

Disciplinary Policy

Please be aware that this printed version of the Policy may NOT be the latest version. Staff are reminded that they should always refer to the Intranet for the latest version.

Purpose of Agreement	The policy provides a standard framework to be used by managers to engage with their employees regarding expectations and deal with issues fairly, consistently and promptly when the required standard is not met.
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REVIEW LOG

Include details of when policy was last reviewed

Version Number	Review date	Name of reviewer	Ratification process	Reason for amendments
1	01/08/03	LB	JCC	Amendment to name
2	01/10/07	JB	PSG JCC	Rewrite of policy
3	01/02/09	HRBP	PSG JCC	Rewrite of policy
4	October 2015	Sarah Martin	Provisional review undertaken. Extension granted for six months as agreed by the Policy and NHSLA Group	Rewrite of policy

Policy Summary

The purpose of this policy is to provide managers with the legal framework that the Trust requires them to follow when considering Disciplinary action against employees.

It specifies the issues that are excluded from this policy (Section 3) and confirms the responsibilities of all individuals involved in the process (Section 4).

The process to be followed from investigation, suspension, record keeping and disciplinary hearings are contained in Section 5. In particular:

- Section 5.6 outlines the range of penalties that can be imposed at a disciplinary hearing if a case to answer has been proven.
- Section 5.7 provides alternatives to dismissal.
- Section 5.8 gives details of who has authority to dismiss.
- Section 5.9 covers Professional Registration or Regulation issues
- Section 5.10 explains time frames and processes for appeal.
- Section 5.11 outlines special considerations
- Section 5.12 covers grievances raised during the disciplinary process, and
- Section 6 covers investigations by external organisations.

Appendix 1 gives examples of the differences between misconduct and gross misconduct.

A suggested meeting format is included at appendix 2, whilst model letters for managers use are contained within Appendix 3

**SOLENT NHS TRUST
DISCIPLINARY POLICY**

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SOLENT NHS TRUST DISCIPLINARY POLICY

1. Introduction and Purpose

- 1.1 Solent NHS Trust is committed to providing a safe and healthy working environment, and to promoting the well-being of its employees. Solent NHS Trust has an expectation that employees conduct themselves professionally to ensure the organisation delivers patient centred care and aligned to Trust values.
- 1.2 The policy provides a standard framework to be used by managers to engage with their employees regarding these expectations and deal with issues fairly, consistently and promptly when the required standard is not met.
- 1.3 The aim of this policy is:
- To develop a culture of trust and collaboration through managing conduct objectively and constructively.
 - To ensure that our workforce understands how their conduct will be managed throughout their employment.
 - To ensure that managers understand and can identify potential misconduct/gross misconduct and how to manage this effectively and to put in place appropriate support measures specifically designed to tackle and address misconduct. Definitions of misconduct and gross misconduct are referred to in Appendix 1.

2. Scope and Definitions

2.1 Scope

This policy applies to all directly employed staff working within the Trust, but shall not override the specific provisions within Medical and Dental staff terms and conditions of service.

2.2 Definitions

For the purposes of this policy the following definitions apply:

- **Conduct:** the actions of the employee within the workplace. In certain circumstances it may be appropriate to apply this policy to incidents outside the workplace (to include arrests or criminal proceedings) which bring the Trust into disrepute.
- **Misconduct** can be defined as unacceptable or improper behaviour/conduct.
- **Gross misconduct** can be defined as acts that are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence.

Examples of both misconduct and gross misconduct are contained in appendix 1.

- **Disciplinary action:** applies to formal action that may be taken against an employee including formal warning and/or dismissal where there is reasonable belief that misconduct has occurred.

- **Disciplinary Procedure:** details the process the Trust will follow to ensure the effective management of conduct in a fair and consistent manner.
- **Reasonable belief:** Any disciplinary action taken will be based on a reasonable belief that misconduct has occurred. This is significantly different to a criminal investigation whereby the onus is to prove an occurrence 'beyond reasonable doubt'.

Examples of what constitutes conduct, including misconduct and gross misconduct are included at Appendix 1.

3. Excluded Issues

3.1 The following issues are excluded from this policy. For issues involving staff:

- performance, which has not improved following training and support, managers should refer to the Performance Management Policy
- Sickness absence, managers should refer to the Sickness Absence Policy.
- Alcohol or drug misuse, managers should refer to the Drug and Alcohol Misuse Policy.
- court convictions not connected to work, managers should refer to the policy for the Recruitment of Ex Offenders and Continuing Employment of Offenders Policy

4. Roles and Responsibilities

4.1 Employees

The Employee is responsible for:

- Maintaining professional conduct at work, with colleagues and patients
- Ensuring they treat colleagues and patients fairly and equitably
- Ensuring they comply with all Trust policies and procedures
- Attending meetings as requested under this policy
- Arranging the attendance of their staff representative or companion at meetings
- Notifying the manager conducting the interview who their representative/ companion and any witnesses will be prior to the meeting (please see section 5.5.9 for further detail relating to witnesses).
- Maintaining confidentiality during and after the application of this policy
- Notifying the Trust if they are not of good character, or an unfit person as prescribed in Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 as amended. - (Directors only)

4.2 **Managers**

The Manager is responsible for:

- Ensuring staff and patients are treated fairly and equitably
- Ensuring that Trust policies and procedures are complied with
- Informing the Human Resources department when incidents arise
- Arranging meetings in line with this policy
- Carrying out a fair, timely and thorough investigation in line with the Investigation Policy
- Providing a fair and reasonable outcome for staff in line with this policy
- Ensuring all timescales in the policy are adhered to
- Maintaining confidentiality during and after the application of this policy
- Ensuring the employee's health and wellbeing are fully considered during any investigation and beyond and referrals made to occupational health as appropriate.
- To ensure that employees are made aware throughout of the Employee Assistance Programme.
- Notifying and seeking advice from the Chief Nurse and/or Chief Medical Officer in respect of any referrals that may be necessary to the relevant professional body, eg General Medical Council (GMC), General Dental Council (GDC), Nursing and Midwifery Council (NMC) , Health Professions Council (HPC) or General Social Care Council (GSCC).
- Ensuring the relevant referrals to the professional body are reported in line with professional guidelines.

