

### Frequently asked questions

These are provided for guidance or quick reference guide only, so always refer to the policy

## 1. Representation & Attendance

### 1.1 What representation can I expect at any meeting?

For an informal meeting, which is where a manager will gather initial facts about a situation, no representation is legally required, as this will normally consist of getting your 'side of the story', however you may reasonably request this. However, for a formal meeting, you have the right to representation by an NHSBT employee or representative of a Trade Union you belong to who may attend this and any further meetings. You will receive reasonable notice and with no unreasonable delay.

### 1.2 Can I bring a solicitor or a member of my family as my representative?

No. Your representative must be as stated above. However, should your professional registration be at risk, this may be considered by the panel.

### 1.3 What happens if I am unable to attend an investigation meeting or disciplinary panel?

As part of your employment contract you are required to follow the organisations policies, and therefore in this situation, you must make every effort to attend. If your reason for not attending is due to sickness, then you will be required to follow the Attendance Policy. Should your absence continue it may be necessary to progress the stages in the policy without you. However, we will talk to you about this as part of your managed plan.

### 1.4 If I am unable to attend an investigation or disciplinary panel, how can I respond to the situation or allegation?

If you are unable to participate on health grounds, you will be given the opportunity to write down your response. This would then be considered by the manager leading the investigation or disciplinary hearing. You may choose to be represented in your absence by a trade union representative of a union you belong to.

## 2. Investigation

### 2.1 What is involved in an investigation?

The investigation may involve interviews, gathering data, evidence, seeking written statements from any relevant witness.

### 2.2 At a formal investigation or other meeting, can a conversation be recorded?

No. Notes will be taken by a nominated note taker. You will be given the opportunity to comment on the content before the final version is issued. Please note however that notes are not verbatim i.e. word for word, however they must be in context of the meeting and capture the essence of the conversation. Any of the attendees can make notes in addition to the person nominated by the chair.

### **2.3 Who is responsible for appointing the Investigating Managers and can the employee object?**

The investigation managers will be appointed by a senior manager. The employee will be advised of this and if given reasonable cause, may object to this decision.

### **2.4 Why is correct and accurate documentation so important?**

This ensures that there is no misunderstanding between you and your manager regarding expected behaviour and any actions agreed to improve and support you. It acts as a record that action has been taken and the support given to bring about your improved behaviour at an early stage, should the misconduct continue. You may wish to take your own notes in any meetings for any future reference.

### **2.5 What happens if I am invited to attend an investigation meeting or other formal meeting and I am off sick?**

You will need to advise the person conducting the investigation or holding the meeting when you intend to return to work. If you are likely to be absent for a longer period of time, after establishing your fitness to attend meetings or answer questions, you will be invited to attend during your absence. Every practical means necessary will be considered, to gain your comments, side of story or statement, which will be required from you.

### **2.6 What happens if I am redeployed pending a disciplinary investigation?**

Where this occurs, there will be no loss to your normal pay or other allowances. Redeployment in this situation will be temporary only for Health and Safety reasons or to allow a proper investigation to take place.

### **2.7 As an employer, what is meant by 'Duty of Candour'?**

Candour is defined in the Robert Francis report as "The volunteering of all relevant information to persons who have or may have been harmed by the provision of services, whether or not the information has been requested and whether or not a complaint or a report about that provision has been made."

### **2.8 As an employee, what does 'duty of candour' mean to me?**

As stated in the NHS Constitution everyone has a duty of care to volunteer information if something may cause harm to an individual. Therefore, should you have a concern, it is important you follow our internal processes to ensure that your concern is escalated if and when appropriate. This may be through a number of means including:

- Telling your supervisor, manager or a responsible person
- Reporting an incident through the appropriate reporting system e.g. quality or health and safety
- Following the 'Raising a Matter of Concern Policy' and process, if you think it is appropriate to do so
- Following the 'Dignity at Work Policy' and process, if you think it is appropriate to do so
- Reporting concerns about possible fraud following the Anti-Fraud, Bribery and Corruption Policy

This list is not entirely exhaustive

### **2.9 What is Just Culture and when do I consider it?**

We all know that occasionally things may go wrong at work. As you will be aware, when this happens, we have processes for investigating and managing an incident. A [Just Culture Guide \(the Guide\)](#) has been published by NHS Improvement to support the conversations and decision making by managers when, on the rare occasion, it may be appropriate to consider the individual actions of an employee involved in a patient and /or donor safety incident. We have reviewed this guide and it has been agreed by the Executive Team to introduce this process into the organisation. Adopting the Just Culture Guide will help support a consistent approach to evaluating the actions of individuals involved in safety incidents. This applies to all incidents, not just Serious Incidents, and all relevant controlled documents will be updated accordingly.

