



DISCIPLINARY POLICY

To be read in conjunction with the Disciplinary Procedure

| | |
|-----------------------------------|-------------------------|
| Policy author | Senior HR Manager |
| Accountable Executive Lead | Chief Executive Officer |
| Approving body | Trust Board Executives |
| Policy reference | POL-HR-027 |

ESSENTIAL READING FOR THE FOLLOWING STAFF GROUPS:

1 – All staff will read this policy as necessary

STAFF GROUPS WHICH SHOULD BE AWARE OF THE POLICY FOR
REFERENCE PURPOSES:

1 – All staff will use this policy as necessary

POLICY APPROVAL DATE:
August 2021

POLICY
IMPLEMENTATION DATE:
September 2021

DATE POLICY TO
BE REVIEWED:
August 2024

DOCUMENT CONTROL AND HISTORY

| Version No | Date Approved | Date of implementation | Next Review Date | Reason for change (e.g. full rewrite, amendment to reflect new legislation, updated flowchart, etc.) |
|-------------------|----------------------|-------------------------------|-------------------------|---|
| 1 | March 2014 | March 2014 | March 2015 | Initial policy written and implemented |
| 2 | June 2016 | N/A | N/A | Policy reviewed and updated as appropriate in line with changes. |
| 3 | July 2016 | N/A | N/A | Final draft, following further discussion with trade unions. |
| 4 | August 2016 | N/A | N/A | An initial draft of this policy was shared with TMC members, Executive Team, Key clinical & corporate leads and stakeholders for comments and input. Policy updated as appropriate. |
| 5 | September 2016 | October 2016 | October 2019 | Final version, taken to TCC for approval then TMC. |
| 6 | October 2020 | October 2020 | October 2023 | Policy reviewed and updated. Draft shared with Trust for consultation and taken to TCC for approval. |
| 7 | August 2021 | September 2021 | August 2024 | Policy updated (Section 4.8) and taken to TCC for approval. Exec approval August 2021. |

| Contents | Page Number |
|---|--------------------|
| 1. Introduction | 4 |
| 2. Scope | 4 |
| 3. Other policies to which this policy relates | 4 |
| 4. Principles | 4 |
| 5. Roles and responsibilities | 5 |
| 6. Procedure | 6 |
| 7. Consultation | 8 |
| 8. Auditable standards/monitoring effectiveness | 8 |
| 9. Training and awareness | 8 |
| 10. Inclusion | 8 |
| 11. Review | 8 |
| 12. Reference documents and bibliography | 9 |
| 13. Further enquiries | 9 |

DISCIPLINARY POLICY

1.0 INTRODUCTION

1.1 The main purpose of the Disciplinary Policy is to bring about an improvement in levels of conduct through informal or formal action.

2.0 SCOPE

2.1 This Disciplinary Policy applies to all staff except Bank Staff who should refer to the Bank Policy.

2.2 The Disciplinary Policy does not apply to issues of capability/poor performance or poor attendance due to sickness and should be dealt with in accordance with the Capability and Performance Management Policy or Sickness Absence Management Policy respectively.

2.3 This Disciplinary Policy should be read in conjunction with all appropriate codes and conduct/rules for professional bodies. In cases involving professional competence or personal conduct of medical staff, this policy should be read in conjunction with the document Maintaining High Professional Standards in the Modern NHS; a disciplinary framework for the initial handling of concerns about doctors and dentists in the NHS.

2.4 The Disciplinary Policy has been written based on guidance from the Advisory Conciliation and Arbitration Service (ACAS Code) and is designed to assist line managers, employees and trade union representatives to deal with disciplinary situations in the workplace in a fair and consistent manner.

3.0 OTHER POLICIES TO WHICH THIS DISCIPLINARY POLICY RELATES

- Capability and Performance Management Policy
- Sickness Absence Management Policy
- Grievance Policy
- Bullying and Harassment Policy
- Maintaining High Professional Standards Policy
- Equality and Diversity Policy

4.0 PRINCIPLES

The following principles will apply to the application of this Disciplinary Policy:

4.1 It is the responsibility of the employees to ensure that they are aware of the Disciplinary Procedure and of the standard of conduct that is expected of them.

4.2 The Trust encourages the use of informal methods of dealing with minor lapses in conduct through the development and application of good employment practices. **(refer to section 2.1 of the Disciplinary Procedure)**

4.3 If a decision is made to invoke the Disciplinary Procedure then it is manager's responsibility with support from the Divisional HR Manager to ensure the Disciplinary Procedure will be operated promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.

4.4 Disciplinary issues will be dealt with in an open, transparent and fair manner and will be applied in a consistent and non-discriminatory way.