4.3 **Human Resources**

The Human Resources department is responsible for:

- Providing appropriate advice and support to managers in the application of this policy and its procedure including relevant training and coaching
- Ensuring the policy is followed in a fair and equitable manner
- Ensuring the policy is adhered to and timescales are met
- Any trends are identified and brought to the attention of the respective senior manager
- Maintaining confidentiality during and after the application of this policy
- Ensuring, through dialogue with the manager that the employee's health and wellbeing are fully considered and appropriate support (through Occupational Health and/or the Employee Assistance Programme) is provided to the employee throughout the application of this policy.

4.4 **Staff-side representatives or companions.**

- 4.4.1 Employees are entitled to be accompanied by a staff-side representative or workplace friend or colleague, at any/all formal meetings held under this Policy. It is the employee's responsibility to make arrangements to be accompanied. The employee must be informed of this right at the commencement and all subsequent stages of this procedure.
- 4.4.2 The employee's choice of companion must be reasonable, depending on the circumstances of each individual case, however, it would not normally be reasonable for someone to attend whose presence would prejudice the meeting.
- 4.4.3 Staff Side Representatives may be from another Trust or a lay official or full time officer as long as they are certified by their union as being competent to accompany an employee.

Any other companion (a workplace friend or colleague) should always be a member of the Trust. Reasonable time off should be afforded to the workplace friend or colleague, in discussion with their Line Manager.

- 4.4.4 The companion may address the meeting and confer with the employee, during the meeting, put forward the employee's case, summarise the employee's case and/or respond on the employee's behalf to any view expressed at the hearing.
- 4.4.5 The representative or workplace colleague or companion may not answer questions on behalf of the employee or prevent the employer from explaining their case.
- 4.4.6 Any companion must maintain confidentiality during and after the application of this policy.
- 4.4.7 If the reason given for failing to attend a meeting is due to the non-availability of a trade union representative or workplace friend/colleague and there have been no earlier adjournments in the process for this reason, on only one occasion the meeting will be postponed and a new meeting will be arranged within reasonable time; normally 5 working days. Exceptional circumstances will always be considered.

5. Processes

5.1 Informal

- 5.1.1 It is anticipated that in the majority of circumstances managers will be able to discuss and resolve daily working concerns informally in a supportive atmosphere, through discussion with the employee.
- 5.1.2 It is anticipated that any informal action/discussions should be documented and will be taken in a reasonable timescale that is practicable in the circumstances. Example informal letter and invite can be found in Appendix 3.
- 5.1.3 If the concerns raised at the informal stage continue, consideration should be given to further investigation. Where serious or complex concerns are raised further investigation should be taken immediately.

5.2 Investigation

- 5.2.1 The line manager would normally take responsibility for investigating an issue, although in some instances it may be deemed appropriate to appoint an independent manager. This person should be at least the same level as the employee's line manager. Reference should be made to the Investigation policy.
- 5.2.2 An investigation has to be completed to ensure that as far as possible all relevant facts have been ascertained so that an informed decision can be made for the benefit of both the employee and the Trust.
- 5.2.3 Where an investigation is being conducted into a matter of misconduct, the line manager may make the decision to investigate, proceed and conduct a disciplinary hearing on the same day.

5.3 Suspension (exclusion) or Transfer

- 5.3.1 There may be occasions when the allegations being considered are of a serious nature to warrant the suspension of the employee involved or a temporary transfer to

another service whilst the investigation is being conducted. Managers should consider before taking this decision, whether or not it is appropriate for an employee to continue with their normal duties during the course of the investigation.

5.3.2 The manager should refer to the Suspension, Exclusion or Transfer Policy for details on how to suspend an individual.

5.3.3 The manager is responsible for contacting the relevant HR Business Partner for support and discussion prior to any decisions made on the suspension, exclusion or transfer.

5.4 **Record Keeping and Confidentiality.**

5.4.1 A record of the disciplinary process and the outcome will remain on the employee's file.

5.4.2 This information is to be retained in accordance with the NHS Records Code of Practice.

5.4.3 Summary notes of the meeting will be made, which the employee is entitled to receive a copy of. These notes are not intended to be verbatim notes of the meeting; they are a summary record of discussions. . In the event that the employee does not agree with the notes the individual will be able to provide their comment/s, which will be retained on file with the original notes.

5.4.4 Employees, managers and representatives must ensure confidentiality throughout the process and thereafter when the resolution has been reached. Failure to do this could result in disciplinary action being taken against the person responsible for the information breach.

5.5 **Disciplinary Hearing**

5.5.1 Usually the line manager would conduct this hearing. It is important to ensure a clear line of appeal is identified early on in the disciplinary to ensure appropriate people are available at a later stage should this be needed.

