

Disciplinary

1 What this policy covers

This policy provides a framework for maintaining satisfactory standards of conduct. GHC wants to ensure that when something unexpected occurs, a consistent and robust process is followed, to determine what should happen next. GHC is committed to ensuring the practice of reflection and improvement is embedded across the Trust.

This policy seeks to ensure that any disciplinary matter is dealt with fairly and the first steps taken are to establish the facts. The principles and processes in this policy may also be used in circumstances that fall within the definition of some other substantial reason of a kind so as to justify dismissal (SOSR) or where an employee cannot continue to work in their position without contravening a duty or restriction imposed by or under an enactment ('statutory illegality'). In these cases GHC may adjust the process as necessary and appropriate to the specific circumstances.

2 Principles

All staff should work in accordance with GHC's values and follow the expected standards of behaviour and performance, including those in codes of conduct set by professional bodies. Where conduct falls short of these it may be considered misconduct or gross misconduct.

The policy applies to all GHC staff, including those in a probation period, except medical and dental staff (where GHC's Maintaining High Professional Standards Policy should be used) and workers engaged solely through GHC's Temporary Staffing Team.

2.1 Just and learning culture

A just and learning culture puts equal importance on learning and accountability for both staff and GHC. In the case of an incident or adverse event it asks *what* was responsible, not *who*. It provides a supportive approach to foster a culture of openness and learning from experience, to increase the reporting of incidents and to improve and change behaviour and practice within GHC.

In line with a just and learning culture, when an issue or concern comes to light the initial facts will be gathered to gain an understanding of a situation that has occurred before a decision is made about how to proceed. This will include considering:

- details of the issue from your perspective
- any consequences of the incident/issue/practice
- the behaviours/actions of you and others during the situation.

2.2 Formal action

At every stage in the disciplinary process you will be advised of the nature of the allegations and given the opportunity to state your case before any decision is made. How you state your case may take different formats at different stages.

No formal disciplinary sanction will be issued until an accelerated process meeting or hearing has taken place. If a sanction is issued you will be informed, and following a disciplinary hearing, have the right to appeal.

Investigation interviews and hearings will be digitally record by a HR representative. Any recordings will be held securely.

3 Responsibilities

- Managers will ensure that their staff know the standards of work and conduct required of them and support any employee subject to a disciplinary investigation/process, including keeping a record of all contact with the employee during that time.

- Commissioning managers will commission disciplinary investigations and meet employees to advise them of the allegations.
- Investigating officers will investigate and establish the facts in relation to the allegations, as quickly as possible, and present their findings to the commissioning manager in a report.
- Commissioning managers will decide if a disciplinary hearing is required and oversee the arrangements for the hearing.
- Employees should always behave and carry out their duties appropriately, in line with expected standards, processes and any professional codes of conduct.
- Employees should raise concerns and report incidents in an honest and transparent manner, and provide a written statement and/or participate in meetings and investigation interviews if required.

4 Minor issues

Minor conduct issues can often be addressed and resolved quickly and informally. Your manager will have a discussion with you outlining:

- the standards expected of you
- the desired required improvement in your conduct
- the possible outcomes if the concerns continue.

Afterwards your manager will write to you to summarise the main points you discussed and a copy will be placed on your personal file for future reference. If your conduct does not improve, your manager will seek HR advice about addressing the matter formally.

5 Fact-find for serious concerns or persistent issues

5.1 Carrying out a fact-find
Following an incident, adverse event or receipt of a concern that involves an employee or employees, all relevant facts should be collected within 24 hours (or as soon after as possible) so that a decision can be made about any next steps. This should include:

- considering if it was a system or process that led to the event rather than an employee's conduct
- written statements from the employees concerned
- written statements from witnesses
- any appropriate documentary evidence or information available.

The fact-find should be completed as quickly as possible, ideally within 24 hours. It should not normally take any longer than three days.

