



DISCIPLINARY POLICY

ICB document reference:	ICB HR 002
Version	2.0
Name of originator/author:	AGEM HRBP Team
Date of approval:	1 July 2021
Name of responsible Committee:	Senior Management Operational Delivery Group
Responsible Director/ICB Officer:	Director of Nursing
Category:	Human Resources
EIA undertaken:	Yes
Date issued:	July 2022
Review date:	1 July 2025
Target audience:	All staff
Distributed via:	Email, Website, Intranet and Board Portal

Document Control Sheet

Document Title	Disciplinary Policy
Version	1
Status	Final
Authors	AGEM HRBP Team
Date	1 July 2021

Document history			
Version	Date	Author	Comments
1	July 2021	AGEM HRBP Team	Revision of 4 policies to 1 new NHS Lincolnshire ICB Policy
2.	July 2022	AGEM HRBP Team	Rebranding of Policy for Lincs ICB

Section	Contents	Page
1.0	Policy Statement	4
2.0	Principles	4-6
3.0	Equality Statement	6
4.0	Monitoring and Review	6
5.0	Data Protection	6
	Part 1 - Procedure	7
1.0	Scheme of Delegation	6
Part 2	Disciplinary Procedure	7
1.0	Procedure	7
2.0	Informal Stages	7-8
3.0	Formal Stages	8
4.0	Suspension	10
5.0	Professional Misconduct	10
6.0	Alleged or Actual Criminal Offences	10-11
7.0	The Disciplinary Hearing	11-12
8.0	Appeals	12-13
9.0	Duration of Warning / Records	13
10.0	Recording of Meetings	13
Appendix A	Examples of Gross misconduct / General Misconduct	14
Appendix B	Conducting a Disciplinary Hearing	15-17
Appendix C	Appeals Hearing Procedure	18

Disciplinary Policy

1. Policy Statement

- 1.1 The Disciplinary Policy applies to all staff and is in accordance with all legal requirements and ACAS guidance. The policy aims to encourage employees to achieve and maintain the required standards of conduct, performance and attendance. It ensures fairness and consistency in the treatment of individuals. In cases where an employee fails to attain the required standard the disciplinary policy will be instigated, and this may result in disciplinary action.
- 1.2 Disciplinary issues concerning the Chief Executive or Executive Directors will be referred to the Board of the ICB. Cases will be progressed by the Board in accordance with the principles and procedures set out in this policy.

2. Principles

- 2.1 Alleged breaches of conduct, performance or attendance will be fully investigated before any disciplinary action is taken and wherever possible, the manager will attempt to resolve the matter through informal discussion with the employee.
- 2.2 Managers considering whether an issue should be progressed to a disciplinary hearing should discuss the matter with an HR Representative before making a decision.
- 2.3 All cases of suspected fraud within the ICB must initially be referred to the Director of Finance and Local Counter Fraud Specialist prior to a full investigation being initiated as required under the Standing Financial Instructions. This is to assess the case and exercise discretion as to the need to involve others or whether to allow the matter to be dealt with internally. If the latter is preferred, the following procedure will apply (Please refer to the Bribery, Fraud, Corruption and Speaking Up Policy).
- 2.4 No disciplinary action will be taken against a trade union representative without firstly discussing with the relevant full time officer.
- 2.5 Employees will be informed in writing of the issues causing concern and will be given the opportunity to present their views before any decision is made at a disciplinary hearing.
- 2.6 Employees are entitled to be accompanied at all formal meetings by a Trade Union Representative or work colleague.
- 2.7 If the employee has been requested to attend a disciplinary hearing, they must inform the Chair of the Disciplinary Panel of their chosen companion, at least 2 working days in advance of the meeting.
- 2.8 The employee may not insist on being accompanied by a colleague whose presence would prejudice the meeting or who might have a conflict of interest. It would also be unreasonable for an employee to ask to be accompanied by a colleague from a remote location when someone suitably qualified was available on site. Should there be any dispute regarding the chosen companion that cannot be resolved, the matter will be escalated to the Head of HR Business Partners.