4.5 Confidentiality will be maintained at all stages of the process, including within the terms of reference, statement of case, this includes anonymising third party patient information in bundles of documents to prevent disclosure of the identity of the persons concerned.

4.6 Necessary investigations will be carried out to establish the facts of the case.

4.7 The disciplinary process may be suspended or postponed if the Investigating Officer discovers a situation that would have a material effect on the outcome of the case.

4.8 Employees against whom disciplinary procedures have been invoked have the right:

- To be informed, where a disciplinary hearing is necessary of the nature of the allegations in writing and will be given an opportunity to state their case with regards to any appropriate disciplinary sanction.
- To be represented by a Trade Union representative or accompanied by a work colleague at any stage in the procedure. Disabled employees may also wish to be accompanied by a second person as a support worker or someone with knowledge of the disability and its effects.
- Right of appeal against any decision as designated in Section 6.7. **(Appeals Procedure)**
- Not to be dismissed for a first act of Misconduct except in the case of Gross Misconduct.

5.0 ROLES AND RESPONSIBILITIES

5.1 Responsibilities of the Trust Board/Executive Directors

- Responsibility to oversee this Disciplinary Policy and ensure that appropriate processes and actions are in place to ensure employees are treated in a fair and consistent manner.

5.2 Responsibilities of the Head of Department /Divisional Manager

- Ensure appropriate systems and processes are in place across their area of responsibility, to monitor timescales for disciplinary investigations and disseminate shared learning from any matters arising from the investigations in their own area of responsibility.
- Appointing the Investigating Officer, when required, thus ensuring all disciplinary matters are dealt with in accordance with the Disciplinary Procedure.

5.3 Responsibilities of the Manager

- Ensuring employees are aware of this Disciplinary Policy and its contents and that their employees understand the standards of conduct and attendance required.
- Responsible for ensuring that high standards are maintained, bringing any concerns they may have about a particular employee to their attention in a timely and sensitive manner through existing feedback processes such as 121's.
- Participating in any Trust training deemed necessary to ensure that they have the necessary skills to undertake their responsibilities appropriately.

5.4 Responsibilities of the Human Resources Department

- The Associate Director for Workforce and Organisational Development will oversee the introduction, operation and monitoring of the Disciplinary Policy and Procedure and discharge the Trust Board responsibility with regard to this Disciplinary Policy.

- Ensuring that the Disciplinary Procedure is applied fairly, equitably and consistently throughout the Trust.
- Assess whether an informal approach could resolve any potential situation before the need to invoke formal disciplinary proceedings.
- Providing advice and guidance on the correct application throughout all stages of the Disciplinary Procedure.
- Maintaining records of outcomes of formal disciplinarys for the purposes of ensuring a consistent approach, including records on ESR.
- Monitoring all disciplinary matters across the Trust and provide the Trust Board with regular reports on the types and outcomes of disciplinary investigations undertaken within the Trust, including reports on the profile of staff subject to disciplinary to ensure discrimination does not occur.
- Providing training to line managers in relation to the Disciplinary Policy and Procedure.

5.5 Responsibilities of Peer Support

- Where a formal disciplinary investigation is invoked in accordance with Section 2.2 of the Disciplinary Procedure, employees will be assigned peer support throughout the process to provide pastoral support.
- Provide ongoing informal support and guidance to staff going through an investigation. It is not the role of peer support to represent the staff member at meetings or a hearing during the investigation process.

5.6 Responsibilities of the Employee

- Where the informal or formal stage of the disciplinary procedure is invoked, employees are required to participate fully in the process, in a timely and constructive manner, whether this concerns them personally or a work colleague. The purpose is to establish the facts fully and as quickly as possible and, unless all contribute appropriately, the findings may be incomplete, possibly resulting in inaccurate conclusions being drawn.
- Ensure they understand the standards of behaviour and conduct expected by the Trust and familiarise themselves with the Trust Values.

6.0 **PROCEDURE**

6.1 The Disciplinary Policy has two stages, Informal and Formal as described in the Disciplinary Procedure. The informal stage will not be considered for cases of alleged serious Misconduct or Gross Misconduct.

6.2 Should Formal disciplinary action be commenced; an investigation will be held in line with the Disciplinary Procedure.

6.3 Suspension may be considered in some circumstances due to the seriousness of the allegations, of the risk the employee poses to the investigation by remaining at work. A suspension risk assessment will be undertaken and alternative courses of action will be considered in the first instance such as:

- Restricted duties in existing role and location (e.g. it may be appropriate to consider this course of action where the employee has committed a drug error).
- Placing the employee under additional supervision if practicable.
- Temporary assignment to a different role that is within the skills and knowledge of the employee.