5.2 Reviewing a fact-find
An appropriate senior manager will review the fact-find information and use the decision-making checklist supplied by HR to consider the immediate appropriate next steps. This could be:

- no further action
- using the accelerated disciplinary process
- commissioning a full disciplinary investigation
- addressing matter using an alternative process or policy.

Once the fact-find has been completed and a decision about any further action made, you will be updated accordingly.

5.3 Absence during fact-finding
In rare cases you may be asked not to attend work while the fact-finding exercise is carried out, because of the seriousness of the concerns. This will only happen if genuine risks are identified and all alternative options have been ruled out.

Where this is considered, approval will be sought from another senior manager and HR. It does not constitute disciplinary action or any assumption of guilt, but is to ensure the welfare of everyone involved and to support a fair and timely fact-finding process.

6 Disciplinary accelerated process

The accelerated process enables a faster resolution of a disciplinary matter. It can only be offered to you if:

- you have accepted all the allegations against you
- you are not already subject to a final written warning
- the allegations are not considered to involve a significant potential risk to service users or staff
- the allegations are not considered to constitute gross misconduct
- the Service Director (or equivalent) and Deputy HR Director have confirmed using the process is appropriate.

You may be asked about using the accelerated process following the fact-find, during an investigation or once the investigation has been completed, depending on the circumstances. It cannot be offered if an investigation has been completed and the commissioning manager believes there is sufficient evidence to present the case to a disciplinary hearing on the grounds of gross misconduct and/or in cases where dismissal is a potential outcome.

If you are offered the option of an accelerated process meeting, the nature of the allegations, likely outcome and what to expect at the meeting will be explained to you before you have to decide.

At an accelerated process meeting any disciplinary sanction will be determined by the commissioning manager and offered to you for you to accept or reject. You do not have a right of appeal if you accept the sanction.

6.1 Accelerated process meeting
Accelerated process meetings are usually arranged with very little notice, to conclude the matter as quickly as possible. This may mean there is not enough time to formally invite you to the meeting in writing.

The meeting will be carried out by an appropriate-level manager, supported by HR. They are less formal and shorter than a disciplinary hearing. At the meeting:

- the manager will feedback the outcome of the fact -find/investigation and any recommendations
- you will have the opportunity to respond to the allegations and raise any mitigating circumstances
- if no further issues are identified and the manager remains satisfied it is appropriate to continue with the accelerated process, they will decide the outcome, which could include issuing a disciplinary warning up to and including a final written warning
- you will be asked if you accept the outcome and sanction. If you do, the process will be concluded and the outcome confirmed in writing within seven calendar days. If you reject the outcome, the manager will explain that the case will proceed to the next stage of the formal disciplinary process.

7 Disciplinary investigation process

When a disciplinary investigation is required, the commissioning manager will nominate an investigating officer to carry it out. The investigating officer will be from outside your immediate work team, will not have had any involvement in the issue and will be supported with the process by a HR manager.

You will be advised of the precise allegations against you and that an investigation is taking place. This will also be confirmed in writing. Sometimes the allegations may change as an investigation develops; if this happens, you will be kept informed. At the start of the investigation process the commissioning manager will agree with you how they will keep in touch and provide you with updates during the process.

The investigating officer will seek to establish the facts of the matter and complete their investigation as quickly as is reasonably practicable in the circumstances. How long this takes will depend upon the nature and complexity of the allegations being investigated. The investigation will normally include investigatory interviews with you and other relevant witnesses.

Once the investigating officer has completed the investigation report the commissioning manager will decide what happens next. This could be:

- no further action
- offering you the option of using the accelerated disciplinary process
- proceeding to disciplinary hearing
- addressing the matter using an alternative process or policy.

The commissioning manager will tell you their decision about what happens next and then confirm it in writing.

7.1 Amended duties and suspension
Sometimes during the investigation process it is necessary to assign an employee with amended duties, temporarily redeploy them to an alternative work base or role, or suspend them. This could be because the employee, other staff or service users may be at risk, relationships may have broken down, there is considered to be risks to GHC property, or to enable a fair investigation to be completed. All other options will be considered before suspending an employee.