- 2.9 Employees are required to attend all meetings relating to the disciplinary process. If they, or their companion, are unable to attend the arranged meeting, they must give notice and reasons why they are unable to attend. The meeting will then be rescheduled to a mutually convenient time, within 10 working days of the original date wherever possible. However, where an employee fails to attend such meetings without reasonable grounds, then the meeting may be held in their absence. The employee will be informed of this in writing.
- 2.10 If an employee has a valid objection to the person appointed to undertake the investigation or to hear the case, they must raise this objection in writing, clearly stating their reasons, to the Head of HR Business Partners.
- 2.11 The level of disciplinary action to be taken will be determined according to the seriousness and nature of the alleged misconduct. Once the formal disciplinary procedure has been initiated subsequent misconduct within the warning period may lead to further, and perhaps more serious, disciplinary action, which may ultimately lead to dismissal.
- 2.12 Warnings are active from the date of issue for the periods detailed in Part 2 – Disciplinary Procedure, Section 9 of the policy - Duration of Warning / Records; except in exceptional circumstances.
- 2.13 No employee will be dismissed for a first instance of misconduct: However, a summary dismissal may occur in the case of Gross Misconduct.
- 2.14 The employee will have the right of appeal against any disciplinary warning or sanction issued in the formal stages of the procedure. (Please refer to Part 2, Disciplinary Procedure, Section 8 of the procedure – Appeals).
- 2.15 The ICB will ensure that all managers who are responsible for disciplinary issues are suitably trained and have the necessary knowledge and skills.
- 2.16 Should an employee raise a complaint either under the Grievance Policy or the Dignity at Work Policy whilst subject to action under this policy, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where an initial investigation into the complaint, conducted by another manager, finds that the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently. If the grievance complaint is found to have no bearing on the matters being investigated under this policy, then the disciplinary proceedings will continue from the point at which they were suspended. In any event, advice should be sought from a HR Representative
- 2.17 All matters relating to any part of this procedure will be treated in strict confidence. Any breach of this confidentiality may render those responsible liable to disciplinary action. However, it must be remembered that legislation requires the accused to be made aware of the allegations against them and the name(s) of those making the allegations, along with witnesses.

3. Equal Statement

- 3.1 In applying this policy, the ICB will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, sex, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.
- 3.2 As part of the ICB equal opportunities monitoring, all disciplinary hearings are monitored on a rolling annual basis. Subsequently information may be held on the disciplinary monitoring register longer than the duration of the warning itself.

4. Monitoring and Review

- 4.1 The policy and procedure will be reviewed periodically and where review is necessary due to legislative change, this will happen immediately.
- 4.2 Implementation and operation of this policy will be monitored on an annual basis by the ICB Leadership Team. It will also be assessed on an ongoing basis as part of the monthly review of performance of ICBs and the annual governance review of ICBs undertaken by the NHS England ICB Transition team.

5. Data Protection

- 5.1 Data is held and destroyed in accordance with the provisions of the Data Protection Act 1998 and any ICB policy which derives from that Act.

Part 1 - Procedure

1.1 This procedure is detailed in **PART 2** and should be read in conjunction with the flow chart.

2. Scheme of Delegation

Informal procedure	Line Manager or equivalent level manager from elsewhere within the organisation
Formal procedure	Line manager or equivalent level manager from elsewhere within the organisation or the line managers direct manager if the line manager has been previously involved or implicated and a HR Representative
Appeal following formal procedure	Chaired by the Line Managers manager or equivalent who has not previously been involved or implicated
Dismissal Hearings	Chaired by a Deputy Director or equivalent plus one other manager and HR representative
Appeal against dismissal	Chaired by a Director plus one other manager and HR representative

Part 2 – Disciplinary Procedure

1. Procedure

1.1 If an employee fails to meet the required standards of performance, conduct or attendance, they may be subject to this disciplinary procedure. At all stages the employee will be told of the reason for using the procedure. Management will ensure that the changes in performance, conduct or attendance required and the timescales involved are reasonable, achievable and where possible agreed by all parties. Please refer to the Attendance Management policy and the Managing Work Performance policy for further information and guidance. Further misconduct, or expiry of the review period without improvement, may lead to progressive disciplinary action which may ultimately result in dismissal. This procedure may also apply where cases of unacceptable conduct take place outside the working environment.

2. Informal Stages

2.1 Where there is an identified failure in performance, the procedure in the Managing Work Performance Policy will be implemented. Where unsatisfactory progress is made towards the agreed performance level, the formal stages of the Disciplinary Policy will apply.

2.2 Where levels of attendance are a cause for concern, the procedure in the Attendance Management policy will be implemented.

2.3 In cases of suspected minor misconduct in relation to conduct or behaviour, the following process will be followed:-

- The employee's line manager will speak to the individual, in private, as soon as possible after an issue comes to light. This will be a two-way discussion aimed at establishing the circumstances and encouraging improvement.
- If, during the discussion, it becomes evident that there is no problem the manager will confirm to the employee that no formal disciplinary action will be taken.
- Where an improvement in conduct is required, the manager will make sure the employee understands what needs to be done, and over what period of time. The required improvement, the length of the review period and any sanctions imposed, for example withdrawal of flexi time, will be confirmed in writing following the meeting and the letter will also include the consequences of a failure to improve.
- Further meetings will be held to review progress during, and at the end of, the review period. Notes of all meetings will be taken and agreed.
- If, during the initial discussion, it becomes obvious that the matter may be more serious, the meeting will be adjourned and the employee advised that an investigation will be instigated under the formal stages of the disciplinary procedure.
- If managed informally there is no right to be accompanied by a Trade Union representative or workplace colleague to the meeting with the line manager.

