



| <b>POLICY / PROCEDURE INFORMATION</b><br>(Policy no HR00024) |  |
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| <b>Subject</b>   | <b>Disciplinary Policy and Procedure</b><br><i>(This policy is non-contractual, subject to periodic review and will be amended according to service development needs)</i> |
| <b>Applicable to</b>   | All employees of Nottinghamshire Hospice   |
| <b>Date issued</b>   | Sept 2020  |
| <b>Next review date</b>                                      | Sept 2023  |
| <b>Lead responsible for Policy</b>                           | Director of People Services  |
| <b>Policy reviewed by</b>                                    | Director of People Services  |
| <b>Notified to (when)</b>                                    | Chief Executive Officer (Dec 2018)   |
| <b>Authorised by (when)</b>                                  | Strategy and Corporate Governance Group (Dec 2018)   |
| <b>CQC Standard if applicable</b>                            |  |
| <b>Links to other Policies</b>                               | Code of Conduct  |
| <b>Summary</b>   | This policy aims to provide a clear understanding of Nottinghamshire Hospice's Disciplinary Policy and Procedure   |
| <b>This policy replaces</b>                                  |  |

| <b>VERSION CONTROL</b>                                   |               |                      |
|--|---------------|----------------------|
| <b>Status</b>  | <b>Date</b>   | <b>Reviewed date</b> |
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| Policy reviewed by Donna Roberts, HR Manager             | June 2017     |                      |
| Policy Reviewed by Donna Roberts, HR Manager             | December 2018 |                      |
| Updated control sheet and published on Policy Doc App    | January 2019  |                      |
| Reviewed by Donna Roberts                                | Sept 2020     | Sept 2023            |
| Logo updated and uploaded to website                     | March 2021    |                      |

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## **1. Introduction**

Nottinghamshire Hospice is committed to meeting the needs of patients whilst creating an environment that people want to be part of. The Disciplinary Policy supports the promotion of good conduct, by setting out what we consider to be unacceptable behaviour, and by providing a fair and transparent procedure which managers can work with staff to maintain those standards and encourage improvement where necessary.

## **2. When does this policy apply?**

The Disciplinary Policy and Procedure applies to you, as an employee of Nottinghamshire Hospice, while carrying out your duties or representing the organisation, whether this occurs at work or away from Hospice premises. It does not apply to volunteers, employees in their probationary period, agency workers or self-employed contractors.

If you are in any doubt as to your responsibilities or the standards of conduct expected you should speak to your line manager or a member of Human Resources.

This policy excludes issues that are raised in relation to the following, which are dealt with under separate policies:

- Concerns relating to your genuine sickness absence
- Concerns relating to your performance as a result of capability or ill health
- Proposed redundancies

If you have difficulty at any stage of the procedure because of a disability, you should discuss the situation with your line manager or a member of Human Resources as soon as possible.

## **3. Probationary Period**

If you are in your probationary period, this policy does not apply to you. Should your manager have any concerns regarding your conduct during your probationary period they will discuss their concerns with you during an informal meeting. The outcome of that meeting may be to terminate your contract with immediate effect or extend your probationary period for an agreed period of time. You will have no right of appeal against the decision taken. If you do not reach the required standard at the end of any extended probationary period, your contract of employment will be terminated with immediate effect and you will have no right of appeal against the decision taken.

## **4. Rules of Conduct**

While working for Nottinghamshire Hospice you should at all times maintain professional and responsible standards of conduct. In particular you should:

- (a) observe the terms and conditions of your contract.

(b) ensure that you understand and follow the Nottinghamshire Hospice Code of Conduct which is available on the Policy App and the 'N' drive or from a member of Human Resources.

(c) observe all our policies, procedures and regulations which are included on the Policy App and the 'N' drive or notified to you from time to time by means of notice boards, e-mail or otherwise;

(d) take reasonable care in respect of the health and safety of colleagues, patients, volunteers and third parties and comply with our Health and Safety Policy.

(e) comply with all reasonable instructions given by managers; and

(f) act at all times in good faith and in the best interests of our organisation, patients, staff and volunteers.

Failure to maintain satisfactory standards of conduct may result in action being taken under this Disciplinary Procedure.

## **5. Confidentiality**

Our aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

You will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against you, unless we believe that a witness's identity should remain confidential.

## **6. Misconduct**

Misconduct generally falls into one of three types: minor misconduct, major misconduct and gross misconduct. Minor misconduct will typically be dealt with informally in the first instance, but might result in formal action where there is a repeat of the behaviour. All the examples provided below are for guidance only and are not an exhaustive list.