6.4 The panel hearing the case may give some of the below outcomes in conjunction with a warning:

- That no further action is necessary

- The imposition, extension or renewal of any formal warnings issued under the Disciplinary Procedure;
- The temporary or permanent transfer of an employee to an alternative post/department within the Trust.
- That matters should be considered under an alternative procedure i.e. Capability and Performance Management Policy.
- Downgrading (no salary protection payable).
- Change of shift pattern (no salary protection available).
- Restrictions/termination of Bank work.

6.5 There are two levels of warning in the Formal Disciplinary Procedure which can be given to an employee dependent upon the gravity of the case and/or the ongoing nature of the misconduct:

- Stage 1 – First Written Warning (will remain on personal file for 12 months)
- Stage 2 – Final Written Warning (will remain on personal file for 24 months)

6.6 Where the allegations are of a serious nature which may impact on the employee's suitability to work, a referral to the relevant external professional bodies may be made.

6.7 Appeals Procedure

6.7.1 All employees have the right to appeal against any formal disciplinary action and must do so in writing to the Associate Director for Workforce and OD within 10 working days of receipt of the written confirmation of the disciplinary decision.

6.7.2 The appeal hearing will be heard by a minimum two-member panel that have had no previous involvement in the case. The panel members should be an appropriate senior manager and an HR representative. As a minimum the appeal must be chaired by an Executive Director. In cases where there are professional specific issues the panel composition must contain a representative from the relevant professional area.

6.7.3 The decision made at the appeal hearing will be final and there will be no further stages of appeal.

6.8 Failure to Attend a Disciplinary Meeting/Hearing or Requesting a Postponement

6.8.1 An employee is able to make a request for postponement of the disciplinary meeting/hearing for the Trust to consider and the Trust may rearrange a new date. If the employee is unable to/fails attend the rearranged meeting/hearing without good cause, the Trust reserves the right to proceed with process and will make a decision based on the information available.

6.9 Some other Substantial Reason (SOSR) or Statutory Debarment

6.9.1 Dismissal procedures for these reasons will be dealt with in accordance with the Disciplinary Procedure except that dismissal may be the outcome without the employee going through any first or final warning process. In all cases, the organisation will ensure that a fair process has been followed in relation to identifying and investigating any allegations.

6.10 Overlapping of Grievance and Disciplinary Cases

- 6.10.1 If a grievance is lodged relating to a current matter, it will be addressed during the disciplinary process. Only in exceptional circumstances will an on-going disciplinary process be suspended on account of a grievance being submitted.
- 6.10.2 Where a separate grievance process is underway (i.e. a formal grievance has been submitted as per the Grievance and Disputes Policy) the two processes shall be dealt with concurrently and in accordance with the respective policies and procedures.

7.0 CONSULTATION

An initial draft of this Disciplinary Policy was shared with staff side and all other staff for comments and input. Amendments based on this feedback have been included where possible and deemed appropriate.

8.0 AUDITABLE STANDARDS/PROCESS FOR MONITORING EFFECTIVENESS

The Disciplinary Policy and Procedure will be monitored and reviewed by the Human Resources Department and Trust Consultative Committee as per the review date or earlier if significant events require.

The Trust acknowledges the importance of skills training for managers and will therefore ensure that appropriate training for managers in respect of the Disciplinary Policy and Procedure will be provided as identified and where required.

9.0 TRAINING AND AWARENESS

This Disciplinary Policy will be disseminated via the current communication channels and will replace the existing Disciplinary Policy on the Trusts intranet.

Ongoing training, advice and support will be provided by the HR Operations Team to support staff and managers in understanding and adhering to this Disciplinary Policy.

10.0 EQUALITY AND DIVERSITY

The Trust recognises the diversity of the local community and those in its employment. Our aim is, therefore, to provide a safe environment free from discrimination and a place where all individuals are treated fairly, with dignity and appropriately to their need.

Managers will not discriminate in the application of this Disciplinary Policy/Procedure in respect of the protected characteristics as defined within the Equality Act 2010 and not contravene the prohibited conduct contained within this.

11.0 REVIEW

The Disciplinary Policy and Procedure will be reviewed at three yearly intervals from the date of review or, if required, by changes in legislation, significant developments in employment law practice.

