
Improving & Managing Conduct Policy

(Formerly Disciplinary Policy)

Incorporates following previous policies: HR13 Disciplinary Policy, HR15 Investigation Policy and HR09 Dignity at Work Policy

Solent NHS Trust policies can only be considered to be valid and up-to-date if viewed on the intranet. Please visit the intranet for the latest version.

Purpose of Agreement	The Improving & Managing Conduct Policy outlines a timely, fair and consistent approach to resolving conduct related concerns in a fair and balanced way.
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Amendments Summary:

Amend No	Issued	Page	Subject	Action Date

Review Log:

Version Number	Review date	Name of reviewer	Ratification process	Reason for amendments
1	March 2020	Hannah West, HR Consultant Vicky Butler, HR Consultancy Manager	Policy Steering Group, Clinical Executive Meeting	Policy re-write. Combined disciplinary and investigation policies to create Improving & Managing Conduct Policy . Creation of supporting SOP's, containing details on process.

SUMMARY OF POLICY

What it is:

A different approach to resolving conduct related concerns, aligned to our values that supports an open and honest environment where workplace issues are talked through, addressed and resolved at the earliest opportunity.

What it isn't:

Whilst this policy was previously known as the Disciplinary Policy (and also incorporates the previous Investigation Policy) it outlines a very different, more positively focused approach to resolving workplace issues, that depends on the circumstances of the situation.

Where to go for further information:

- The policy should be read alongside the Investigation Standard Operating Procedure.
- Reference should also be made, when applicable, to the Improving & Managing Conduct Standard Operating Procedure and Appeals Standard Operating Procedure.
- In addition, a toolkit is available containing a suite of documents to assist in the application of this policy and the supporting procedures.

Good practice:

We expect our people involved in the application of this policy to follow the Principles of Good Practice (outlined in section 1.3) and the requirement for confidentiality (outlined in section 1.4).

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IMPROVING AND MANAGING CONDUCT POLICY

1.0 INTRODUCTION

1.1 PURPOSE

At Solent NHS Trust we believe that a positive and good working environment have a significant impact on wellbeing and engagement leading to better performance and reduced stress and absence. We want our people to be able to bring their whole self to work, one way in which we can support our people to do so is to create an open, honest environment where workplace issues are talked through, addressed and resolved at the earliest opportunity in a safe constructive way that provides lasting solutions for those involved.

At Solent NHS Trust we understand that there is very rarely intent to act in a way that could be perceived as misconduct and that the vast majority of people strive to do their best at work. As such, when something happens that wasn't as expected, we are committed to understanding peoples actions and ensuring that our people are encouraged to improve where necessary. It is the Trust's intention to ensure a focus on learning and accountability rather than blame and formal action should be seen as a last resort.

Whilst every effort will be made to work together on resolving workplace issues, there will be occasions when situations arise that may require formal action following a thorough investigation. This policy outlines Solent NHS Trust's commitment to providing a fair framework for determining the appropriate response.

Any decisions taken in line with this policy will be fair and unbiased and not taken by one person alone. The wellbeing of our people involved or affected by this policy will be carefully considered.

Where it is identified that an issue needs to be addressed formally, this policy should be read alongside the Investigation SOP. Reference should also be made to the Improving & Managing Conduct SOP and Appeals SOP for situations that may require further formal action.

1.2 SCOPE

The Improving and Managing Conduct Policy applies to any situation whereby an issue, concern, complaint or allegation arises regarding an employee's conduct. In the policy and SOP, we may use one of these terms to mean any or all of them and also use the general term "issues".

The purpose of the Improving and Managing conduct policy is to provide an accessible, inclusive and constructive way for issues to be addressed together, with a view to learning, resolving or correcting any mistakes or wrongdoing.

The policy encourages early resolution where appropriate and empowers our people to work together in a supportive, safe environment to resolve issues and prioritise learning. It is recognised however that there will be occasions when a formal approach may be necessary.

The decision tree which can be found in the toolkit, should be applied to support consistent decision making and guidance.

Throughout the application of this policy and the supporting procedures, the health and wellbeing of our people will always be thoroughly considered.