3. Formal Stages

- 3.1 Before any disciplinary hearing is held, an investigation will take place to establish the facts of the case. This will normally be in the form of a fact find meeting where notes will be taken. However, in exceptional circumstances and with advice from an HR Representative, other forms of evidence may be sufficient. For example, in the case of short-term persistent absence, absence records, return to work interviews and Occupational Health reports may be used as the basis for disciplinary proceedings.
- 3.2 Normally, the investigation process should take no longer than 4 weeks. Where it is not possible to complete the process within this timescale, the reasons for the delay will be recorded and the expected date for completion of the investigation process communicated in writing to all parties involved.
- 3.3 An employee is entitled to be accompanied at the investigation meeting by a Trade Union Representative or a workplace colleague.
- 3.4 Employees should be made aware of the level of action to be taken and the potential outcome of the meeting.

Managers Authorised to Take Disciplinary Action:-

- 3.4 To ensure fairness and impartiality, where reasonably practicable, the disciplinary panel should consist of no less than two members. The meeting will be led by a

manager who has not been previously involved in the matter, in consultation with either another impartial manager or an HR Representative. Where dismissal is a possibility, the disciplinary hearing will be conducted by a Manager authorised to dismiss and an HR Representative. Please contact the Head of HR Business Partners for those Managers authorised to dismiss. (Please refer to Part 1, Section 4 of the Policy – Scheme of Delegation).

3.5 The outcome of a disciplinary hearing will generally fall into one of the following categories:-

- Case dismissed
- No action required
- The employee is required to attend counselling or retraining
- First written warning
- Final written warning
- Dismissal

Also see Part 3.11 Summary Dismissal of the procedure for further sanctions.

First Written Warning

3.6 If the issue is serious, a First Written Warning will normally be issued and will be kept on the employee's personal file for 12 months. A copy of the written warning will be kept on file but should be disregarded for disciplinary purposes after 12 months from the date of issue.

Final Written Warning

3.7 If the issue is more serious or if there is still an active First Written Warning in place and insufficient improvement has been made or further misconduct occurs, a Final Written Warning will normally be issued and will be kept on the employee's personal file for 12 months. A copy of the written warning will be kept on file but should be disregarded for disciplinary purposes after 12 months from the date of issue.

Dismissal with Notice

3.8 If, within 12 months of the issue of a Final Written Warning, further misconduct occurs or insufficient improvement has been made, the employee will normally be dismissed with notice.

3.9 The employee will be provided with written reasons for dismissal, the date on which the employment will terminate, their entitlement to pay, and the right of appeal. (Please refer to Part 2, Section 8 of the procedure – Appeals)

3.10 The ICB reserves the right to make a payment in lieu of notice.

Summary Dismissal

3.11 Where behaviour or misconduct is sufficiently serious to constitute gross misconduct (see examples in Appendix A) the employee will normally be summarily dismissed -

i.e. without notice. In exceptional cases an alternative sanction may be applied. (Please refer to section 3.13 of the procedure – Potential Additional Sanctions).

- 3.12 The employee will be provided with written reasons for dismissal, the date on which the employment will terminate and the right of appeal. (Please refer to Part 2 – Disciplinary Procedure, Section 8 of the procedure – Appeals)

Potential Additional Sanctions

- 3.13 Additional sanctions may be included after full discussion with an HR Representative who will be able to advise on the appropriateness, equity and viability of any further sanction. These can include, but are not limited to:-

- Demotion or transfer to another job or location
- Deferred increment
- Loss of privileges e.g. removal of right to self-certificate absence and the requirement for all absences to be covered by a medical certificate, removal of flexi-time.

4. Suspension

- 4.1 This does not constitute disciplinary action or sanction. Suspension is only to be invoked when an individual's continued presence at work places themselves/other person(s) at risk, or hampers any investigation. If appropriate, suspension should be effected as soon as possible after the matter to be investigated comes to light or a need for suspension is identified. Suspension will always be on full pay and should be for as brief a period as possible. It is expected that suspension will be no longer than 4 weeks, but may be extended in exceptional circumstances. Employees who are suspended will be informed in writing of the reasons for the suspension. The necessity or otherwise for suspension, will be agreed between the manager and an HR Representative.