12.0 REFERENCE DOCUMENTS AND BIBLIOGRAPHY

This Disciplinary Policy and Procedure was developed in line with best practice and up to date research with reference to the sources of information listed below (as may be amended or updated from time to time):

- Agenda for Change NHS Terms and Conditions of Service
- ACAS Code of Practice- Disciplinary and Grievance Procedures (March 2015)
- Employment Rights Act 1996
- Employment Relations Act 1999
- Equality Act 2010
- Disclosure and Barring Service (DBS) Duty to Refer
- Medical Staff Disciplinary Procedure - Maintaining High Professional Standards in the Modern NHS
- Professional codes of practice

13.0 FURTHER ENQUIRIES

Further information regarding this Disciplinary Policy is available from the HR Team on 0121 685 4000 ext 55404.



Equality Impact Assessment

Initial Assessment form

The Initial Equality Impact Assessment (EIA) is a quick and easy screening process. It should:

1. Identify those policies which require a full EIA by looking at:
 - Negative, positive or no impact on any of the protected characteristics.
 - Opportunity to promote equality for the protected characteristics.
 - Data/feedback to prioritise if and when a full EIA should be completed
2. Justify reasons why a full EIA is not going to be completed

Division or Corporate area:

Workforce & OD

Speciality/Service Area

Human Resources

Executive Lead (enter name and designation):

Jo Williams, CEO

Title of Policy:

Disciplinary Policy

Q1) What is the aim of your Policy?

To outline the process in managing conduct issues informally and formally

Q2) State to which Trust strategic objective this Policy relates:

Q3) Who benefits from your Policy?

All staff members

Q4) Do you have any feedback data that influences, affects or shapes this Policy?

| Yes | No |
|--|----|
| <input checked="" type="checkbox"/> Please complete below. | |

What is your source of feedback?

- Monitoring Data
- Previous EIAs
- National Reports
- Internal Audits
- Patient Surveys
- Complaints / Incidents / Claims / Litigation
- Focus Groups
- Equality & Diversity Training
- Other (please state)

What does this source of feedback reveal?

To effectively manage conduct issues with early intervention and have a more efficient investigation process.

Q5) Thinking about each group below does or could the Policy have a negative impact on members of the protected characteristics below?

| Protected Characteristic | Yes | No | Unclear |
|--------------------------------|--------------------------|-------------------------------------|--------------------------|
| Age | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Disability | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Race | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Sex | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Gender Reassignment | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Sexual Orientation | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Religion or belief | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Pregnancy & Maternity | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Marriage & Civil Partnership | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Other socially excluded groups | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If the answer is “yes” or “Unclear” please complete a full EIA

Q6) Who was involved in the EIA and how?

Meesha Ranpuria – HR Manager
Annwyn Williams – Senior HR Manager

How were they involved?

- Surveys
- Team Meeting
- Group Review
- Other

Please specify:

Q7) Have you identified a negative/potential negative impact (direct /indirect discrimination)?

| | | | |
|----|-------------------------------------|-----|--------------------------|
| No | <input checked="" type="checkbox"/> | yes | <input type="checkbox"/> |
|----|-------------------------------------|-----|--------------------------|

Q7a) If 'No' Explain why you have made this decision?

The group review went through each protected characteristic to identify any negative/potential negative impact. The group did not identify any form of indirect/direct discrimination.

Q7b) If 'yes' explain the negative impact – you may need to complete a full EIA

If a negative impact has been identified please continue to undertake a full impact assessment. If no negative impact has been identified please submit your Initial Equality Impact Assessment to roh-tr.governance@nhs.net

Justification Statement:

As a member of ROH staff carrying out a review of an existing or proposal for a new service, policy or function you are required to complete this EIA by law. By stating that you have not identified a negative impact, you are agreeing that the organisation has not discriminated against any of the protected characteristics. Please ensure that you have the evidence to

support this decision as the Trust will be liable for any breaches in the Equality Legislation.

Completed by:

| | |
|-----------------|----------------------------|
| Name: | Annwyn Williams |
| Designation: | Senior HR Manager |
| Date: | 07 th July 2021 |
| Contact number: | |

This EIA has been approved:

| | |
|-----------------|--|
| Name: | |
| Designation: | |
| Date: | |
| Contact number: | |



Equality Impact Assessment

Full Assessment Form

Having completed the Initial EIA Screening Form (Appendix A) which identified a negative or potential negative impact, you are required to complete this Full Equality Impact Assessment form. This will involve you questioning aspects of a proposed/existing policy, guideline or strategy and forecasting the likely effect on different groups.

Step 1) What is the impact?

1) Why have you carried out this Full Equality Impact Assessment?

Please mention any additional impacts in the box below. This could include contributing factors or conflicting impacts/priorities (e.g. environment, privacy and dignity, transport, access, signage, local demography) that has resulted in indirect discrimination or anyone else who will be impacted on by your policy, guideline or strategy.