This policy applies to locum, permanent, and fixed term contract employees (including apprentices) who hold a contract of employment or engagement with the Trust and secondees (including students), in line with the Solent NHS Trust Equality, Diversity, Inclusion and Human Rights Policy. For matters relating to Medical and Dental employees, the Maintaining High Standards of Performance Policy should be referred to alongside this policy, and advice sought from HR Consultancy if required.

1.3 PRINCIPLES OF GOOD PRACTICE

The following principles should be applied to every concern raised under this policy:

- Ensure HEART values guide actions and behaviours throughout the application of this policy.
- Ensure the health and wellbeing of all involved is considered throughout the process.
- It is expected that issues will be resolved through learning and accountability, however it is recognised that there will be occasions when issues need to be addressed formally. No formal hearing will be undertaken until a thorough investigation has been completed, allowing for the opportunity for all people involved to be heard.
- Ensure decisions are supported by a consistent framework and that they are well informed, justified and appropriate for the circumstances (see decision trees in [toolkit](#)).
- Ensure identification of key members (stakeholders) involved/affected in the application of the policies and procedures, to ensure regular communication is maintained.
- All involved managers to ensure adequate time is allowed to support a timely and thorough process.
- Ensure timely, detailed, clear, sensitive and compassionate communication throughout.
- Ensure any perceived or identified conflict of interest responded to.
- Be carried out without unreasonable delay. Further guidance on anticipated timescales is outlined within the relevant procedure.
- Be sensitive and respectful to all involved members.
- Seek to explore and not to pre-judge.
- Seek to establish facts, based on reasonable belief (as opposed to 'beyond reasonable doubt').
- Be part of a learning culture where appropriate feedback is given and utilised to make improvements.
- Have accurate notes captured where appropriate, complying with the principles of General Data Protection Regulations (GDPR) and in accordance with the notes template and guidance in the [toolkit](#).
- Ensure records are retained in accordance with the records management guidance document in the [toolkit](#).
- Ensure, in the case of a formal approach, timescales are regularly reviewed and not drawn-out.
- Prior to any formal meeting which may result in termination of an employee's employment, the case will be referred to the People Management Advisory Forum (PMAF) to ensure appropriate senior-level oversight. In addition, any appeals received in

relation to a decision to terminate an employee's employment will also be referred to PMAF.

- Where a formal approach is taken ensure decisions are not taken by one person alone.
- Provide an appropriate debriefing/closure for all involved whether or not a formal sanction is issued

1.4 CONFIDENTIALITY

All people involved in the application of this policy and the supporting procedures must ensure confidentiality throughout the process and thereafter. We want to ensure that all people involved feel able to openly engage and be able to assure them that the information shared remains confidential. As such, we take breaches of confidentiality very seriously.

Further guidance on confidentiality and record management can be found within the relevant SOP's and [toolkits](#).

1.5 EXCLUSIONS

This policy will not apply to concerns relating to:

- Performance – please see Performance Management Policy
- Sickness absence – please see Attendance and Wellbeing policy

2.0 SUPPORT AVAILABLE

It is recognised that for all of our people involved, the processes may be unusual or unfamiliar and therefore immediate and/or ongoing support may be required. The following support is available in addition to support offered by a person's line manager. Note that if people feel unable to speak to their line manager, they may approach an alternative manager.

2.1 EMPLOYEE ASSISTANCE PROGRAMME

The Employee Assistance Programme provides free and confidential advice and support to all employees regardless of the situation; this can be sourced by the individual directly or through the individual's line manager, Occupational Health or HR Consultancy for immediate and on-going support.

2.2 STAFF SIDE REPRESENTATIVES / WORKPLACE COMPANIONS

Employees have the right to be accompanied by a Staff Side (Union) Representative or workplace colleague at all formal meetings held in line with this policy and the relevant supporting procedures. It is the employee's responsibility to arrange accompaniment, if they require support with this they should contact their line manager or another appropriate manager. Having a companion has many benefits including providing the employee with advice and support and aiding the employee's understanding of the situation. Please see [toolkit](#) for further guidance on the right to be accompanied.