5.5.2 In the case of alleged gross misconduct the manager who conducts the hearing will need to ensure they have the authority to dismiss should this be needed.

5.5.3 HR are present at the hearing in order to provide professional employment law and procedural advice, however any ultimate decision is that of the hearing manager. The manager should also arrange a note taker.

5.5.4 In the case of a clinically registered professional, where appropriate, and in all cases where dismissal may be an outcome, the Trust will ask a designated Professional Advisor or other such person acting in an objective advisory capacity, to be present at part of the hearing in order to give advice on facts related to the allegation(s). Sometimes the Professional Advisor may be an employee of another organisation such as the professional governing body for the clinical area.

5.5.5 In all disciplinary cases, employees should expect the following:

- A letter to invite them to a pre-arranged investigatory and/or disciplinary meeting (hearing) – A template letter can be found in Appendix 3
- Advice about what they can expect at the meeting – relevant documentation (including the investigation report if applicable) and other paperwork to be referred to at the meeting should be enclosed with the invite letter.
- Adequate notice – 1 calendar weeks' notice is considered to be best practice

- To be advised of their right to be accompanied
 - Following a disciplinary hearing, a letter confirming the outcome of the meeting at each stage of the proceedings.
 - To be advised of their right of appeal.
 - Clearly specified recommendations and, where appropriate, specific objectives to assist the employee in reaching the required standard.
- 5.5.6 Meetings may be rescheduled on one occasion should the reason for not attending be reasonable. However, further failures to attend may result in the meeting being conducted in the employee's absence and a decision made on the information available.
- 5.5.7 If the reason given for failing to attend is due to the non-availability of a trade union representative or workplace friend/colleague and there have been no earlier adjournments in the process for this reason, on only one occasion a new meeting will be arranged within reasonable time; normally 5 working days. Exceptional circumstances will always be considered.
- 5.5.8 If the individual is unfit to attend the hearing due to a medical condition, medical advice will be sought from the Occupational Health department to determine when they will be fit to attend. If they are unlikely to be fit to attend in a reasonable timescale, the individual may provide a written statement to the manager holding the disciplinary hearing or arrange for their representative to speak on their behalf. Reference should be made to the Managing Attendance and Wellbeing Policy.
- 5.5.9 At the hearing, the manager will indicate the reasons why it is thought necessary to enter into formal disciplinary proceedings. The Investigating Officer may be present in order to outline the investigation undertaken, provide a summary of the outcome and call witnesses in support of the allegation, if necessary/appropriate. Further information relating to witnesses is available at section 5.11.4.2. The format to be followed at a hearing is attached at appendix 2.
- 5.5.10 If the employee chooses not to contribute to the hearing a decision will be made on the information available.
- 5.5.11 Having heard the information available the hearing manager will adjourn to decide whether they have reasonable grounds to believe that the allegation has been/or has not been substantiated and whether disciplinary action is warranted. The manager will make a decision based on the balance of probability from the evidence available. Any action proposed should have due regard to what is reasonable in the circumstances. The meeting can be reconvened on the same day or as soon as a decision is reached.
- 5.5.12 The hearing manager will confirm in writing the outcome of the hearing within the timescales stipulated in section 5.10.1. Template letters are contained within Appendix 3.
- 5.5.13 The hearing manager will be responsible for notifying any relevant governing body for example the NMC, GMC, GDC, HPC, GSCC Independent Safeguarding Authority (ISA) and Home Office should this be deemed appropriate as well as the Chief Nurse and Chief Medical Officer appropriately. Advice should be sought from the HR team and Associate/Director before this action is taken.

5.6 Outcome of a Disciplinary Hearing

5.6.1 In making a decision regarding appropriate action, the manager conducting the hearing will consider the nature and level of seriousness of the offence and the employee's history of conduct and performance, their responses, and any mitigation presented.

Level of Warning	Timescale of Warning
First written warning	This will remain on the employee's personal file for 12 months . The employee should be advised that further issues in their conduct may result in proceeding to the next stage of the policy.
Final written warning	This will remain on the employee's personal file for 24 months . In some cases, this warning may remain on the employee's file for longer (see section 6.8). The employee should be advised that further issues in their conduct may result in proceeding to the next stage of the policy and may result in a dismissal.
Dismissal	<p>For allegations of gross misconduct the dismissal will be without notice.</p> <p>Employees who have been issued with previous warning/s, will be paid in line with their contractual notice period.</p> <p>Any dismissed employee will be entitled to any contractual holiday accrued that they have remaining.</p> <p>A record will be retained on the employee's file for life. If the Trust are asked by another agency to provide the reason for leaving for an employee that has been dismissed they are legally obliged to provide this disclosure.</p>

5.6.2 If an employee has been given a warning it will be recorded on their HR file. The warning will stay on the employee's file for the length of time specified.

5.6.3 If during the period of the warning, the employee is absent from work for a period of two weeks or more, the period of warning will be extended to reflect the period of absence

5.7 Alternatives to Dismissal

5.7.1 Exceptional circumstances may exist in which a final written warning or other action short of dismissal may be more appropriate than dismissal. This sanction may remain on the employee's record for longer than specified above.