The Guide asks several pre-set questions that, when followed, supports a consistent and fair evaluation of an individual's actions. Using the Guide will help to ascertain whether there is something specific about an individual that needs additional support to work safely, versus whether the issue which resulted in an incident is wider. For example, was the incident caused by a system failure or issue? In which case singling out an individual would be unfair and counter-productive to safety. The transparent process will enable those involved in incidents to understand the process used and the approach that would be taken. The Guide will also be used by managers to explain the investigation process and support communication with patients and donors involved in an incident.

The [Just Culture Guide](#) does not replace the existing processes for investigating a patient / donor safety incident but rather provides an additional tool for investigating and managing events. We hope this will support our aim to be open, fair, and to learn from events, by continuing to encourage colleagues to feel confident to speak up when things go wrong.

## 3. Witness

### 3.1 What is a witness?

Someone who may have seen or heard an event or series of events; relevant event or events leading up to the situation related to the allegation.

### 3.2 During an investigation who can suggest who might be asked to be a witness?

This may be the person the allegation is against, another witness or the investigating manager.

### 3.3 When will witnesses be invited to a disciplinary panel?

Any witness who has been asked to attend by either party, where questions of clarification are required around the statement.

### 3.4 I've been asked to be a witness, what would this involve?

You may need to provide a statement to the investigating manager, and if required, you may need to attend a disciplinary panel to answer any questions about this. If you are asked to attend by the person the allegation is about, again you will be required to answer any questions from the panel or management.

## 4. Suspension

### 4.1 What is Suspension?

Suspension from duty is not a disciplinary measure. However, it may be an appropriate step when a situation is thought to be serious enough to consider immediate removal from your place of work by sending you home, or if the incident is likely to have significant detrimental impact on NHSBT, other employees, donors or the general public while the incident is being investigated.

### 4.2 What are the principles of Suspension?

- If you are suspended, you must not enter NHSBT premises or contact any other employees involved in the incident, without speaking to the person(s) who authorised your suspension. You may for example need access if you are putting together your response or case.
- You would be suspended from part or all of your duties, on full pay with no loss of your normal pay or regular allowances.
- Suspension will be carried out by the most senior manager available at the time (See the levels of authority in the policy, as this includes suspension).
- You will be told the reason for your suspension which will be confirmed in writing.
- Suspension from duty will not normally go beyond seven days. If an extension is required, then you will receive an explanation for the reasons. Should this continue beyond a second week, bi-weekly reviews should take place.
- If your suspension lasts more than eight weeks, a formal review will be carried out by an independent senior manager to establish that further suspension is justified.

- You must be contractually available for work and meetings and follow normal policies and procedures during the suspension period. Your manager will make regular and agreed contact with you, during the suspension period.
- If you have annual leave booked during a suspension period, the annual leave will override the suspension. If you intend to go on leave for extended periods of time and therefore you are not available to maintain contact, or attend meetings relevant to the case, you must speak to your manager in advance, to gain their permission
- All of your IT accounts, keys and security passes will be withdrawn for the suspension period.
- Your manager must consider what communication the rest of the team/department need and any implications to them. It will be necessary to cover your work/shifts; therefore your manager will provide a statement that informs your team/department of the situation and new working arrangements but must not breach confidentiality.
- If you are on sick leave, you will remain on sick leave until you are deemed to be fit to return to work by your GP or Occupational health. However, once you are fit, all of the above will be considered, to establish the right course of action for your set of circumstances.

### **4.3 As a manager, what do I do if I am authorised to conduct a suspension from duty?**

You will have followed the flow chart and obtained the appropriate authorisation. You will need to advise the individual of the issue that has led to their suspension and ensure that it is with immediate notice. As contained within the principles above, you will be required to remove all keys, passes, and IT equipment if possible, suspending their access. You will advise them that you will confirm the suspension in writing and agree the next contact date and time.