2.3 OCCUPATIONAL HEALTH

Employees can self-refer to the Trust's Occupational Health team at any time. Manager referrals will be made for any person who either requests or is identified as needing such

support. Where indicated, Occupational Health will advise on an individual's fitness to attend meetings. Employees are required to attend and engage with Occupational Health appointments.

3.0 ADDITIONAL CONSIDERATIONS

Outlined below are additional considerations, which may need to be taken into account within the application of this policy.

3.1 PROCEEDINGS AGAINST A STAFF SIDE REPRESENTATIVE

In all cases where the Manager is investigating an issue and/or considering formal action against a Trade Union Official the case will be discussed with a branch or full time officer.

3.2 ACCESSIBLE INFORMATION

If a communication barrier is identified, the appropriate Manager must ensure that they discuss with the person the relevant support available to them. This may include the arrangements for accessing an interpreter if there are language barriers or accessible information such as large print or audio documents, if required.

3.3 FORMAL PROCESS WHILST WORKING ON JOINT APPOINTMENTS

In cases where an investigation is required or potential formal action may be taken against an employee who works across two organisations, the employing organisation will determine the action to be taken. In some cases a joint process may be appropriate.

3.4 INVOLVEMENT OF INTERNAL OR EXTERNAL INDIVIDUALS OR ORGANISATIONS

Depending on the nature of the allegations, concerns or incidents, it may be necessary to notify external bodies, e.g. professional bodies, Multi-Agency Partners, the Counter Fraud team, Local Authority Designated Officer (LADO) and/or the police or an internal contact such as the Safeguarding Allegations Management Advisor (SAMA). When making a referral of this nature, the manager must ensure HR Consultancy is aware.

Where an investigation needs to be carried out externally, where possible the external investigation will run in parallel with the internal process. However, continued consideration should be given as to whether suspension of internal process is appropriate whilst the relevant agencies are investigating and where criminal proceedings may occur; external investigations may take priority over internal.

3.5 SERIOUS INCIDENTS REQUIRING INVESTIGATION (SIRI)

There may be occasions where a SIRI overlaps with an HR Investigation. In these circumstances, consideration should be given to enabling a joined up approach to investigating the SIRI alongside the HR Investigation process. Please see further guidance on joint HR/SIRI investigations in the [toolkit](#).

3.6 RAISING A CONCERN OR COMPLAINT DURING A FORMAL PROCESS

Where an employee raises a concern or complaint at any stage of the investigation or formal process, a decision will be made as to whether the proceedings should be suspended until the matter is resolved.

The considerations will be based on the relevance and severity of the issue which may make it inappropriate for the formal process to continue, but in most cases the procedures will run parallel. It is considered in most cases that a delay to concluding an investigation or formal process and any subsequent interventions/actions may not always be in the best interest, or conducive to, the wellbeing of those involved. Please see the [resolution policy](#) and [SOP](#) for more details in relation to the resolution process.

3.7 ADDITIONAL ALLEGATIONS

If further information of a serious nature comes to light during an investigation then the appropriate managers involved will determine whether to conduct a second investigation or widen the scope of the original investigation.

3.8 SUSPENSION, EXCLUSION OR TRANSFER

There may be rare occasions when the issues being considered are serious enough to warrant a temporary transfer or the suspension of the person involved. Suspension is always a last resort and the manager should refer to the Suspension, Exclusion or Transfer Policy, for details on when and how to suspend a person, and is responsible for contacting HR Consultancy for support prior to decision making.

3.9 RECORDING OF MEETINGS

People are not permitted to make electronic audio and/or visual recordings at any meetings held under this policy. We take any such breaches seriously. The employee, or their companions, may take notes at the meeting. A copy of the formal meeting notes will be sent to the employee. Where meetings are being recorded as a reasonable adjustment (see 3.11) the meeting chair will be responsible for making the recording.

3.10 SERVICE REVIEW

There may be occasions where broader concerns within a team or service are raised. This may include concerns about team cultures, values and behaviours or leadership styles for example. Please refer to the Resolution Policy and SOP in this instance.

3.11 REASONABLE ADJUSTMENTS

A reasonable adjustment is a change to remove or reduce the effect of an employee's disability so they can do their job (ACAS).