5.7.2 In exceptional circumstances, other disciplinary sanctions may be applied which fall short of dismissal and are appropriate to the circumstances of the individual case and may remain on the employee's record for longer than specified above. Should these be applied, the employee will be transferred on to the pay arrangements and band for that post, with effect from the date of change. Alternatives to dismissal may include:

- Final written warning for a greater period of time
- Demotion with no protection of pay
- Transfer to an alternative post or working pattern

- Prevention from undertaking certain duties including overtime

5.8 Authority to Dismiss

- 5.8.1 Managers should refer to their job description for confirmation as to whether or not they are able to dismiss an employee. If this is not stated within a manager's job description, please discuss further with the relevant HR Business Partner who will be able to advise accordingly.
- 5.8.2 Authority to dismiss shall not be delegated other than in the unavoidable absence of the authorised line manager when action cannot reasonably be delayed, or where the manager does not have the authority to dismiss in their job description.
- 5.8.3 Dismissal of Directors and other managers directly responsible to the Chief Executive may only be effected by a panel of 3 independent Directors of the Trust Board or otherwise fairly elected members.
- 5.8.4 Regarding the dismissal of the Chief Executive, the panel would comprise 2 independent Directors of the Trust Board, the Trust Board Chairman, and a representative from NHS Improvement.

5.9 Professional Registration or Regulation

- 5.9.1 If the employee is professionally registered, the manager should consider if the situation is such that a referral to the employee's professional body is required. If so, the manager should discuss this with the Chief Nurse and if she agrees that a referral is to be made the employee should be advised of this. The respective professional body may then decide to instigate an investigation.
- 5.9.2 If the situation involves a Director and their Fitness For Practice is in question, any concerns/findings of the investigation will be made available to professional regulators, CQC and other relevant bodies in accordance with Regulation 5 of the Health and Social care Act 2008 (Regulated Activities) Regulations 2014 as amended.

5.10 Right of Appeal

- 5.10.1 Appeals may be made in writing against any formal decision under this policy and within the time limits stipulated below:

Sanction	Appeal to be made to	Timescale for Manager's written response	Employee timescale to submit appeal after Manager's	Timescale to hear appeal
First Written Warning	Next In Line Manager	1 week	1 week	3 weeks
Final Written Warning	Service Manager or next in line manager if higher	2 weeks	2 weeks	3 weeks
Dismissal	Head of Service or Operational Director	2 weeks	2 weeks	3 weeks

5.10.2 The employee must stipulate their full grounds of appeal in writing, which should be one or more of the following:

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

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

5.10.3 The appeal hearing will not involve further investigation into the conduct of the individual, unless the provision of new evidence means this is appropriate.

5.10.4 At this stage a manager at the same level or more senior to the hearing manager will conduct the hearing. Appeals against dismissal will normally be heard by the Operational Director.

5.10.5 As an alternative to an appeal hearing, consideration will be given to providing a written response to an appeal which is sufficiently detailed in writing. In all other cases, the employee will be invited to an appeal hearing by letter which should be hand delivered to the employee, or sent recorded delivery should it not be possible to give it to them in person.

5.10.6 This should be given to the employee or be sent so that the employee would normally receive it 1 week prior to the meeting. A template letter is enclosed at Appendix 3.

5.10.7 Appeal Hearings may be rescheduled should the reason for not attending be reasonable. However, further failures to attend may result in the appeal hearing being conducted in the employee's absence and a decision made on the information available.

5.10.8 If the individual is unfit to attend the appeal hearing due to a medical condition, medical advice will be sought from the Occupational Health department to determine when they will be fit to attend. If they are unlikely to be fit to attend in a reasonable time, the individual may provide a written statement to the manager holding the appeal hearing or arrange for their representative to speak on their behalf.

5.10.9 Alternatively if the individual fails to attend the hearing without good cause it will proceed in their absence and a decision will be made on the basis of the evidence available. If the individual requests an adjournment, a further hearing will be made as soon as possible wherever possible within 1 week. No further adjournments will then be arranged.

5.10.10 At the appeal hearing, the employee, or representative will state their grounds of appeal. The appeal hearing manager will then question the employee and any witnesses provided, who were not previously part of the initial investigation. If the appeal hearing manager considers it necessary they may choose to re-interview witnesses who were part of the earlier investigation.

5.10.11 The employee will have the opportunity to provide any further information before the hearing is adjourned and a decision reached.

5.10.12 The appeal hearing manager may consider inviting the manager who conducted the original disciplinary hearing to be present for part of the appeal hearing, as appropriate.

5.10.13 The employee will be notified in writing of the decision within seven days. A template letter is enclosed at Appendix 3. The decision will be one of the following:

- Confirm the original decision
- Substitute the sanction for a lesser one
- Overturn the original decision

There is no further right to appeal under this policy.

5.11 **Special Cases**

5.11.1 Most cases of misconduct can be adequately managed under the process. However there are certain instances where special restrictions apply, such as for pre-employment misconduct and eligibility to work in the UK. In these cases the Recruitment of Ex-Offenders and Continuing Employment of Offenders Policy would apply or the Recruitment and Selection policy respectively.

5.11.2 **Proceedings against a Staff Side Representative**

5.11.2.1 In all cases where the Manager is considering taking action under this policy against a Trade Union Official, the case will be discussed with a branch secretary or full time officer after obtaining the employees agreement.

5.11.3 **Language Barriers**

5.11.3.1 If there are likely to be understanding or language difficulties during the meeting, it may be necessary for an interpreter or friend to be made available. The employee will be responsible for making arrangements for this, or where appropriate, Access to Communications will be contacted with the support of the relevant HR Business Partner.