Following suspension, you will need to confirm the suspension in writing, advising them of the key principles. If you are in any doubt as to the content, contact HR Direct on (2) 7700 or at HRDirect@nhsbt.nhs.uk

## **5. Disciplinary Panel/Meeting**

### **5.1 Who is able to chair a panel?**

This is determined by the severity of a case (examples of misconduct are given in Appendix 4) and a worse case scenario may need to be considered to ensure the right level of authority is present. The levels of authority to issue sanctions is in the table on Page 3 of the policy.

### **5.2 Definitions**

#### **5.2.1 Supervisor**

Is the person who allocates and checks your work.

#### **5.2.2 Duty Manager**

Is the person who carries out all or most of the following - initial informal stages of grievance and discipline; appraisal/PDPR reviews; sitting on interview panels; ensuring training is given to employees; reviewing work performance and progress; work allocation and checking.

#### **5.2.3 Line Manager**

Is the person who has responsibility over own employees for all or most of the following - disciplinary and grievance matters; appraisals/PDPR reviews; recruitment decisions/chairing interview panel; sickness absence; personal and career development; departmental workload and allocation i.e. allocation of blocks of work and responsibilities.

#### **5.2.4 Director or two levels below**

The authority to dismiss will normally be a director or up to two levels below. However, in certain cases, it may not be possible to have the appropriate decision maker available, therefore an alternative may be sought, in agreement with management, Human Resources and your representative.

### **5.3 As a chair, what do I need to do if a case is referred to a panel?**

The chair of the panel will need to arrange a panel for the meeting, who will consider the employee's conduct.

The panel should consist of the chair who needs to be a manager (not previously involved in the process) with the appropriate authority and they should be supported by Human Resources in an advisory capacity.

The chair will need to notify the employee in writing, at least 7 calendar days prior to the meeting advising them of the reason the meeting is taking place, the arrangements, their right to be accompanied and the possible outcome of this meeting. As chair, you will need to provide the employee with two copies of the Management Statement of Case (one for the employee and one for their representative if they intend to bring one to the meeting).

## **6. Management Record of Informal Discussion**

### **6.1 What is a Management Record of Informal discussion and how is it used?**

This is a tool your manager may choose to use to record a conversation they have with you about a particular situation, and to inform or remind you of the standard that is expected. They may alternatively choose to make a file note instead, however, either way, you will receive a copy and this may be referred to in the future.

## **7. Sanctions**

### **7.1 What is a sanction?**

A penalty applied following a proven issue of misconduct that will remain on file for a specified time period and should a further instance occur, will set out possible future actions. It should also act to deter the behaviour repeating itself.

### **7.2 What is an Improvement note?**

An improvement note may be issued to you by your manager, should there be little or no change following a previous issue. This may be issued to you by your manager, once a Disciplinary triage has been completed. However, should you contest this, the case will be referred to a panel.

It may also be an option for a Disciplinary panel to issue, should your case be referred to a panel. In this situation an Improvement Note will be confirmed in writing within 7 calendar days of the panel.

### **7.3 What can I expect to be included within an Improvement Note?**

It confirms the basis for the warning, the standards and improvements required, the review process, and that any repetition or further misconduct occurring during the 'life' of the warning may lead to further disciplinary action being taken. Any support you may need, including any training, will be provided or considered where possible. This warning will be on your record for 6 months.

### **7.4 What can I expect to be included within a First written warning?**

A first written warning will be confirmed in writing within 7 calendar days of the formal hearing. The letter will confirm the basis for the warning, the standards and improvements required, the review process, and that any repetition or further misconduct occurring during the 'life' of the warning may lead to further disciplinary action being taken, up to and including dismissal. This warning will be on your record for 18 months. The letter to you will also include details of your right of appeal.

### **7.5 What can I expect to be included within a Final written warning?**

The letter will confirm the basis for the warning, the required standards and improvements, the review process and that any repetition or further misconduct occurring during the 'life' of the warning may lead to dismissal. The letter will also include details of your right of appeal. This warning will be on your record for 18 months. The letter will also include details of your right of appeal.

### **7.6 Can I be dismissed with notice for a first offence?**

This would depend on the severity of the action being considered by the panel. Appendix 4 contains details of examples of conduct including gross misconduct.

### **7.7 What reference can I expect if I receive a warning of any level, including dismissal under the Disciplinary Policy?**

Any reference requested will be answered honestly by NHSBT and therefore will inform a potential future employer of the reason for the warning or dismissal. Only warnings that are current may be mentioned in a reference.