Reasonable adjustments will be considered and implemented where reasonably possible, to ensure that people with a disability are not disadvantaged throughout the implementation of this policy and the supporting procedures. Employees should make their manager aware if they feel they require any reasonable adjustments to be made. Guidance will be sought from Occupational Health to determine any recommended reasonable adjustments.

3.12 PAY PROGRESSION INCREASES

During the period that any formal record remains live the employee may be exempt from any pay progression increases. On expiry, pay progression increases that would have been applied will be actioned but not backdated. For further information please see the [Agenda for Change Starting Pay and Progression Policy](#).

3.13 DISMISSAL OF DIRECTORS OR CHIEF EXECUTIVE

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.

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/England.

4.0 ROLES AND RESPONSIBILITIES

For further details of the roles and responsibilities of all individuals involved in the processes that support this policy please see appendix A of the relevant supporting procedures. Please see the Investigation SOP, Improving & Managing Conduct SOP and/or Appeals SOP, as applicable.

4.1 ROLE OF THE LINE MANAGER

The line manager is the manager who is directly responsible for managing the individual that the issue has been raised by or against.

4.2 ROLE OF THE CASE MANAGER

The Case Manager is the Service Manager, Operations Director or Associate Director usually within the relevant service who commissions an investigation. If a modified investigation is deemed appropriate, the responsible Line Manager will usually be referred to as the Case Manager.

4.3 ROLE OF THE CASE INVESTIGATOR

The Case Investigator is a manager who plans and conducts the investigation, within the scope remit, in order to establish the facts of the case. Investigations are fact finding exercises; as such Case Investigators are required to present the facts and any evidence gathered to enable a decision to be reached. The Case Investigator is not required to make any decisions in relation to next steps to be taken on conclusion of the investigation. The Case Investigator may be an internal manager or sourced via an external organisation.

4.4 ROLE OF THE MEETING CHAIR

The Hearing Manager is the manager responsible for chairing the formal hearing. In cases where a formal investigation has been undertaken, the Case Manager would usually take on the role of Hearing Manager. In the case of a modified investigation the manager who undertook the modified investigation (normally the line manager) would usually be the Hearing Manager. The Hearing Manager must not be the manager who undertook the formal investigation (if applicable).

4.5 ROLE OF THE SENIOR LEAD

A Senior Lead will be assigned in cases requiring a formal investigation. The senior lead will normally be an Operations Director.

4.6 ROLE OF HR CONSULTANCY

The role of HR Consultancy is to work in partnership with the Case Manager and Case Investigator to enable a thorough and robust investigation, advising on issues of procedure and law with a view to achieving consistency and ensuring adherence to Trust Policy and SOP.

4.7 ROLE OF STAFF SIDE REPRESENTATIVES OR ACCOMPANYING WORKPLACE COLLEAGUE (COMPANIONS)

The role of the staff side representative or accompanying workplace colleague (companion) is to provide support and guidance to the employee throughout the process.

4.8 ROLE OF THE PEOPLE MANAGEMENT ADVISORY FORUM - PMAF

To provide scrutiny and advice with respect to the Trust's people practices to ensure that an inclusive, compassionate and person-centred approach is applied and that there is fairness and consistency in our practices across the Trust.

5.0 TRAINING

Policy awareness is the responsibility of the Managers; it should be raised through local induction and identified as a training need where appropriate. All employees should be aware that policy is available via the intranet and via their Line Manager.

6.0 EQUALITY AND DIVERSITY AND MENTAL CAPACITY ACT

An impact Needs/Requirements Assessment has been completed for this policy and no equality or diversity issues were identified, see appendix 1.

Solent NHS Trust is committed to safeguarding employees against discrimination in the workplace. Reasonable adjustments will be made to ensure employees with a disability, as defined by the Equality Act 2010, are not placed at a disadvantage throughout the investigation process.

7.0 SUCCESS CRITERIA / MONITORING EFFECTIVENESS

Solent NHS Trust strives to be a learning organisation and carry out regular, anonymised case reviews to continually improve.