- 4.2 Should it be concluded that no further action is necessary following investigation, a briefing session should be held between the individual, their trade union representative or work colleague if required, and their manager prior to a return to work.

5. Professional Misconduct

- 5.1 Contravention of professional codes, standards, practice, laws or rules by health professionals may lead to disciplinary action, including dismissal. The professional bodies may take action in addition to action taken by the organisation, and the organisation has a duty to report incidents of professional misconduct to certain statutory bodies e.g. General Medical Council (GMC), Nursing and Midwifery Council (NMC), Health Professions Council (HPC).
- 5.2 If the employee is also employed by another organisation, the organisation may be required to notify that organisation of the disciplinary action taken.

6. Alleged or Actual Criminal Offences

- 6.1 As the burden of proof is different in disciplinary hearings compared to criminal proceedings, the organisation does not need to wait for the outcome of police enquiries or court hearing before commencing investigations and bringing the matter to a conclusion. However, liaison with the Police may be advisable, depending on the situation. The organisation will consider the circumstances of the case and, following advice, decide whether to proceed or not with the internal organisation investigation into the allegation against the employee, or delay it.
- 6.2 Criminal offences or alleged criminal offences committed outside the place of employment are not necessarily matters for disciplinary action. The organisation will consider whether disciplinary action is necessary, where a member of staff is cautioned, charged with, or convicted of a criminal offence(s) related or unrelated to their employment.
- 6.3 The decision whether to take disciplinary action or not, will take into account whether the caution, charge or conviction is one that is relevant to the employee's employment, or makes them unsuitable for the type of work undertaken.

7. The Disciplinary Hearing

- 7.1 A disciplinary hearing (See Appendix B) will normally be held by a panel consisting of a manager, who has not been previously involved in the matter, who will act as the Panel Chair. They will either be accompanied by another appropriate manager or an HR Representative, or in some cases both. Should the attendance of an HR Representative be required, their role will be to provide advice on Human Resources policies and employment legislation and to ask questions to obtain clarification on any issues that are discussed or new relevant information disclosed (Please refer to Part 1 - Procedure, Section 4 of the Procedure – Scheme of Delegation).
- 7.2 Before the disciplinary hearing the employee will be advised in writing of the purpose of the meeting and details of the complaint or allegation being considered, covering all issues to be discussed. The individual will be given a minimum of 5 working days' notice of the disciplinary hearing. If the individual, or their chosen companion, is not available to attend on the date proposed, the ICB will endeavour to offer an alternative reasonable date within 10 working days of the original date wherever possible. Note: This meeting will normally only be re-arranged once, except in exceptional circumstances.
- 7.3 Should either party wish to call any witnesses to the disciplinary hearing they must give at least 2 working days' notice to the Disciplinary Panel and have full responsibility for arranging the attendance of these witnesses.
- 7.4 All relevant facts and evidence will be made available to the employee at least 5 working days prior to the disciplinary hearing. Additional information gathered by the employee, that they wish to present at the meeting, must also be made available to the disciplinary panel at least 2 working days prior to the meeting.
- 7.5 Either party may present evidence including details of previous relevant warnings, witness statements, call witnesses and have the opportunity to ask questions.

- 7.6 Adjournments may be called by the panel at any time during the hearing should new facts emerge which require investigation or clarification. If the employee becomes distressed an adjournment may be called in order for them to regain their composure. Should the employee be unable to continue, the meeting will be adjourned to a later date.
- 7.7 An adjournment must be held in order that there can be a period of dispassionate reflection by the disciplinary panel to consider what action, if any, is to be taken. Where possible, both parties will be verbally informed of the outcome after the adjournment.
- 7.8 The employee will be advised in writing of the outcome of the disciplinary hearing within 7 working days unless a longer period is specified and can be justified. If disciplinary action is taken, the employee will be informed of the required improvements which are necessary and if applicable details of timescales for achievement, the duration of the warning and consequences of failing to improve during the active period. The letter must include the date of the disciplinary hearing, the reason for issuing the warning as well as details of any sanctions which may be imposed. It should also be noted whether the employee invoked their right to be accompanied. The right of appeal will also be included.