5.11.4 **Witnesses**

5.11.4.1 Witnesses are expected to co-operate with the investigating officer and attend any meetings/disciplinary hearings as required. Reasonable time off should be afforded to the witness, in discussion with their Line Manager.

5.11.4.2 The hearing manager will assess the relevance and reasonableness of witnesses called to attend at a hearing by both the investigating officer and the employee and reserves the right to deny the presence of a witness if it is not deemed appropriate. Further, the hearing manager will determine the benefit of witnesses being present and consider on a case by case basis whether their attendance is reasonable and appropriate or whether it would be more appropriate to seek further information from a witness outside of the hearing environment. In this event, this further information would be shared with the employee in a reconvened meeting so they have every opportunity to respond.

In any event, all relevant evidence will be considered before a decision is reached.

5.11.4.3 Consideration should be given to provide anonymity to witnesses in line with the Freedom to Speak Up policy.

5.12 Raising a Grievance

- 5.12.1 In exceptional circumstances, where an employee raises a grievance at any stage of the disciplinary procedure, a decision will be made as to whether the proceedings should be suspended until such time as the grievance is resolved.
- 5.12.2 A decision will be made based on the seriousness of the allegations presented as to whether it would be appropriate/inappropriate for the disciplinary procedure to continue.
- 5.12.3 In most cases, the two procedures will run parallel.
- 5.12.4 It is not sufficient to raise a grievance with regards to the disciplinary action itself, as the right of appeal is in place for this.

6. Investigations by External Organisations.

- 6.1 Where there is a need for an investigation to be carried out by an organisation external to the Trust, (e.g. Local Counter Fraud Specialist, Police, CQC, etc.), consideration should be given as to whether it is appropriate for an internal investigation to be suspended whilst the allegations are investigated by the relevant agency. Where criminal proceedings may be appropriate, it may be necessary for external investigations to take priority over the internal investigation.

7. Training

- 7.1 The requirements of this policy will be brought to the attention of all those responsible for managing staff. Training is provided by the Human Resources Department in relation to the effective management of conduct on a regular basis throughout the year and can be accessed via the Learning and Development Department and where appropriate, identified as a training need.

8. Equality & Diversity and Mental Capacity Act

- 8.1 An impact needs/requirements assessment has been completed for this policy and no significant equality or diversity issues were identified (Appendix 4).
- 8.2 Where English is not the first language or there are difficulties in reading this policy, employees should contact their line/ other appropriate manager or senior officer of the Trust, an HR Representative or a staff representative for advice and guidance.

9. Monitoring the Effectiveness of the Policy

- 9.1 All formal action taken in accordance with this policy will be recorded and the number and nature of cases will be monitored and a report of this data is produced annually and shared with the Trust Board. Any trends identified are brought to the attention of the respective Operational Director. The effectiveness of this policy is continually reviewed during its application by the HR Business Partners.

10. Review

10.1 This document may be reviewed at any time at the request of either staff side or management, but will automatically be reviewed every three years unless organisational changes, legislation, guidance or non-compliance prompt an earlier review.

11. References and Links to other Documents

11.1 References

- Code of Practice and Guidance on Disciplinary and Grievance Procedures (ACAS, 2009)

11.2 Links to other Trust Policies/ Procedures

- Investigation Policy
- Suspension, Exclusion or Transfer Policy
- Equality, Diversity and Human Rights Policy
- Dignity at Work (Bullying and Harassment) Policy
- Grievance Policy
- Managing concerns and complaints policy
- Serious Incident requiring investigation policy
- Freedom to Speak Up Policy
- DBS policy
- Recruitment of Ex- Offenders and Continuing Employment of Offenders policy
- Drug, Alcohol and Substance Misuse Policy
- Performance Management Policy
- Managing Performance of Medical and Dental Staff
- Sickness Absence Policy
- Records of information life cycle policy
- NHS records Code of Practice, part 2 – Retention Schedule
- Flexibility in Employment Policy
- Retirement Policy
- Safeguarding Adults at Risk Policy
- Safeguarding Children and Young People Policy
- Claims Management Policy and Procedures

Example of Misconduct and Gross Misconduct

MISCONDUCT

- Attendance issues/Non-attendance
- Failure to follow reasonable instructions
- Failure to complete duties
- Negligence
- Failure to comply with Trust policies
- Unsatisfactory appearance relating to personal hygiene and/ or failure to wear a uniform or protective equipment provided by the Trust
- Misuse of Trust's IT systems, smartcards or telephones, including storing of confidential information and passwords
- Trading on Trust premises
- Gambling whilst on duty or Trust premises
- Participating in unlawful industrial action
- Borrowing or attempting to borrow money from patients or clients
- Bribery or corruption
- Behaving inappropriately when visiting a patient or client including dishonesty
- Abuse of position held

These issues of conduct may also constitute gross misconduct.

GROSS MISCONDUCT

- Theft or fraud
- Bribery
- Deliberate falsification of records
- Breach of confidence
- Corruption
- Assault or violence
- Professional misconduct
- Malicious damage
- Discrimination, bullying or harassment
- Drink and drug abuse
- Breach of copyright and patent rules
- Unauthorised access or disclosure of confidential information
- Abuse of a Trust computer system
- Negligence
- Installing unauthorised software onto the Trust computer systems
- Bringing the Trust, or Health Authority into disrepute
- Failure to disclose a medical condition which may put the Health and Safety of colleagues or patients at risk
- Improper interference in the award of contracts and/ or failure to comply with proper tendering processes
- Suppressing fraud referral or advising suspects that they are under investigation
- Failure to follow infection control or other health and safety procedures which could cause harm to others
- Failure to report suspected child or vulnerable adult abuse, or being involved in such abuse.
- Director's subject to the Fit and Proper person's requirements, who fail to comply

with Regulation 5 and Schedule 4 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 as amended. This includes being made bankrupt, bringing the Trust, Regulators, or NHS into disrepute or anything that indicates to the Trust that they are not of good character.

