employees own duties
- Abusive or obscene language
- Sleeping on duty, including breaks, whether paid or unpaid
- Smoking in non-designated areas of Libertatem Healthcare Group's premises and/or client premises
- Unauthorised use of personal mobile phone during shift hours
- Any issues raised through inappropriate posting of information via social media network
- Unauthorised or inappropriate use of company property, including IT equipment.
- Other actions considered a breach of good conduct and/or likely to bring the company into disrepute
- Failure to provide an efficient, safe and high quality service
- discrimination/ bullying or harassment

In serious or persistent cases of the above, the misconduct may be regarded as 'gross misconduct' and treated as such

### Examples of Gross Misconduct

- Theft or fraud
- physical violence or bullying
- deliberate and serious damage to property
- serious misuse of company's property
- deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious insubordination
- bringing company into serious disrepute
- serious incapability at work brought on by consumption of alcohol or illegal substances
- causing loss, damage or injury through negligence

- a serious breach of the health and safety rules
- a serious breach of confidentiality
- a breach of professional boundaries

## **PROCEDURE**

### **Informal Stage**

In some cases it may be appropriate for a line manager to counsel the employee regarding their conduct with the aim of improving their behaviour. Serious cases of misconduct should be addressed at a formal level even if they are a first offence.

For minor issues a supervision meeting should be arranged by the line manager as soon as possible after concerns have been raised or recognised. When counselling an employee on the expected behaviour the manager should explain the purpose of the supervision and outline the issues of concern. During the meeting the possible consequences and impact of the employee's behaviour should be explained. The manager should ensure the employee understands the standards of conduct expected and explore the need for further training or support to enable the employee to achieve these standards. This may include reference to the relevant codes of professional conduct.

It should be emphasised to the employee that future misconduct of a similar or related nature will lead to a formal disciplinary process. The outcome of the meeting should be confirmed to the employee in writing, this information should be kept on the employee's personal file for future reference.

### **Suspension**

In certain cases of misconduct it may be necessary to suspend the employee from duty. Suspension should only take place where there is a risk to patient safety, the member of staff or colleagues and/or to ensure the investigation can be completed unhindered.

Suspension is a neutral act and is not a disciplinary sanction. During the period of suspension, the suspended employee must not attend their place of work, unless instructed by management to do so. The employee must make themselves available for any meetings that may be arranged as part of the investigation and disciplinary process.

## **INVESTIGATION**

The investigation procedure will normally be used when an employee is suspected of committing any act of misconduct or acts in serious breach of any of Libertatem Healthcare Group policies, procedures or rules. The investigation should take place within a reasonable time frame; the timetable will be determined by the investigating manager and communicated to the employee.

Where the matter is routine or straightforward, there will be no need to conduct a separate investigation, some examples of such matters are outlined below:

Repeated occasions of poor timekeeping or unauthorised absence where the line manager has a clear record of the dates/times of these occasions and notes/evidence of previous counselling meetings where clear standards have been set;

**or**

Repeated failure to engage with the Sickness Policy, or failure to attend arranged meeting with a line manager without justifiable reason. In such circumstances the

company reserves the right to dispense with a full investigatory interview and to proceed directly to a formal disciplinary hearing.

### **Investigation process**

The employee will be invited in writing to the investigation meeting. This is the opportunity to seek clarity and establish facts. There is no right for employee to be accompanied at an investigatory meeting.

An individual not connected with the investigation should be selected as note taker. The note taker is responsible for taking full notes as an accurate reflection of the meeting, ensuring all key points from both parties are captured including the start time, adjournment time and end times. A typed copy of the notes must be provided to the investigation officer for review and provided to the employee. If the employee requests amendments to be made, these should be documented on a separate sheet and returned to the investigation officer.

At the end of the investigation meeting, there are four potential outcomes:

- Further investigation is required
- No further action
- Further training or supervision is necessary
- Proceed to Disciplinary hearing

The outcome will be communicated to the employee in writing.

### **DISCIPLINARY HEARING**

Where it is determined that there is a potential case to answer, the case should proceed to a formal disciplinary hearing.

#### **Convening a disciplinary hearing:-**

- the employee will be given at least 48 hours' advance notice in writing of any disciplinary meeting they are required to attend in order to prepare for the meeting
- the employee will be advised in writing of the purpose of the hearing and that it will be held under the Company's disciplinary procedure
- the employee will be given written details of the nature of their alleged misconduct including dates, specific description of allegation etc.
- the employee will be provided with all relevant information relating to the case
- the employee has the right to be accompanied at the hearing, by a fellow worker or trade union official
- An individual not connected with the disciplinary hearing should be selected as note taker. The note taker is responsible for taking full notes as an accurate reflection of the meeting, ensuring all key points from both parties are captured including the start time, adjournment time and end times.

The employee will be given reasonable notice of the hearing in writing. Prior to the hearing the employee and their representative (where applicable) will be provided with copies of the investigation report and documentary evidence that will be considered at the hearing. The employee will also have the opportunity to submit a written statement of case and documentary evidence to the hearing, which must be received by the panel chair prior to the date of the formal disciplinary hearing.

Witnesses may be called by either staff side or management side as part of the presentation of their case. The panel chair must be notified of any witnesses being called

prior to the hearing. Witnesses may be accompanied at the hearing by a trade union representative or work colleague. It will be the responsibility of each party concerned to organise witness attendance.

During the hearing the panel chair may, at their discretion or at the request of either party, adjourn the hearing at any point. The chair shall rule on the admissibility of questions and evidence and on any matter connected with the proceedings.