If you are given amended duties, temporarily redeployed or suspended, it is important that you understand it does not imply guilt, it is a neutral act and is not disciplinary action. You will normally be told in person and this will then be confirmed in writing. The suspension or alternative working arrangements will be reviewed by the commissioning manager during the investigation if new facts come to light, to ensure they do not continue if they are no longer necessary.

You will be paid an average of your pay while suspended. However, if you are on remand in prison or your bail conditions prevent you from undertaking your duties and/or attending GHC premises, you will be suspended without pay. While you are suspended or carrying out amended duties, you may not be allowed to enter some GHC sites without first getting permission.

8 Disciplinary hearing

If an investigation concludes there is evidence to support the allegations against you there will usually be a disciplinary hearing at which you will have the opportunity to:

- state your case
- respond to the allegations
- present any mitigation
- ask questions about the management case.

No disciplinary outcome decision or action will be reached or taken until the hearing has taken place (unless the accelerated process is used instead).

A disciplinary panel of three people will hear the case and consider the allegations, one of whom will be the HR support to the panel. The Chair will head the panel and lead the hearing on the day.

A letter confirming the arrangements of the hearing and the allegations being considered will be sent to you no less than seven calendar days before the hearing. You will also be sent a copy of the investigation report seven calendar days before the hearing, usually by recorded delivery. If you or your trade union representative/ supporting colleague cannot attend on the date, one alternative date will be suggested. If one of the panel is unable to attend the hearing on the revised date, an alternative panel member may be identified.

You can submit a written statement of your case for the panel to consider, although there is no obligation for you to do this. If you choose to provide a written statement, you must send it to the panel at least three days before the date of the hearing. It is suggested a statement of case should:

- include a specific response to each allegation
- be clear and concise
- refer to any supporting documents or statements in the appendices
- have numbered pages so it is easy for the panel to follow.

If you wish to call any witnesses in the hearing in support of your case, you must tell the panel at least three days before the hearing, providing their names and the reason you wish for them to attend. Witnesses may only attend where the panel believe their attendance will add value to the proceedings, otherwise witness statements and/or investigation interview transcripts will be used. If it is agreed that a particular side can call a witness, all parties will be informed before the meeting. It is your responsibility to arrange for the attendance of any witness, if it is agreed that they can attend as part of your case.

If you or you trade union representative/supporting colleague need an adjustment or special arrangement, it is your responsibility to advise the panel of this at least five days before the date of the hearing.

You must make every effort to attend the hearing. If you fail to attend a disciplinary hearing without good reason or you fail to attend a rearranged hearing the Chair may proceed with the hearing in your absence and reach a decision on the evidence available.

9 Possible outcomes and disciplinary sanctions

Where possible you will be given the outcome of an accelerated process meeting or hearing verbally and it will be confirmed in writing within seven calendar days of the meeting/hearing. If an outcome cannot be given on the day you will be provided with a written outcome within seven calendar days.

While every case will be treated on its own merits, to ensure a fair and consistent approach, the panel will consider sanctions imposed in similar cases, although these will not be treated as a precedent.

The outcome and any associated sanctions may be:

- no case to answer
- a case to answer but no formal action – there may be other actions such as, complete additional training, have enhanced support or supervision for a period or that the matter is dealt with under another policy
- first written warning – if the breach has been minor, the informal process has failed or if the conduct does not meet acceptable standards. The outcome letter will include details of the misconduct, the improvement or change required and the timescale for these. The warning will be active for 12 months
- final written warning – if further misconduct has occurred, following a previous process the conduct is still unsatisfactory, or if the misconduct is sufficiently serious that a first and final written warning is appropriate (especially if dismissal may have been a possibility). The outcome letter will give details of the misconduct, the improvement or change required and the timescale for these. The warning will be active for 24 months
- dismissal – if further misconduct has occurred, following a previous process, the conduct is still unsatisfactory or failing to reach prescribed standards, or if the misconduct is sufficiently serious to warrant it. The outcome letter will give the reasons for dismissal, the date on which employment will terminate, and if contractual notice is being given or not (ie summary dismissal for gross misconduct)
- actions short of dismissal – if dismissal was a clear possibility but there were significant mitigating circumstances. These may include demotion without pay protection, transfer to another role without pay protection, a change of work base without excess mileage protection, removal of responsibilities and/or privileges associated with the role/position. These sanctions can be issued alongside a written warning.