- Insubordination
- Vexatious complaints
- The individual cannot continue to work in their current or any other role unless they breach a statutory provision
- Bankruptcy
- Prevented by law from being a Director of a Company

Neither of these lists are exhaustive. Other conduct issues of equivalent seriousness may constitute either misconduct or gross misconduct.

Suggested Meeting Format

Completed (✓)

The manager introduces the people in attendance and their roles at the meeting

The manager reminds the employee of their right to be accompanied (if no companion present). This must be recorded in the notes of the meeting.

The manager outlines the intended procedure for the meeting.

The manager asks if there are any initial questions.

The manager details the allegations made which are then discussed further

If the Investigating Officer is present he/she will outline the investigation undertaken, provide a summary of the outcome and call witnesses in support of the allegation, if necessary/appropriate.

The employee has the opportunity to respond to the findings of the investigation, provide relevant information or witnesses to support them and ask any relevant questions of those present.

Once all the information has been discussed, reviewed and considered, the meeting is adjourned

Following an adjournment, if a decision is reached, the employee will be notified of the relevant decision:

1. If there are not reasonable grounds to believe that the alleged incident(s) took place, the employee will be told that there is no case to answer. The suspension, exclusion or transfer will be lifted, if applicable, and no paperwork relating to the matter will be retained on the employee's personal file.

OR

2. that there are reasonable grounds to believe the allegation occurred and the employee will be asked if they have any mitigation they would like considered. The hearing will then be adjourned for a second time.

Following the second adjournment the individual will be notified of the relevant sanction, the period of time it will remain on their file, and their right to appeal

The manager will notify the individual that written confirmation of the decision will be issued within seven days.

Signed:

Date:

APPENDIX 3
TEMPLATE LETTERS

Letter inviting individual to a disciplinary hearing

[Note: Solent NHS Trust reserves the right for managers to amend this letter as appropriate to fit individual circumstances].

Sent by Recorded Delivery

[Date]

Private and Confidential

[Name]

[Address]

Dear [Name]

Re: Disciplinary Hearing

I am writing to advise you that you are required to attend a meeting in accordance with the Trust's Disciplinary Procedure and further to the investigatory meeting held on [date] at [location]. Your disciplinary hearing will take place at [time and date] at [location]. I shall be conducting the meeting accompanied by [Insert Name] HR Business Partner, to advise on any procedural matters.

At the hearing I will spend time discussing the following allegations which have been raised against you:

- [State each allegation in summary including dates the allegations took place] – all potential allegations should be included.
- [State any breaches in Trust policy where possible]

I must advise you that the Trust takes these allegations very seriously and, if found to be misconduct or gross misconduct this could result in a disciplinary sanction in line with the Trust's Disciplinary Procedure. [For matters of gross misconduct, I must advise you that, if upheld, it may lead to your dismissal.]

I would also mention that if I decide the charge is substantiated when determining any penalty, I may also need to take into your current disciplinary record which *is currently clear/consists of XXXXX*

If you wish to bring a witness to this hearing or provide further evidence in your support, please provide details of these to me no less than 2 days before the hearing is due to be held. You have the right to be accompanied at this meeting by a Staff Side or Trade Union representative or by a workplace friend or colleague. If you wish to be accompanied, you will need to make arrangements for this. Please refer to the Disciplinary Policy for further detail in relation to staff representatives and companions.

I would also like to advise you of our Employee Assistance Programme, should you require further support during this process, who can be contacted on 0800 243 458 or www.workplaceoptions.com .

Yours sincerely

[Name]

[Tite]

cc. [Insert Name] HR Business Partner

Enc. Investigation Report, Disciplinary policy

Letter confirming disciplinary outcome- first written warning

[Note: Solent NHS Trust reserves the right for managers to amend this letter as appropriate to fit individual circumstances].

Sent Recorded Delivery

[Date]

Private and Confidential

[Name] [Address]

Dear [Name]

Outcome of Disciplinary Hearing: First Written Warning

I am writing to confirm the outcome of your Disciplinary Hearing held on [date]. You were present at the meeting accompanied by [insert name]. [Insert name], HR Business Partner was present to advise on any procedural matters.

I would like to summarise my findings as follows:

- [State each allegation in summary including dates the allegations took place]
- [State any breaches in Trust policy where possible]
- [Summarise the outcome of each allegation based on the evidence received]
- [State, if appropriate, the improvement which is expected]

In reaching a conclusion, I considered your comments carefully along with all aspects of Trust policy and practice. Based on the evidence presented, I can confirm that I uphold these allegations and am therefore giving you a first written warning. This warning will remain live on your file for twelve months, after which time, if there are no further issues in your conduct the warning will be disregarded and no further action will be taken.

It is important that I inform you that further issues in your conduct could ultimately lead to another sanction under the Disciplinary Procedure.