### **7.8 What if following an investigation or a formal hearing it is found that there is no case to answer?**

This will be communicated to you within 7 calendar days. Any recommendations for example, training or facilitation needs, will be dealt with as a separate issue and a Management Record of Informal Discussion form will be completed by the relevant manager. Any witnesses will also be advised that the case is now closed without breaching confidentiality.

### **7.9 What if following a formal hearing no formal sanction is to be issued?**

This will be communicated to you within 7 calendar days. However, any recommendations will be dealt with separately by your manager.

## **8. Special Cases**

### **8.1 What are my responsibilities if I am representing NHSBT on an external body or group?**

You have a responsibility for ensuring that you do so in a professional manner that will not bring NHSBT into disrepute. You also have a responsibility for ensuring that your appointing manager is kept informed of any decisions taken by the group that will affect NHSBT business or that will require change in process or practice. You will also need to ensure that the group or body have a comprehensive understanding of any position held by NHSBT at the time of the meetings and any potential impact of considered changes.

### **8.2 How is the Disciplinary Policy applied to those considered to be Special Cases?**

The Policy applies to all employees however the following key considerations will be applied:

#### **Disciplinary Action involving a Staff Side Representative**

If you are a Trade Union representative, then the same policy and process will be followed, however we will inform the National Officer for NHSBT within the union you represent, prior to commencing a formal investigation. However, the Full-Time officer does not need to represent the employee if they may not choose to. In cases where the NHS Counter Fraud Office is investigating no prior discussion needs to take place. If disciplinary action is necessary, the HR Consultant supporting the case will discuss the case with the full-time officer. If suspension is seen as appropriate, this can take place immediately, with the HR Consultant informing the full-time officer as soon as practicable.

#### **Disciplinary Action involving Medical Staff**

If you are a medical practitioner, then the same process will be followed however the Managing Concerns about Medical Practitioners Policy should be the first point of reference.

#### **Disciplinary Action involving All Professional Staff**

In cases concerned with potential or actual acts of gross professional misconduct or competence, where following an investigation it has been established that misconduct is proven, we have a responsibility to notify appropriate professional bodies and will do so.

#### **Criminal Offences**

If you are cautioned, charged with, or convicted of a criminal offence, we will consider the effect the charge or conviction has on your suitability to do the job, your relationship with NHSBT and work colleagues, Donors or customers. Should the conduct warrant disciplinary action due to its nature,

e.g. conduct which may result in loss of confidence in you or has the potential to bring the service into disrepute, it will be investigated, and may lead to disciplinary action up to and including dismissal. Where the conduct requires prompt attention, we are not required to await the outcome of criminal proceedings.

Should you not be available for work due to being in custody or on remand, we will decide whether your job can be held open and this decision will be made by following the disciplinary process in your absence.

An allegation relating to an issue of Safeguarding may result in a referral being made to the Independent Safeguarding Authority (ISA) if appropriate (see the Employment of Ex-Offenders and Referrals to the Independent Safeguarding Authority (ISA) Policy for further details).

### Directors

Disciplinary issues relating to Directors of NHSBT will be dealt with by the Chief Executive and Chairman of NHSBT; with the co-option of other Executive or Non-Executive Directors they may feel appropriate. Disciplinary issues with the Chief Executive will be dealt with by the Chairman of NHSBT

## 9. Support

### 9.1 What support can I access during this difficult time should I feel worried or upset about the situation?

We have an Employee Assistance Programme to provide support to our employees and their families at times of difficulty. They can be contacted on **Free phone 0800 716 017**. **Web access [www.first-assist.com](http://www.first-assist.com) (access code 72992)**.

## Policy approval & review

Policy version	Related document to UCD/People/Disciplinary/002v1.8
Title	UCD/People/Disciplinary/002v1.8/FAQsv1.4
Approved by SPC	October 2021
EIA completed	N/A
Counter Fraud check	N/A
This document replaces	UCD/People/Disciplinary/002v1.5/FAQv1.3
Effective Release Date	June 2022
Review Date	February 2022
Author	Daryl Hall
Filepath	G/HR/HR/Everyone/Policies
Distribution	Available on People First

## FAQ's Section Details

Section	Section Heading	Page
1	Representation and Attendance	1
2	Investigation	1
3	Witness	2
4	Suspension	3
5	Disciplinary Panel/Meeting	4
6	Management Record of Informal Discussion	4
7	Sanctions	5

8	Special Cases	6
9	Support	7