

1 What this policy covers

This policy provides a framework for maintaining satisfactory standards of conduct. We want to ensure that when something unexpected occurs, a robust process is followed to determine what should happen next. We are committed to ensuring that the practice of reflection and improvement is embedded at UH Sussex.

This policy seeks to ensure that any disciplinary matter is dealt with fairly and that *the first steps taken are to establish the facts*.

This policy applies to all UH Sussex staff except Medical and Dental staff, where the UH Sussex Maintaining High Professional Standards (MHPS) Policy should be used.

2 Principles

This policy embeds a “Just Culture”¹ approach to managing concerns, which can be seen as an environment where equal emphasis is put on accountability and learning, and one that when an adverse event happens it instinctively asks “what went wrong?” rather than “who is to blame?”

We should all work in accordance with UH Sussex’s Trust values and follow the expected standards of behaviour outlined in the Behavioural Standards guidance and through codes of conduct set by professional bodies.

Where conduct falls short of these expected standards, a line manager is responsible for addressing this in the first instance. In most cases where the issue of concern is minor this can be dealt with through a conversation which is followed up in writing.

However, when the alleged behaviour is more serious, this policy outlines the process which is to be followed. A list of examples of more serious conduct issues can be found in Appendix 1.

3 Responsibilities

The Chief People Officer will oversee implementation of the policy and monitor compliance and effectiveness.

Managers are responsible for dealing with concerns as they happen in a fair, balanced and compassionate manner. This includes:

- Dealing with concerns informally in the first instance, where appropriate.
- Carrying out fact finding when an incident occurs as detailed below.
- Providing training where it is identified that a lack of knowledge is the reason for the incident
- Carrying out formal investigations where necessary (see Investigation Policy)
- Ensuring appropriate support is in place for the staff member
- Decision making, outcome letters and feeding back to the staff member

¹ <https://www.england.nhs.uk/patient-safety/a-just-culture-guide/>

- Presenting the facts to more senior managers as required at hearings or other formal meetings

HR support the disciplinary process and will:

- Assign specified HR professionals to support managers in the implementation of this policy
- Attend formal hearings and provide advice to managers
- Provide administrative support for writing up notes of hearings and formal meetings
- Keep an overview and monitor investigations across the Trust

4 Policy in practice

When an incident or concern is raised

If there is reasonable belief that an incident or event has taken place or that something has happened that raises concerns about conduct or behaviour, your manager (or appropriate other manager depending on the nature of the issues raised) will carry out an initial fact-finding exercise to better understand what led to the event.

They will use a pre-investigation checklist to assist this process and will be advised by HR when completing the fact-finding exercise.

Fact-finding

The key objectives of the fact-finding will be to:

- establish dates and times
- identify who was involved and who witnessed events (and their lead-up)
- take statements that may assist in establishing the facts
- establish why the incident has occurred and whether further training is required.
- establish whether systemic issues have contributed to the incident
- review documentation and evidence as appropriate.

Suspension during fact-finding

Because of the seriousness of some concerns, very rarely, we may ask you not to attend work while the fact-finding exercise is carried out. This decision will only be taken if genuine risks are identified and all alternative options have been ruled out.

For more information please refer to the UH Sussex Suspension Policy.

Outcomes from the fact-finding process

The manager will present the key facts to a more senior manager who will work with HR to decide what should happen next.

The options will include:

- organisational and/or team learning

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- individual or team support to change behaviours or practice.

If individual conduct or behavioural issues are identified, the following measures will be considered:

- an informal discussion with your manager, an action plan or other support
- an action plan and/or other support including training and development, written advice and guidance
- further investigation under the UH Sussex Investigation Policy
- formal disciplinary action
- use of another policy
- rarely, suspension from work (please see separate Suspension Policy)

In these instances, your manager will meet you, go through the fact-finding outcome and explain how your conduct or behaviour has fallen short of expectations.

Your views and responses will be heard and the focus will be on supporting you to help improve or adjust your behaviour to an acceptable standard, which may include an action plan. Advice and guidance from your manager will be confirmed in writing and will be kept on your personal file.

Where informal discussion or management advice and guidance have failed to address the conduct or behaviour concerns within a reasonable timeframe, or more serious issues are identified from the fact-finding, the formal disciplinary process may be followed.

If the facts are still unclear or where there are differing accounts following the fact finding then a formal investigation under the UH Sussex Investigation Policy may be required. Please refer to this policy for further information.

If you have been suspended during the fact finding then it may be necessary to extend this suspension during the formal investigation.

Agreed sanction

Where the more senior manager has decided on formal disciplinary action and you have taken full responsibility for your actions and accept the outcome reached, it may be possible to agree a sanction without the need to move to a disciplinary hearing. This is only possible in cases where the level of sanction to be offered is First Written Warning.