You have the right to appeal against this sanction. If you wish to do so you should write to [insert your manager's name and location] within one week from the date of this letter detailing the grounds of your appeal. Your appeal should be one or more of the following:

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

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

If you have any queries regarding the content of this letter, then please do not hesitate to contact me. I would also like to advise you of our Employee Assistance Programme, Workplace Options, should you require further support during this process, they can be contacted on 0800 243 458 or email assistance@workplaceoptions.com.

Yours sincerely

[Name]

[Title]

cc. [Insert name], HR Business Partner

Letter confirming disciplinary outcome- final written warning

[Note: Solent NHS Trust reserves the right for managers to amend this letter as appropriate to fit individual circumstances].

Sent Recorded Delivery

[Date]

Private and Confidential

[Name] [Address]

Dear [Name]

Outcome of Disciplinary Hearing: Final Written Warning

I am writing to confirm the outcome of your Disciplinary Hearing held on [date]. You were present at the meeting accompanied by [insert name]. [Insert name], HR Business Partner was present to advise on any procedural matters.

I would like to summarise my findings as follows:

- [State each allegation in summary including dates the allegations took place]
- [State any breaches in Trust policy where possible]
- [Summarise the outcome of each allegation based on the evidence received]
- [State, if appropriate, the improvement which is expected]

In reaching a conclusion, I considered your comments carefully along with all aspects of Trust policy and practice. Based on the evidence presented, I can confirm that I uphold these allegations and am therefore giving you a final written warning. This warning will remain live on your file for [twenty four months, after which time, if there are no further issues in your conduct the warning will be disregarded and no further action will be taken] or [the remainder of your employment with the Trust].

It is important that I inform you that further issues in your conduct could ultimately lead to your dismissal under the Disciplinary Procedure.

You have the right to appeal against this sanction. If you wish to do so you should write to [insert your manager's name and location] within two weeks from the date of this letter detailing the grounds of your appeal. Your appeal should be one or more of the following:

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

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

If you have any queries regarding the content of this letter, then please do not hesitate to contact me. I would also like to advise you of our Employee Assistance Programme, Workplace Options, should you require further support during this process, they can be contacted on 0800 243 458 or email assistance@workplaceoptions.com .

Yours sincerely

[Name]

[Title]

cc. [Insert Name] HR Business Partner

Letter confirming disciplinary outcome- dismissal

[Note: Solent NHS Trust reserves the right for managers to amend this letter as appropriate to fit individual circumstances].

Sent Recorded Delivery

[Date]

Private and Confidential

[Name] [Address]

Dear [Name]

Outcome of Disciplinary Hearing: Dismissal

I am writing to confirm the outcome of your Disciplinary Hearing held on [date]. You were present at the meeting accompanied by [insert name]. [Insert name], HR Business Partner was present to advise on any procedural matters.

I would like to summarise my findings as follows:

- [State each allegation in summary including dates the allegations took place]
- [State any breaches in Trust policy where possible]
- [Summarise the outcome of each allegation based on the evidence received]

In reaching a conclusion, I considered your comments carefully along with all aspects of Trust policy and practice. Based on the evidence presented, I can confirm that I uphold these allegations.

In your hearing I confirmed that due to the nature of the allegations made against you, demotion or transfer within the Trust would not be appropriate. I am therefore terminating your contract of employment with immediate effect. Your final salary will be paid on [month and year] including [your notice period, – except for cases of gross misconduct] any outstanding payments and accrued holiday entitlement. Your P45 will be sent to your home address after this date.

You have the right to appeal against this sanction. If you wish to do so you should write to [insert name of service manager] within two weeks from the date of this letter detailing the grounds of your appeal. Your appeal should be one or more of the following:

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

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

If you have any queries regarding the content of this letter, then please do not hesitate to contact me. I would also like to advise you of our Employee Assistance Programme, Workplace Options, should you require further support during this process, they can be contacted on 0800 243 458 or email assistance@workplaceoptions.com.

Yours sincerely

[Name]

[Title]

cc. [Insert Name] HR Business Partner

Letter confirming disciplinary outcome- demotion/ transfer

[Note: Solent NHS Trust reserve the right for managers to amend this letter as appropriate to fit individual circumstances].

Sent Recorded Delivery

[Date]

Private and Confidential

[Name] [Address]

Dear [Name]

Outcome of Disciplinary Hearing: [Demotion/ Transfer]

I am writing to confirm the outcome of your Disciplinary Hearing held on [date]. You were present at the meeting accompanied by [insert name]. [Insert name], HR Business Partner was present to advise on any procedural matters.

I would like to summarise my findings as follows:

- [State each allegation in summary including dates the allegations took place]
- [State any breaches in Trust policy where possible]
- [Summarise the outcome of each allegation based on the evidence received]

In reaching a conclusion, I considered your comments carefully along with all aspects of Trust policy and practice. Based on the evidence presented, I can confirm that I uphold these allegations.

In your hearing we discussed the alternatives to dismissal and concluded that [demotion/ transfer/ other option] would be a suitable alternative in consideration of the nature of the allegations made against you. You will therefore be transferred permanently to [insert name of position, where it is etc] with immediate effect. I must also advise you that you will be placed onto the pay arrangements and band for that post, with effect from the date of this change.

It is important that I inform you that further issues in your conduct could ultimately lead to your dismissal under the Disciplinary Procedure.

You have the right to appeal against this sanction. If you wish to do so you should write to [insert name of service manager and location] within two weeks from the date of this letter detailing the grounds of your appeal. Your appeal should be one or more of the following:

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

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

If you have any queries regarding the content of this letter, then please do not hesitate to contact me. I would also like to advise you of our Employee Assistance Programme, Workplace Options, should you require further support during this process, they can be contacted on 0800 243 458 or email assistance@workplaceoptions.com.