Step 2) What are the differences?

2a) Identify the Equality group(s) that will be affected by the impact and state what the differences are:

| Protected Characteristic | Negative / Potential Negative Impact | Positive / Potential Positive Impact | How is the Equality group identified affected in a different way to others as a result of the policy, guideline or strategy? |
|---------------------------------|---|---|---|
| Age | <input type="checkbox"/> | <input type="checkbox"/> | |
| Disability | <input type="checkbox"/> | <input type="checkbox"/> | |
| Race | <input type="checkbox"/> | <input type="checkbox"/> | |
| Sex | <input type="checkbox"/> | <input type="checkbox"/> | |
| Gender Reassignment | <input type="checkbox"/> | <input type="checkbox"/> | |
| Sexual Orientation | <input type="checkbox"/> | <input type="checkbox"/> | |
| Religion or Belief | <input type="checkbox"/> | <input type="checkbox"/> | |
| Pregnancy & Maternity | <input type="checkbox"/> | <input type="checkbox"/> | |
| Marriage & Civil Partnership | <input type="checkbox"/> | <input type="checkbox"/> | |
| Other socially excluded groups | <input type="checkbox"/> | <input type="checkbox"/> | |

2b) If this EIA indicates that there is insufficient evidence to judge whether there is differential impact please state why below.

Step 3) Consultation

3a) With whom have you consulted on your policy and when did the consultation take place?

3b) As a result of the consultation are there any further changes to the policy needed?

Step 4) Plan to address negative impact

4a) Please complete your action plan using the table below. Detail how you are going to address the negative impact, stating the timescales involved.

| Protected Characteristic | Negative Impact | Action Required | Cost Implications | Expected Outcome | Lead (name and job title) | Timescale (specify dates) |
|--------------------------|-----------------|-----------------|-------------------|------------------|---------------------------|---------------------------|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

Completed by:

| | |
|-----------------|--|
| Name: | |
| Designation: | |
| Date: | |
| Contact number: | |

This EIA has been approved by:

| | |
|-----------------|--|
| Name: | |
| Designation: | |
| Date: | |
| Contact number: | |



The Royal Orthopaedic Hospital
NHS Foundation Trust



POLICY IMPLEMENTATION PLAN

| | |
|------------------------------------|-------------------------|
| POLICY TITLE: | Disciplinary Policy |
| ACCOUNTABLE EXECUTIVE LEAD: | Chief Executive Officer |
| POLICY AUTHOR: | Senior HR Manager |
| APPROVED BY: | Trust Board Executives |
| DATE OF APPROVAL: | August 2021 |

An implementation plan must be developed for all policies. This will ensure that a systematic

approach is taken to the introduction of policies in order to secure effective working practices.

The following template provides a list of activities to consider as a starting point for thinking about implementation in a systematic manner.

IMPLEMENTATION PLAN OWNER: _____

| REFERENCE | ACTION | RESPONSIBLE | COMPLETED? (YES/NO) | IF NO, PLANNED COMPLETION DATE | EVIDENCE | STATUS |
|-----------|--|-------------|------------------------|-----------------------------------|-------------|--------|
| 1 | <i>Communications and engagement</i> | | | | | |
| a | Comms to go out Trustwide | HR Manager | No | September 2021 | In progress | |
| b | | | | | | |
| c | | | | | | |
| d | | | | | | |
| 2 | <i>Training</i> | | | | | |
| a | Webinar to be completed | HR Manager | No | December 2021 | In progress | |
| b | Training to be confirmed (virtual/face to face) | HR Manager | | December 2021 | | |
| c | Investigating Officer Training to be completed | HR Manager | No | December 2021 | In progress | |
| d | Training to be confirmed (virtual/face to face) | HR Manager | No | December 2021 | In progress | |
| 3 | <i>Resources</i> | | | | | |
| a | Acting Senior HR Manager | | | | | |
| b | HR Manager | | | | | |
| c | Deputy HR Manager | | | | | |
| d | Comms Team | | | | | |
| 4 | <i>Monitoring Effectiveness & Evaluation</i> | | | | | |
| a | Weekly Senior HR Meetings | | | | | |
| b | | | | | | |
| c | | | | | | |
| d | | | | | | |

Final date when plan is expected to be fully implemented: __October 2021_____

Status key:

| | | | | | | | |
|--------------|-----------------|--------------|--|------------|---|-------------|-----------|
| Green | Fully on target | Amber | Some slippage but expected to meet timescale | Red | Significantly off target date or failed to complete | Blue | Completed |
|--------------|-----------------|--------------|--|------------|---|-------------|-----------|