### **6.1 Minor Misconduct** may include

- Poor time-keeping.
- Poor attendance, without good reason.
- Poor attitude or behaviour which contradicts Nottinghamshire Hospice's Code of Conduct.
- Minor breaches of Nottinghamshire Hospice rules, policies and procedures.
- Time wasting.
- Minor poor performance caused through negligence, laziness or carelessness.
- Refusal to follow instructions.

Minor misconduct can often be resolved informally between you and your line manager. These discussions should be held in private and without undue delay wherever there is a cause for concern. Where appropriate, a note of any such informal discussions may be placed on your personnel file but will be ignored for the purposes of any future disciplinary hearings. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).

## **6.2 Major Misconduct** may include

- Frequent or persistent poor time-keeping or unauthorised and/or unreasonable absenteeism despite a previous formal recorded warning.
- Objectionable or insulting behaviour.
- Excessive personal use of the internet, email or phone during work time.
- Persistent refusal to comply with a reasonable instruction.
- Persistent time wasting.
- Persistent, wilful or unacceptable behaviour which contradicts Nottinghamshire Hospice Code of Conduct.
- Failure to maintain performance or compliance standards either through deliberate act or through negligence, laziness or carelessness.
- Breaches of Nottinghamshire Hospice rules, health and safety regulations, or any other operational or regulatory requirement.
- Failure to maintain accurate records relating to patient care.
- Damage to or unauthorised use of company equipment / property.

## **6.3 Gross Misconduct** may include

Gross misconduct is a serious breach of contract and includes misconduct which is likely to have a significant impact on our business or reputation or irreparably damages the working relationship and trust between you and us. If you commit an act of gross misconduct you may be summarily dismissed without notice and without any pay in lieu of notice even where there were no previous warnings on your record.

Gross misconduct may include the following, although this list is not exhaustive:

- Theft, fraud, bribery and dishonesty, including deliberate falsification of Nottinghamshire Hospice documents and fabrication of expense claims and time sheets.
- Serious negligence in the conduct of your duties.
- Fighting, assault on another person, or other physical violence, threatened violence or behaviour which evokes violence.
- Criminal offences whether committed during the course of duties or otherwise, that directly affects your ability to carry out your job or may affect our reputation or our relationships with our patients, their families /carers, customers, staff, volunteers, members of the public or your suitability to work for us.
- Deliberate and serious damage to Nottinghamshire Hospice property or the property of staff, volunteers, patients or their families / carers.
- Serious misuse of our property or our name.
- Incapability at work as a result of alcohol or being under the influence of illegal drugs or other substances during working hours.

- Possession, use, supply or attempted supply of illegal drugs.
- Causing loss, damage or injury through serious negligence.
- Serious breaches of Nottinghamshire Hospice rules, health and safety regulations, or any other Nottinghamshire Hospice operational or regulatory requirement or serious misuse of safety equipment.
- Repeated or serious failure to obey instructions, or any other serious act of insubordination.
- Unlawful discrimination or harassment.
- Accepting or offering a bribe or other secret payment.
- Accepting a gift from a patient, supplier, contractor or other third party in connection with your employment without prior consent from your line manager.
- Harassment of, or discrimination against staff, volunteers, contractors, patients or members of the public, related to gender, marital or civil partner status, gender reassignment, race, colour, nationality, ethnic or national origin, disability, religion or belief or age.
- Giving false information as to qualifications, medical history, previous work history or entitlement to work in order to gain employment or other benefits.
- Unauthorised use or disclosure of confidential information relating to Nottinghamshire Hospice business, to any person, firm or company or failure to ensure that confidential information in your possession is kept secure.
- Failure to comply with procedures designed to secure and safeguard personal, confidential or business sensitive data from loss, or unauthorised access, a serious breach of our data protection policy or unauthorised entry to computer records.
- Serious breach of trust and confidence.
- Any conduct which is in direct opposition to, or is calculated to undermine, the interests of Nottinghamshire Hospice (including engaging in other paid employment during your contracted hours without permission).
- Making a claim of false or misleading information under our Confidentiality Policy maliciously, for personal gain, or otherwise in bad faith.
- Making untrue allegations in bad faith against a colleague.
- Victimising a colleague who has raised concerns, made a complaint or given evidence or information under our Grievance Procedure, Disciplinary Procedure or otherwise.
- Failure to comply with Retail policy and processes regarding the purchase of stock, resulting in the potential for personal gain.
- Serious misuse of our information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of email and the internet).
- Deliberately accessing internet sites containing pornographic, offensive or obscene material.
- Any act which is deemed to be seriously detrimental to the conduct of Nottinghamshire Hospice's business or its public image.
- Failure to comply with or a serious breach of qualified staff's professional code of conduct whilst working for Nottinghamshire Hospice.
- Serious breach of professional boundaries with users of the Nottinghamshire Hospice service.
- Serious neglect of duties, or a serious or deliberate breach of your contract or operating procedures.