If you are issued with a first or final written warning, your incremental pay progression will be withheld for the period of time the warning is active.

The purpose of issuing a warning is to give you the opportunity to improve your behaviour in work. If you are absent from work due to sickness or special leave for a period of 28 calendar days or more while the warning is live, the period the warning in place will be suspended until you return to work.

Your manager will write to you to confirm when the warning expires. The original outcome letter from the accelerated process meeting or hearing will remain on your personal file purely as a record of the process. If there is any other paperwork relating to the management case or investigation it will be removed.

10 Right of appeal

You have the right to appeal any disciplinary sanction issued at a disciplinary hearing. The hearing outcome letter will explain how to appeal. You must appeal within seven calendar days of being informed of the outcome. The appeal will be arranged and carried out in line with GHC's appeals process.

You can appeal if you believe:

- there was a defect in the procedure which may have a material effect on the decision
- not all evidence was considered or proper account was not taken of evidence referred to at the hearing
- the sanction or decision was too severe
- new relevant evidence has come to light since the last hearing likely to impact on the outcome which was not available at the time.

An appeal meeting will review the decision taken at the hearing, it will not re-hear the case. The outcome of the disciplinary hearing will stand until the appeal takes place.

An appeal may result in the original sanction being upheld or a lesser sanction issued, it cannot result in an increase to the original sanction issued. If you are reinstated on appeal, you will be paid as if you had remained employed by GHC and continuity of service will be restored.

11 Right to be supported

You have a right to be accompanied by a trade union representative or work colleague who is an employee GHC at any of the formal stages of this process. A trade union representative who is not an employed official must have been certified by their union as being trained to accompany you. Trade union representatives/ colleagues don't have to accept a request to accompany you and they should not be pressurised to do so.

If you are going to be supported at a meeting or hearing you must say in advance who will be accompanying you. Where your supporting colleague/trade union representative cannot attend on the proposed date of the meeting or hearing, one alternative date will be suggested. Reasonable efforts will be made to accommodate availability, but reasonable timescales must be adhered to.

Your trade union representative/supporting colleague can address the meeting to put and sum up your case, respond on your behalf to any views expressed at the meeting and confer with you during meetings. However, they cannot answer questions for you.

12 When a grievance is raised

If you raise a formal grievance during a disciplinary process the appropriate action will be determined based on the details of your case and your grievance. The two processes may be carried out at the same time, unless your grievance is significantly related to the disciplinary case and it is decided pausing the disciplinary proceedings is appropriate.

13 Resignation during a formal process

If you resign before the investigation or formal process is completed, the process will usually not continue after your last day of employment with GHC, irrespective of the stage reached. Any future employment reference provided for you will state that you left before the process was concluded and there was an unresolved case of alleged misconduct. Occasionally a case may be serious enough to be referred to a professional body or the DBS at this point. You will be informed if this is the case and if it is necessary to continue with the investigation beyond your last date of employment.

14 Referrals to other agencies

Depending on the nature of the issue or allegations, GHC may have a duty to make a referral to another agency or organisation (eg the adult protection team, children's services, local counter fraud specialist, LADO or the police). This may happen when the issue first comes to light, when an investigation is commissioned or following the outcome of an accelerated process meeting or disciplinary hearing. You will normally be advised if a referral is made, unless the other agency has specifically advised GHC cannot tell you.

Advice and guidance will be sought from the appropriate GHC leads before any decision is made. This may be the Safeguarding Lead, the Deputy Director of Nursing, the appropriate head of profession, a Local Security Management Specialist or the Local Counter Fraud team.