The effectiveness of this policy will be monitored by reviewing investigations, formal conduct meetings and appeals completed to ensure the correct procedures are followed. Any learning points and trends will be identified by HR Consultancy who will make recommendations to the Chief People Officer about potential changes. The nominated sub-group of the Workforce and OD Committee, the Workforce Development Group, will have an overview of the workforce statistics collated.

8.0 REVIEW

This document may be reviewed at any time at the request of either staff side or management, but will automatically be reviewed 3 years from initial approval and thereafter on a triennial basis unless organisational changes, legislation, guidance or non-compliance prompt an earlier review.

9.0 REFERENCES AND LINKS TO OTHER DOCUMENTS

This policy may need to be read in conjunction with the following policies and procedures:

Investigation Standard Operating Procedure
Improving & Managing Conduct Standard Operating Procedure
Appeals Standard Operating Procedure
Suspension, Exclusion or Transfer Policy
Suspension Exclusion or Transfer Procedure
Resolution Policy
Resolution Standard Operating Procedure
Performance Management Policy
Attendance & Wellbeing Policy
Equality, Diversity, Inclusion and Human Rights Policy
Serious Incidents Requiring Investigation Policy
Freedom to Speak Up – Raising Concerns Policy
Policy for Managing Performance of Medical and Dental Staff
Policy on Management of Allegations of Abuse against Staff under Safeguarding Procedure
AfC Starting Pay and AfC Pay Progression Policy
Local Counter Fraud, Bribery and Corruption Policy

This list is not exhaustive.

This policy has been developed in line with:

- ACAS guidelines - www.acas.org.uk
- [NHS Improvement – ‘A Just Culture Guide’ - https://improvement.nhs.uk/resources/just-culture-guide/](https://improvement.nhs.uk/resources/just-culture-guide/)
- [NHS Employers – www.nhsemployers.org](http://www.nhsemployers.org)
- [NHSI/E – Improving People Practices](#)

Equality Analysis and Equality Impact Assessment

Equality Analysis is a way of considering the potential impact on different groups protected from discrimination by the Equality Act 2010. It is a legal requirement that places a duty on public sector organisations (The Public Sector Equality Duty) to integrate consideration of Equality, Diversity and Inclusion into their day-to-day business. The Equality Duty has 3 aims, it requires public bodies to have due regard to the need to:

- **eliminate unlawful discrimination**, harassment, victimisation and other conduct prohibited by the Equality Act of 2010;
- **advance equality of opportunity** between people who share a protected characteristic and people who do not;
- **foster good relations** between people who share a protected characteristic and people who do not.

Equality Impact Assessment (EIA) is a tool for examining the main functions and policies of an organisation to see whether they have the potential to affect people differently. Their purpose is to identify and address existing or potential inequalities, resulting from policy and practice development. Ideally, EIAs should cover all the strands of diversity and Inclusion. It will help us better understand its functions and the way decisions are made by:

- **considering the current situation**
- **deciding the aims and intended outcomes of a function or policy**
- **considering what evidence there is to support the decision and identifying any gaps**
- **ensuring it is an informed decision**

Equality Impact Assessment (EIA)

Step 1: Scoping and Identifying the Aims

Service Line / Department	People Services/HR Consultancy	
Title of Change:	Improving & Managing Conduct Policy	
What are you completing this EIA for? (Please select):	Policy	<i>(If other please specify here)</i>
What are the main aims / objectives of the changes	Incorporate NHSI guidance, just culture principles, person centred approach and to separate policy and procedure (SOP).	

Step 2: Assessing the Impact

Please use the drop-down feature to detail any positive or negative impacts of this document /policy on patients in the drop-down box below. If there is no impact, please select "not applicable":

Protected Characteristic	Positive Impact(s)	Negative Impact(s)	Not applicable	Action to address negative impact: <i>(e.g. adjustment to the policy)</i>
Sex			X	
Gender reassignment			X	

Disability			X	
Age			X	
Sexual Orientation			X	
Pregnancy and maternity			X	
Marriage and civil partnership			X	
Religion or belief			X	
Race			X	

If you answer yes to any of the following, you MUST complete the evidence column explaining what information you have considered which has led you to reach this decision.