## **7. The procedure that will be followed for disciplinary matters**

Before commencing any formal action under the Disciplinary Policy we will always consider whether or not the matter can be dealt with informally. Informal discussions and counselling can resolve problems at an early stage and may prevent the need to deal with matters under the formal disciplinary procedure.

If your manager does decide to resolve issues with you informally, where appropriate, a written note of the issues raised with you will be made and put on your personnel file. The note will set out your manager's concerns about your conduct, any explanation you have offered and any actions either you or your manager may have agreed to address the concerns. The note will be ignored for the purposes of any future disciplinary hearings.

Where informal discussions fail to achieve or sustain the necessary improvement in conduct, or where the alleged misconduct is considered more serious, the formal Disciplinary Procedure, explained below, will be used.

### **7.1 Investigation**

The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary allegations against you, before deciding whether to proceed with a disciplinary hearing. The amount and type of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve an initial discussion, interviewing and taking statements from you and any witnesses, and/or reviewing relevant documents. An Investigating Officer will normally be appointed to carry out the investigation and this will be a different person to the Chair of the disciplinary procedure if the matter proceeds to a hearing. The Investigating Officer will be an appropriate person, either a manager or trustee of Nottinghamshire Hospice, the choice of which is at the discretion of the organisation.

Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.

You do not have a right to bring a companion to an investigative interview. However, we may allow you to bring a companion if it helps you to overcome any disability, or any difficulty in understanding English. A companion can be a fellow worker at Nottinghamshire Hospice (but not volunteer) or an official employed by a trade union. The role of a companion is that of an observer only.

You must co-operate fully and promptly in any investigation. This will include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required.

Before commencing any formal disciplinary action we will always consider whether informal action may be appropriate, so that good relationships can be maintained.

Where an incident has taken place involving more than one member of staff a Serious Incident Review Meeting may take place immediately by a relevant manager to enable an understanding of the incident with everyone involved in the room at the same time. A Serious Incident Review Meeting will require all relevant team members involved to provide an insight into the circumstances which resulted in the incident and to carry out any immediate actions required. Once this information is gathered the relevant manager may take the decision to carry out further investigations.

The Investigating Officer can commence investigation interviews immediately and no specific notice is required. The Investigating Officer will be accompanied by a Human Resources representative or another manager (this being an exception and where possible a Human Resources representative), who will take minutes.

If you attend an interview copies of the minutes of the interview will be sent to you to read and confirm that the content of the notes are an accurate reflection of the discussion, they are not however a verbatim record. You will have 48 hours in which to read and if necessary amend the notes. If the Human Resources Department do not receive a copy of the signed or amended notes within 48 hours the assumption will be made that you are in agreement with the content of the notes.

## **7.2 Suspension**

In some circumstances we may need to suspend you from work whilst any investigation takes place. We will suspend you where we believe that your continued presence at work during the investigatory stage could:

- Present a risk to you or others
- Hinder the investigation process
- Present an unacceptable risk to our organisation

The suspension will be for no longer than is necessary to investigate the allegations. Suspension of this kind is not a disciplinary sanction in itself and does not imply that any decision has already been taken about the allegations.

If you are suspended you may not attend work or seek to contact any of our patients (or the patient's family/friends/carers), suppliers, contractors, staff or volunteers. Suspension, and any conditions relating to it, will be confirmed to you in writing. If you need access to our premises to obtain information or evidence which you may wish to use in responding to allegations you must agree appropriate arrangements in advance with the Investigating Officer. You must remain available in normal working hours to participate in the investigation process. You will continue to receive your normal pay and benefits during the period of suspension. You are required to comply with all policies and procedures, for example, follow the sickness absence policy if you become unwell during the suspension.

Where appropriate, you may be redeployed at our discretion to another part of the organisation on a temporary basis as an alternative to suspension.

## **7.3 Criminal allegations**

Where your conduct is the subject of criminal investigation, charge or conviction we will investigate the facts before deciding whether to take formal disciplinary action.