In such circumstances the issue may be addressed by both the organisation and GHC. Sometimes both processes can be carried out at the same time if it is agreed with the police/external organisation. However, if the matter is subject to a police or counter fraud investigation, it may delay the internal GHC investigation. Where the matter is addressed by GHC and another organisation, all staff will be expected to cooperate fully with both processes.

Where the police are involved, guidance needs to be sought from them as to if/when internal investigation interviews can be carried out. This does not stop staff from being asked to record what they know of the event in the form of a written document, especially as part of the fact-finding process.

15 Criminal offences and conduct outside of work

You must inform your manager immediately if you are arrested, reprimanded or cautioned by the police, made a subject of criminal proceedings or convicted of a criminal offence during your employment with GHC. Any information you disclose will be treated in confidence and considered only in relation to your role and your suitability to remain employed by GHC. If you fail to disclose such information, it may result in disciplinary action being taken. Managers should always discuss any disclosures with HR. Behaviour outside work may also be dealt with under the

disciplinary procedure if it affects your continued suitability for employment and/or brings GHC into disrepute.

16 Allegations against a trade union representative

If you are a trade union representative and subject to potential a disciplinary process, other than placing you on alternative duties or suspension if appropriate, no action should be taken until the matter has been discussed with the Director of HR and OD or the Deputy HR Director and your full-time officer.

17 Standards of conduct

Misconduct is regarded as behaviour considered to be inappropriate or improper. Gross misconduct is regarded as so serious that an employee who is found guilty of having committed such an offence may be dismissed summarily (ie without notice or payment in lieu of notice) despite the absence of any previous warnings.

The following are examples of behaviour that may be considered misconduct and gross misconduct. Failing to comply with these standards may result in disciplinary action being taken. It is not possible to specify all the policies, processes, regulations or behaviours that apply, meaning the lists below are a general guide and not exhaustive.

17.1 Misconduct

- Minor breaches of GHC rules, regulations, policies or procedures.
- Failing to meet the required standards of behaviour, conduct, performance or attendance set locally, in professional codes of conduct or in GHC policies and procedures.
- Not complying with a reasonable request by an authorised person / insubordination.
- Poor timekeeping.
- Failing to follow correct absence reporting procedures.
- Using offensive, foul or abusive language.
- Not complying with GHC values.
- Failing to maintain registration with the appropriate professional body.
- Not complying with GHC's Smoke Free policy, including only using electronic nicotine delivery systems or vaporisers outside and on agreed recorded breaks.

17.2 Gross misconduct

- Physical, psychological or verbal ill treatment or abuse of a service user, member of the public, visitor or colleague.
- Acts of violence or threatening behaviour towards a service user, member of the public, visitor or colleague.
- Harassment, serious bullying or serious acts of discrimination towards a service user, member of the public, visitor or colleague.
- Sexual misconduct, including sexual interactions of any kind, with a service user known through the course of duty or another member of staff on duty.
- Professional negligence, misconduct or misrepresentation, including actions or behaviours not in line with any rules of conduct as set out by a professional body.
- Attending work while unfit for duty for reasons other than medical reasons, including being intoxicated while on duty or misusing substances which impair your ability to work.
- Intentionally viewing or downloading pornographic or other derogatory, defamatory, obscene or inappropriate material from internet or email systems.
- Inappropriate use of GHC data or computing equipment, including social media.
- Serious insubordination/deliberate and/or continued failure to follow reasonable instructions.
- Acts considered to bring GHC into serious disrepute, including breaches of civil or criminal law.
- Disclosing or obtaining data or personal sensitive data on employees, service users or other GHC information, unless it is considered to be essential for the execution of an employee's role or provision of service.
- Failure to disclose criminal convictions.
- Fraud, bribery, corruption, theft, unauthorised removal, dishonest handling or obtaining by deception money or property belonging to GHC or involving money or property belonging to other colleagues, service users or visitors on GHC premises.
- Malicious damage to GHC property or equipment or the property of a colleague, service user, contractor or member of the public.
- Being absent without leave (AWOL).