If you do not accept the outcome reached or level of sanction offered, the formal disciplinary process will be followed.

Formal disciplinary process

Where fact-finding or formal investigation establishes more serious behaviour or conduct issues that should be considered using the formal disciplinary process this will be confirmed to you in writing, giving at least 7 calendar days' notice of the hearing. This will include:

- date, time and venue of the hearing
- sufficient information about any alleged misconduct and its possible consequences
- copies of written evidence to be considered at the hearing, so you can prepare your response
- the names of any witnesses who are to be called

- the right to be represented by a Trade Union representative or accompanied by a Trust Network or other work colleague. A Trade Union representative has received the recognised training and is accountable for the representation that they provide. A Trust Network or other work colleague can accompany you and provide you with pastoral support.
- If you have any papers you want to submit for the hearing, please send these to your manager at least 3 calendar days in advance of the hearing, so that they can be distributed.

“You will also be assigned or we can mutually agree, a wellbeing contact when undergoing a formal disciplinary process.”

Safeguarding your health and wellbeing

We understand that going through disciplinary procedures can be very upsetting and we want to ensure that you are properly supported throughout. We will agree a communication plan and ensure that you are given access to wellbeing services.

You will also be assigned or we can mutually agree a wellbeing contact when undergoing a formal disciplinary process. This person will be responsible for maintaining regular contact with you throughout the process and will not be directly involved in the case.

Disciplinary hearing

The hearing will be held without unreasonable delay and you should make every effort to attend. A senior manager will chair the hearing and they will be advised by an HR representative. They will explain the concerns, go through the evidence with you and give you the opportunity to respond and put your case across.

You will be given reasonable opportunity to ask questions, present your own evidence and (where appropriate) call relevant witnesses. The fact-finding or Investigation report will provide the basis of the management case, and the manager who has carried out the fact finding or investigation will also attend to present their findings.

A note-taker will attend the hearing to take minutes of the hearing which will be sent to you afterwards.

If you need any reasonable adjustments for the hearing, please inform your manager or HR.

Witnesses

If it is considered necessary to ask a witness to attend a hearing, the name and reasons for attending will be given in advance, and all parties will be informed before the hearing.

Being accompanied

You can be represented by a Trade Union representative or accompanied by a work colleague or Trust Network colleague to formal hearings. A Trade Union representative has received the recognised training and is accountable for the representation that they provide. A Trust Network or other work colleague can accompany you and provide you with pastoral support. If they are not available on the proposed date or time of the hearing, we'll talk to you about another date and time, as long as this is reasonable and as soon as possible.

Decision and outcome

As far as possible, the outcome of the disciplinary hearing will be given verbally and confirmed in writing, including the right of appeal, within 7 calendar days.

If the hearing is adjourned to consider further evidence before reaching a decision, you will be asked whether you want to receive the outcome in writing. Alternatively, a further outcome meeting can be arranged.

If you did not attend the hearing, the outcome will be confirmed in writing. Where appropriate, we may notify your professional body of the outcome.

Disciplinary sanctions

In determining the outcome, consideration will be given to the evidence presented and documentation reviewed.

The panel will adjourn to decide whether there are reasonable grounds to believe that misconduct or gross misconduct has taken place and whether disciplinary action is warranted. This decision will be based on the balance of probability from the evidence available.

Consideration will be given to:

- the seriousness of the conduct and any explanation given or any mitigation
- any previous conduct record
- actions taken in a similar case
- whether the action considered is proportionate and reasonable in the circumstances.

The sanctions available are detailed below, although this list is not exhaustive. They will also consider any wider actions or implications for UH Sussex.

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

Right of appeal

You'll always be given the right to appeal any disciplinary sanction. The disciplinary outcome letter will explain how to appeal. You must appeal within seven calendar days of getting your outcome letter, but this will be extended in exceptional circumstances.

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

The appeal will concern whether the decision taken was reasonable in light of all the circumstances and evidence provided at the disciplinary hearing and the process followed.

Please refer to the UH Sussex Appeals guidance for further information.

Levels of sanction

First written warning: 12 months

Where conduct has fallen below acceptable standards and informal guidance has not resulted in sufficient improvement within a reasonable timeframe or where the offence is sufficiently serious to justify an immediate formal sanction.

Final written warning: 18 months

Where conduct continues to fall significantly below acceptable standards and previous warning(s) have not resulted in sufficient improvement.

Misconduct is so serious that a first written warning is not appropriate. Dismissal is a consideration, but significant mitigating circumstances are accepted.

Dismissal: with contractual notice

Considered where there has been a current final written warning and further misconduct or unsatisfactory conduct has taken place.

Dismissal: without contractual notice (summary dismissal)

Actions of gross misconduct will, except in the most exceptional circumstances, justify dismissal without notice.