We will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where you are unable or have been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, we may have to take a decision based on the available evidence.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if we consider that it is relevant to your employment.

## **7.4 Investigation Outcome**

The outcome of an investigation may be that the Investigating Officer decides that either:

- There is no case to answer, or any concerns can be addressed informally; or
- There are potential grounds for disciplinary action, in which case, you will be required to attend a disciplinary hearing

If you have been suspended or redeployed to another area of the organisation this arrangement may continue to stand during the period of the disciplinary hearing and outcome, but this will be reviewed to ensure suspension remains appropriate.

## **7.5 Notification of a Disciplinary Hearing**

Following any investigation, if we consider there are grounds for disciplinary action, you will be required to attend a disciplinary hearing. We will inform you in writing of the allegations against you, the basis for those allegations, and will advise you of the potential action that may be taken if allegations are founded. You will be provided with copies of any evidence that is being considered as part of the disciplinary hearing except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.

We will give you written notice of the date, time and place of the disciplinary hearing. The hearing will be held as soon as reasonably practicable, but you will be given at least 48 hours' notice, in writing, to prepare your case based on the information we have given you.

## **7.6 The right to be accompanied at a disciplinary hearing**

You may bring a companion to any disciplinary hearing or appeal hearing under this procedure. The companion may be either a fellow worker at Nottinghamshire Hospice (but not volunteer) or an official employed by a trade union. You must tell Human Resources who your chosen companion is, in good time before the hearing.

A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

If your companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards, we may ask you to choose someone else.

## **7.7 Procedure at Disciplinary Hearings**

If you or your companion cannot attend the hearing you should inform us immediately and we will arrange an alternative time. You must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If you fail to attend without good reason, or are persistently unable to do so (for example for health reasons), we may have to take a decision based on the evidence available to the Hearing Chair at the time. If you are unable to attend a hearing as a result of sickness absence or ill health we will consider whether it is appropriate and reasonable to postpone the hearing until you are fit to attend, or whether to hold the hearing in your absence. In this situation you will be given the opportunity to send a written submission and nominate a representative that can attend on your behalf. Your representative can be a fellow worker at Nottinghamshire Hospice (but not volunteer) or an official employed by a trade union.

The hearing will be held by an appropriate person, either a manager or trustee of Nottinghamshire Hospice, the choice of which is at the discretion of the organisation. The person hearing the case will be accompanied by a Human Resources representative or another manager (this being an exception and where possible a Human Resources representative), who will take minutes.

At the disciplinary hearing we will go through the allegations against you and the evidence that has been gathered. You will be able to respond and present any evidence of your own. Your companion may make representations to us and ask questions, but should not answer questions on your behalf. You may confer privately with your companion at any time during the hearing.

You may ask relevant witnesses to appear at the hearing, provided you give us sufficient advance notice to arrange their attendance. You will be given the opportunity to respond to any information given by a witness. However, you will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, we decide that a fair hearing could not be held otherwise.

We may adjourn the disciplinary hearing if we need to carry out any further investigations such as re-interviewing witnesses in the light of any new points you have raised at the hearing, before an outcome is reached. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened. If no new evidence is found a decision may be taken without reconvening the hearing, however before reaching a conclusion you and / or your companion will be given the opportunity to summarise your case to the Hearing Chair.

Once the hearing has concluded (following adjournment if necessary) you will be informed of the outcome. This may be on the same day as the hearing, however this may not be possible where there is a need for further investigation or where there is simply too much information to review before reaching a decision. We will write to you, without unreasonable delay, to confirm the outcome usually within one week of the disciplinary hearing. If you have been informed of the outcome verbally, the written confirmation will be sent to you normally within 3 working days.

The written notification of the outcome will detail:

- The decision, including if no action is to be taken, if the matter is to be resolved informally or if a sanction is to be applied.
- The reason for the decision.
- Any actions to be taken or recommended, including any sanction to be applied and the expiry of the sanction.
- The name of the individual you should address your appeal to, should you wish to appeal the outcome.

## **8. Possible action under this policy**

Where no sanction is given as outlined below, but where there is cause for concern regarding your involvement within the allegation you may be issued with a Letter of Concern. This will outline the allegation, the reason for concern and any learning, reflection, or training you may be asked to carry out. The Letter of Concern, along with any relevant information gathered in the investigation or disciplinary hearing, will remain on your file during the

remainder of your employment with Nottinghamshire Hospice and may be referred to if appropriate.