Yours sincerely

[Name]

[Title]

cc. [Insert Name] HR Business Partner

Letter inviting individual to an appeal hearing

[Note: Solent NHS Trust reserve the right for managers to amend this letter as appropriate to fit individual circumstances].

Sent Recorded Delivery

[Date]

Private and Confidential

[Name] [Address]

Dear [Name]

Re: Disciplinary Appeal

Further to your letter dated [insert date], I am writing to invite you to an appeal hearing at [time and date] at [location]. I shall be conducting the meeting accompanied by [Insert Name] HR Business Partner, to advise on any procedural matters.

At this appeal hearing, I will spend time discussing the reason for your appeal which may be one or more of the following:

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

I must advise you that this hearing will not involve a further investigation into the allegations made against you.

If you wish to bring a witness to this hearing or provide further evidence in your support, please provide details of these to me no more than 2 days before the hearing is due to be held.

You have the right to be accompanied at this meeting by a Staff Side or Trade Union representative or by a workplace friend or colleague. If you wish to be accompanied, you will need to make arrangements for this. Please refer to the Disciplinary Policy for further detail in relation to staff representatives and companions.

I would also like to advise you of our Employee Assistance Programme, should you require further support during this process, who can be contacted on 0800 243 458 or www.workplaceoptions.com.

Yours sincerely

[Name]

[Title]

cc. [Insert Name] HR Business Partner

Letter confirming appeal outcome

[Note: Solent NHS Trust reserves the right for managers to amend this letter as appropriate to fit individual circumstances].

Sent Recorded Delivery

[Date]

Private and Confidential

[Name] [Address] Dear

[Name]

Outcome of Disciplinary Appeal

I am writing to confirm the outcome of your appeal hearing held on [date]. You were present at the meeting accompanied by [insert name]. [Insert name], HR Business Partner was present to advise on any procedural matters.

At this hearing we discussed the reasons for your appeal and the outcome you wished to achieve.

In reaching a conclusion, I considered your comments carefully along with all aspects of Trust policy and practice. Based on the evidence presented, I can confirm that I [do / do not] uphold your appeal.

‘Do’- please insert the following:

[I can confirm that the sanction you were issued with under the Disciplinary Procedure will therefore be revoked with immediate effect and the following will now apply:

‘Do not’- please insert the following:

[I can confirm that the sanction you were issued with under the Disciplinary Procedure will therefore stand. There is no further right to appeal this decision under this procedure.]

[Substitute the sanction for a lesser one] [Overturn the

original decision]

There is no further right to appeal this decision under this procedure.

If you have any queries regarding the content of this letter, then please do not hesitate to contact me. I would also like to advise you of our Employee Assistance Programme, Workplace Options, should you require further support during this process, they can be contacted on 0800 243 458 or email assistance@workplaceoptions.com

Yours sincerely

[Name]

[Title]

Cc. [Insert name], HR Business Partner

Letter following Informal Meeting

[Note: Solent NHS Trust reserve the right for managers to amend this letter to as appropriate to fit individual circumstances.]

Dear *[Insert name]*,

I am writing to outline the issues that we discussed at the meeting on *[Insert date]* which was held in the presence of *(insert names of other parties present)*. *[If individual declined to have a workplace friend, colleague or staff side representative present insert the following. "At this meeting you declined the opportunity to have a workplace friend or colleague or staff side representative present"]*.

As discussed, you have *(examples of the conduct issued i.e. lateness, timekeeping, approach to others.)*

I would like to set a review date for *[Insert date]* and during this time I will continue to monitor the situation and if it does not improve we will unfortunately have to take a more formal approach which may lead to disciplinary action under the disciplinary policy.

Yours sincerely

[Name]

[Title]

Cc. *[Insert name]*, HR Business Partner

Equality & Human Rights and Mental Capacity Act Impact Assessment

Step 1 – Scoping; identify the policies aims	Answer		
1. What are the main aims and objectives of the document?	To ensure there is a fair and consistent approach to managing conduct across the Trust		
2. Who will be affected by it?	All Staff		
3. What are the existing performance indicators/measures for this? What are the outcomes you want to achieve?	To ensure there is a fair and consistent approach to managing conduct across the Trust		
4. What information do you already have on the equality impact of this document?	This policy replaces the previous disciplinary policy		
5. Are there demographic changes or trends locally to be considered?	No		
6. What other information do you need?	None		
Step 2 - Assessing the Impact; consider the data and research	Yes	No	Answer (Evidence)
1. Could the document unlawfully against any group?		X	This policy ensures all staff are treated equally and consistently
2. Can any group benefit or be excluded?		X	This policy ensures all staff are treated equally and consistently
3. Can any group be denied fair & equal access to or treatment as a result of this document?		X	This policy ensures all staff are treated equally and consistently
4. Can this actively promote good relations with and between different groups?	X		This policy ensures all staff are treated equally
5. Have you carried out any consultation internally/externally with relevant individual groups?	X		Current Policy Steering Group Trade Unions
6. Have you used a variety of different methods of consultation/involvement		X	Not required
Mental Capacity Act implications			
7. Will this document require a decision to be made by or about a service user? (Refer to the Mental Capacity Act document for further information)		X	This policy does not apply to service users

If there is no negative impact – end the Impact Assessment here.