The hearing will be adjourned and a decision made, where possible the employee will be recalled and the decision communicated to them. Where this is not possible it will be explained to the employee. In any event the final decision will be communicated to the employee in writing.

Any decision to refer the matter to the Nursing and Midwifery Council or Disclosure Barring Service should be discussed with the Board of Directors.

## **DISCIPLINARY SANCTIONS**

### **1. First Written Warning**

In the case of minor offences, the employee may be given a first written warning, setting out the nature of the offence and the likely consequences of any further offences. The employee should be told that their conduct is not acceptable and more serious disciplinary action will be taken in the event of continued breaches of conduct. The written warning will be confirmed in writing and will be kept on file; the warning will be valid for 12 months from the date of issue.

### **2. Final Written Warning**

In the case of further offences of a similar category or a first instance of more serious misconduct, the employee may be given a final written warning. The employee should be clearly warned that a similar incident or failure to comply would result in dismissal. The written warning will be confirmed in writing and will be kept on file; the warning will be valid for 2 years from the date of issue.

### **3. Dismissal**

Where a further act of misconduct of a similar nature is committed within the specified period of a final warning, the member of staff will be liable to dismissal, which will normally be with the appropriate period of notice in relation to the employee's contract and length of service. The Company reserves the right in any case to make a payment in lieu of notice.

### **4. Summary Dismissal**

In cases of gross misconduct the employee may be summarily dismissed without notice or payment in lieu of notice. Any decision to dismiss will only be taken as the outcome of a full disciplinary hearing in accordance with this procedure.

### **5. No case to answer**

In the event the panel find there is no case to answer then any documentation, including outcome letter, relating to the incident will be removed from the personal file and destroyed.

## **DISCIPLINARY SANCTION MEETING**

In cases where an employee accepts full responsibility for their actions a disciplinary sanction meeting can take place where the appropriate disciplinary sanction can be offered to them without the requirement for a full disciplinary hearing.

A disciplinary sanction meeting is a formal meeting that would follow the principles outlined in the ACAS Guide, including the right to representation and the right of appeal, and in which a disciplinary sanction (up to, and including, a final written warning) may be given to an employee.

A disciplinary sanction meeting will only be appropriate where the employee has taken full responsibility for their actions and accepted the allegations against them. A disciplinary sanction meeting is not suitable in cases of gross misconduct or where an employee is already subject to a final written warning or the allegations are denied.

## **APPEALS**

A staff member has the right of appeal with regards to the disciplinary action taken against them. Appeals must be submitted in writing to the Managing Director within 5 working days of receipt of the decision letter, stating the grounds and reasons for appeal.

Appeal hearings are convened to review the decision and the outcome of the original disciplinary hearing. An employee must set out clearly the grounds upon which the previous decision is being contested and the outcome they are seeking, as this will form the basis of the appeal hearing.

### **Grounds of appeal:**

- whether they are appealing against the finding that they have committed the alleged act or acts of misconduct or
- against the level of disciplinary sanction imposed
- they feel that Company's procedures were not correctly and fairly implemented
- and indicating the outcome they are seeking

If the appeal is unclear, they may be asked to clarify their grounds before the appeal hearing takes place.

The appeal panel will consider the grounds that the employee has put forward and assess whether or not the conclusion reached in the previous disciplinary hearing was appropriate. The appeal is not a re-hearing of the original disciplinary hearing, but a consideration of the specific areas with which the employee is dissatisfied in relation to the original disciplinary hearing. The panel chair may, therefore, confine discussion to those specific areas rather than reconsider the whole matter afresh. In considering appeals against disciplinary action, the panel will be required to satisfy itself on the following points:

- Whether the misconduct was adequately investigated and substantiated
- Whether Company's procedures were correctly and fairly implemented
- Whether the disciplinary action taken was reasonable, in all of the circumstances

The disciplinary sanction and decision of the original disciplinary hearing may be upheld, lowered or removed as a result of any appeal lodged.

The result of the Appeal will be confirmed in writing within 7 working days of the appeal meeting and the staff member must be provided with a copy of the appeal meeting notes. There will be no further right of appeal following this stage of the procedure.

## **EMPLOYEE REPRESENTATION**

An employee has the right to be represented, if they wish, at any formal stage of the proceedings by either recognised trade union representative or a Libertatem Healthcare Group employed work colleague.

It is the employee's responsibility to liaise with their representative to arrange support.

## **REFERRAL TO THE DISCLOSURE AND BARRING SERVICE**

In cases where the company dismisses or removes a member of staff from working with children and/or vulnerable adults (in what is legally defined as a regulated activity) because they have caused harm to a child or vulnerable adult, there is a legal duty to inform the Disclosure and Barring Service (DBS).

This also applies where the Company would have taken this action had that individual not resigned.

The referral should be made to the DBS when the investigation has gathered sufficient evidence to support the belief that relevant conduct has occurred, and their reasons for withdrawing permission for the employee to engage in a regulated activity.

The DBS referral should be made by the Clinical Director, or their nominee following good practice, who will have consulted with their Local Authority Designated Officer (LADO) or Chair of the Adult Protection Investigation meeting.

## **REFERRAL TO PROFESSIONAL BODIES**

The Clinical Director will make a referral to the relevant professional body where the employee is seen to not be upholding their professional values, brings their profession into disrepute or breaches their professional codes.

Appendix 1-Flow chart for management of disciplinary matters