Where a disciplinary allegation is upheld following a disciplinary hearing and a formal sanction is considered appropriate, the sanctions which can be issued are set out below.

Any disciplinary sanction imposed will be based on the judgement of the Hearing Chair, after considering all the available evidence and any representations made at the hearing. The severity of the incident, any mitigating circumstances and whether you have any other live disciplinary warnings on file will be taken into account. No disciplinary sanction will be imposed without a disciplinary hearing. Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain live, and the likely consequences of further misconduct in that live period. After the live period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

### **8.1 Stage 1 – First Written Warning**

A first written warning may be issued for repeated minor misconduct, or for the first instance of misconduct of a more serious nature, where there are no other live warnings on your disciplinary record.

### **8.2 Stage 2 – Final Written Warning**

A final written warning may be issued for an act of misconduct where you are already in receipt of a live written warning, or for the first instance of misconduct if we consider it sufficiently serious even where there are no other live warnings on your disciplinary record.

### **8.3 Timescales**

A first written warning will normally remain live for six months and a final written warning will normally remain live for 12 months. In exceptional cases of very serious misconduct verging on gross misconduct, or a persistent pattern of major misconduct, a final written warning may remain live indefinitely. At the end of the live period the warning will be disregarded in deciding the outcome of future disciplinary proceedings, unless there are exceptional circumstances where reference to your past conduct is considered relevant to the new disciplinary situation. Your conduct may be reviewed at the end of a warning's live period and if it has not improved sufficiently we may decide to extend the live period.

### **8.4 Stage 3 – Dismissal**

You may be dismissed for:

- Misconduct where there is a live final written warning on your record
- Any misconduct during your probationary period
- Any act of gross misconduct regardless of whether there are live warnings on your record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal).

Where any disciplinary hearing could result in your dismissal, the hearing will be held by an appropriate person, either a manager or trustee of Nottinghamshire Hospice deemed by us as competent to conduct hearings at that level, and who is not your immediate manager. If the decision is to dismiss you, this will be confirmed in writing normally within one week of

the disciplinary hearing. Where you have been informed verbally of the outcome it will normally be confirmed in writing within 3 working days.

## **8.5 Other disciplinary sanctions**

In some cases, at our discretion we may consider alternatives to dismissal.

- Transfer to another department or role.
- Demotion – It may involve a reduction in status, pay and benefits, relevant to the new role.
- A period of suspension without pay.
- Loss of seniority.
- Reduction in pay.
- Loss of a future pay increment
- Loss of overtime.

## **9. Appeal procedure**

There is no right of appeal where concerns have been dealt with informally; however you do have a right to appeal against any formal disciplinary sanction.

Any appeal should be submitted in writing within five working days of you receiving written notification of the outcome of a formal disciplinary hearing. You should clearly state your grounds for appeal, which may be due to, but not limited to, the following:

- Procedural flaws
- Your belief that the decision reached was inappropriate in the circumstances
- Any new information that is now available but was not at the time of the original hearing

If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful you will be reinstated with no loss of continuity or pay.

You should submit any documentation that you wish the person hearing your appeal to take into consideration with your appeal.

Where possible, the appeal hearing will be conducted impartially by a manager or trustee who has not been previously involved in the case. A member of Human Resources will also be present as note taker.

You may bring a companion with you to the appeal hearing (see paragraph 6.6).

You will be invited to, in writing, to an appeal hearing and this will confirm your right to be accompanied. An appeal hearing will normally be arranged within 10 working days of receipt of your written appeal. Appeals will normally be heard by a manager who is more senior than the manager who has conducted the original hearing, and who has not previously been involved in the case. As an alternative, we may instead appoint a Trustee of Nottinghamshire Hospice to hear the appeal. The choice of person will be at the discretion of the organisation. All other arrangements for appeal hearings are as contained in section 6.7 above.

We may adjourn the appeal hearing if we need to carry out any further investigations in the light of any new points you have raised at the hearing. Where this is the case, you will be given a reasonable opportunity to consider any new information obtained before the appeal hearing is reconvened.

The outcome of your appeal may be to:

- Confirm the original decision
- Overturn the original decision in full
- Overturn the original decision and apply a different penalty

We will inform you in writing of our final decision as soon as possible, usually within one week of the appeal hearing. There will be no further right of appeal.

## **10. Notification to External Parties**

In some cases we may be obliged to report an allegation, investigation findings or other appropriate documentation to the police, or other appropriate authority, such as The Adults and Safeguarding Committee, Royal College Nursing, Disclosure Barring Service, Care Quality Commission.