Assessment Questions	Yes / No	Please document evidence / any mitigations
In consideration of your document development, did you consult with others, for example, external organisations, service users, carers or other voluntary sector groups?)	Yes	Internal stakeholders – including managers, employees, Occupational Health, Unions.
Have you taken into consideration any regulations, professional standards?	Yes	ACAS Code, NHSI recommendations as per Dido Harding letter, NHS People Plan, Just Culture Guide

Step 3: Review, Risk and Action Plans

How would you rate the overall level of impact / risk to the organisation if no action taken?	Low <input type="checkbox"/>	Medium <input checked="" type="checkbox"/>	High <input type="checkbox"/>
What action needs to be taken to reduce or eliminate the negative impact?	Fair and consistent application of policy		
Who will be responsible for monitoring and regular review of the document / policy?	HR Consultancy		

Step 4: Authorisation and sign off

I am satisfied that all available evidence has been accurately assessed for any potential impact on patients and groups with protected characteristics in the scope of this project / change / policy / procedure / practice / activity. Mitigation, where appropriate has been identified and dealt with accordingly.

Equality Assessor:	H. West	Date:	09/10/2020
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Additional guidance

Protected characteristic	Who to Consider	Example issues to consider	Further guidance
1. Disability	A person has a disability if they have a physical or mental impairment which has a substantial and long term effect on that person's ability to carry out normal day today activities. Includes mobility, sight, speech and language, mental health, HIV, multiple sclerosis, cancer	<ul style="list-style-type: none"> • Accessibility • Communication formats (visual & auditory) • Reasonable adjustments. • Vulnerable to harassment and hate crime. 	Further guidance can be sought from: Solent Disability Resource Group
2. Sex	A man or woman	<ul style="list-style-type: none"> • Caring responsibilities • Domestic Violence • Equal pay • Under (over) representation 	Further guidance can be sought from: Solent HR Team
3. Race	Refers to an individual or group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.	<ul style="list-style-type: none"> • Communication • Language • Cultural traditions • Customs • Harassment and hate crime • "Romany Gypsies and Irish Travellers", are protected from discrimination under the 'Race' protected characteristic 	Further guidance can be sought from: BAME Resource Group
4. Age	Refers to a person belonging to a particular age range of ages (eg, 18-30 year olds) Equality Act legislation defines age as 18 years and above	<ul style="list-style-type: none"> • Assumptions based on the age range • Capabilities & experience • Access to services technology skills/knowledge 	Further guidance can be sought from: Solent HR Team
5. Gender Reassignment	" The expression of gender characteristics that are not stereotypically associated with ones sex at birth" World Professional Association Transgender Health 2011	<ul style="list-style-type: none"> • Tran's people should be accommodated according to their presentation, the way they dress, the name or pronouns that they currently use. 	Further guidance can be sought from: Solent LGBT+ Resource Group
6. Sexual Orientation	Whether a person's attraction is towards their own sex, the opposite sex or both sexes.	<ul style="list-style-type: none"> • Lifestyle • Family • Partners • Vulnerable to harassment and hate crime 	Further guidance can be sought from: Solent LGBT+ Resource Group
7. Religion and/or belief	Religion has the meaning usually given to it but belief includes religious and philosophical beliefs, including lack of belief (e.g Atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition. (Excludes political beliefs)	<ul style="list-style-type: none"> • Disrespect and lack of awareness • Religious significance dates/events • Space for worship or reflection 	Further guidance can be sought from: Solent Multi-Faith Resource Group Solent Chaplain
8. Marriage	Marriage has the same effect in relation to same sex couples as it has in relation to opposite sex couples under English law.	<ul style="list-style-type: none"> • Pensions • Childcare • Flexible working • Adoption leave 	Further guidance can be sought from: Solent HR Team
9. Pregnancy and Maternity	Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth and is linked to maternity leave in the employment context. In non-work context, protection against maternity discrimination is for 26 weeks after giving birth.	<ul style="list-style-type: none"> • Employment rights during pregnancy and post pregnancy • Treating a woman unfavourably because she is breastfeeding • Childcare responsibilities • Flexibility 	Further guidance can be sought from: Solent HR team