Availability for formal and appeal hearings

If you cannot attend a hearing because of reasonable circumstances beyond your control, a further date will be arranged. We'll talk to you about why you're unable to attend and will consider options that could include holding a hearing via phone or video, or allowing a submitted written response for the disciplinary manager to consider. A representative may agree to attend on your behalf in your absence. In rare circumstances, we may decide to hold the hearing in your absence.

You may decide not to attend an appeal hearing, in which case, we will hold the hearing based on your submission, as long as we receive this at least 5 calendar days before the hearing date.

Confidentiality

Information obtained under the disciplinary procedure will be managed and kept confidential for as long as this is needed by UH Sussex and we will also place any correspondence on your personnel file.

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Appendix 1: Supporting information

This indicates the standards of behaviour expected from us all in relation to our roles at UH Sussex. It is not possible to specify all the rules and regulations that apply and the list of disciplinary rules below are a general guide in respect of very serious misconduct. Other less serious acts may result in disciplinary action short of dismissal.

In any event, UH Sussex will consider each case on its own merits before disciplinary action is taken.

Gross misconduct

Certain offences are regarded as so serious that UH Sussex would not tolerate the continued presence at work of someone who commits them. Normally, such offences are considered acts of gross misconduct, which would, in the absence of substantial mitigation, result in summary dismissal. Summary dismissal involves dismissal without the need for previous disciplinary warnings.

Behaviour outside of work

The examples of gross misconduct listed below relate to offences committed during normal working time while on duty. Behaviour outside work may also be dealt with under the disciplinary procedure, if it affects your continued suitability for employment and/or brings UH Sussex into disrepute.

The following are examples of offences considered to represent gross misconduct. It is not a comprehensive list and other offences not listed may also be considered gross misconduct.

- physical or psychological ill treatment or abuse of patients or colleagues
- acts of violence (including physical assault of a colleague, patient, member of the public) and fighting at work
- being unfit for duty for other than medical reasons including being intoxicated while on duty through drink or drugs and the misuse of drugs that impairs your ability to work (refer also to UH Sussex Alcohol and Drugs Policy)
- intentionally viewing or downloading pornographic or other derogatory, defamatory, obscene or inappropriate material from Trust internet or email systems
- inappropriate use of UH Sussex data or computing equipment, including social media
- serious insubordination
- acts considered to bring UH Sussex into serious disrepute
- bullying, harassment or discrimination contrary to UH Sussex's policies
- deliberate disclosure of confidential patient, staff or UH Sussex information to an unauthorised person
- deliberate and/or continued failure to follow reasonable instructions
- failure to disclose criminal convictions or charges brought against you
- fraud – any deliberate attempt to obtain money or goods through falsification of records or documents (eg time sheets, travel and expenses claim forms)
- indecency or sexual offences
- malicious damage to UH Sussex property or equipment
- theft or attempted theft during the course of employment
- wilful negligence in any action/failure to act which threatens the health and safety of any member of staff, patient or member of the public
- being absent without leave (AWOL).

Criminal offences

If you are charged or convicted of an offence, whether committed on duty or outside of work, we will consider whether the offence renders you unsuitable for continued employment and may take action up to and including dismissal. UH Sussex reserves the right to take action independently of any legal proceedings.

Where the offence or police investigation relate to mistreatment of a child or an “at risk” or vulnerable adult, the manager must inform the UH Sussex Safeguarding lead/team, who will consider whether to contact the Local Authority Designated Officer (LADO). If you are subject to a police investigation, you’re obliged to inform your manager.

Referrals to professional bodies and other agencies

Depending on the nature of the concern, if you are registered with a professional body, the regulatory body may be notified. This decision will be taken by the most senior professional lead from the Directorate, in conjunction with the relevant professional lead for UH Sussex, such as the Director of Nursing or Head/Chief of Service.

Where appropriate, investigations carried out by the counter fraud team and other agencies (e.g. the police, social services) may be carried out separately from this procedure. UH Sussex will give full cooperation to external investigations and will only delay the internal disciplinary procedure where absolutely necessary.

Where cases include serious personal data breaches likely to result in risk to the freedoms of data subjects, UH Sussex has a legal duty to report such cases to the Information Commissioners Office (ICO) within 72 hours. Where there is a potential data breach, UH Sussex’s Data Protection Officer (DPO) must be notified as soon as possible.

Authority to take disciplinary action and decisions about absence from work

Anyone acting on behalf of UH Sussex in supporting the implementation of this policy must have undertaken relevant fact-finding and panel member training.

Band 6 and above will be able to carry out fact-finding exercises.

Band 7 and above have the authority to hold disciplinary hearings and issue formal sanctions.

Band 8a and above have the authority to make decisions about absence from work, hold disciplinary hearings and issue formal sanctions up to and including dismissal.

Band 8c and above have the authority to hold appeal hearings and make or change decisions regarding sanctions, dismissal and re-instatement.