8. Appeals

- 8.1 An employee in receipt of a disciplinary warning or notice of dismissal has the right of appeal.
- 8.2 Appeals, outlining the grounds on which the appeal is being made, must be lodged in writing to the person specified in the notification letter within 5 working days of the receipt of the written notice of disciplinary action or dismissal. The letter must include details of their grounds for appeal. In exceptional circumstances this period may be extended.
- 8.3 The employee must submit details of their grounds for appeal, plus any new evidence they wish to present, to the Appeal Hearing Panel at least 2 working days prior to the appeal meeting.
- 8.4 Appeals will be heard within 5 weeks of receipt of the letter requesting the appeal but either party may, with the consent of the other and in exceptional circumstances, be entitled to extend this period.
- 8.5 The employee must be given at least 10 working days' notice of the date of the appeal hearing.
- 8.6 The Appeals Hearing Procedure (Appendix C) must be followed.
- 8.7 Appeals will normally be heard by a more senior manager to the person taking the first instance disciplinary action unless directed otherwise by the Managing Director. All appeals will include a representative of the Human Resources Department wherever possible.

- 8.8 The employee will have the right to be accompanied at the Appeal Hearing by either a Trade Union representative or workplace colleague.
- 8.9 Both parties must provide to the Appeal Hearing Panel, a full written statement of case including the grounds upon which the appeal is presented/resisted, with copies of any documents the party concerned intends to use in evidence, and, the identities of any witnesses the party concerned intends to call, at least 2 working days prior to the Appeal Hearing.
- 8.10 The decision of the panel will be communicated to both parties verbally, following the adjournment wherever possible, and in any case will be confirmed later in writing (again to either party), no later than 5 working days after the Appeal Hearing.
- 8.11 The decision of the appeal panel is final.

9. Duration of Warning / Records

- 9.1 The duration of warnings will normally be as follows:-

First written warning	12 months
Final written warning	12 months

- 9.2 A copy of the warnings will be kept on file but should be disregarded for disciplinary purposes after 12 months from the date of issue.

10. Recording of Meetings

- 10.1 Only in certain limited circumstances may meetings be electronically recorded, and only with the prior express agreement of all parties.

Examples of Gross Misconduct

Please note: this list is not exhaustive and simply gives examples. There may be other examples of gross misconduct.

- Behaviour bringing the organisation into disrepute
- Physical violence
- Contravention of the ICB's Equality and Diversity policy, including bullying and harassment
- Fraud or falsification of records (e.g. application forms, CVs, sickness forms, overtime and expenses claims)
- Theft or fraudulent misuse of the organisations property or name (e.g. phones, cars or computers)
- Deliberate damage to organisations property
- Incapability to work through substance misuse
- Negligence which causes loss or damage to organisations property or injury to other personnel
- Illegal activity on the organisations premises or with the ICB's property
- Infringement of health and safety rules
- Breaches of confidence
- Soliciting or accepting a bribe or secret commission
- Improper use of email or Internet facilities or other methods of communication and contravention of internal divisional policies in place
- Sharing commercially sensitive business data/intellectual property rights outside of the ICB
- Anything which calls into question an employee's honesty or integrity.

Examples of General Misconduct

Listed below are examples of offences, which amount to misconduct falling short of gross misconduct:

- Persistent lateness and poor timekeeping
- Absence from work, including going absent during work, without valid reason, notification, or authorisation
- Smoking in prohibited areas
- Failure to work in accordance with prescribed procedures
- Failure to carry out reasonable instructions or non-co-operation with reasonable management activities
- Using foul or abusive language towards patients, carers, members of the public or other employees
- Incompetence or unsatisfactory work performance
- Unreasonable standards of dress or personal hygiene
- Minor contravention of Health and Safety procedures
- Failure to observe the organisation's policies and procedures.

Conducting a Disciplinary Hearing

A disciplinary hearing will normally be held by a panel consisting of a manager, who has not been previously involved in the matter, who will act as the Panel Chair. They will either be accompanied by another appropriate manager or an HR Representative, or in some cases both. Should the attendance of an HR Representative be required, their role will be to provide advice on Human Resources policies and employment legislation and to ask questions to obtain clarification on any issues that are discussed or new relevant information disclosed.

The Disciplinary hearing follow the following stages:

1. The meeting is opened by Panel Chair, who introduces all parties and explains the purpose of the meeting and the approach it will take
2. Management side present their case (summary of allegation by the investigating officer), including calling of any witnesses
3. Employee side, then the Disciplinary Panel, will have the opportunity to ask questions
4. Employee side to present their case, including calling of any witnesses
5. Management side, then the Disciplinary Panel, will have the opportunity to ask questions
6. Summing up by management side, then by employee side
7. The Chair will ask the Investigation officer to present their concluding remarks
8. The Chair will ask the Employee and/or representative to present their concluding remarks
9. The Chair will call an adjournment to consider the decisions
10. The Chair reconvenes the hearing to deliver decision and inform the employee of the of their right to appeal.
11. Establishment of a review date (if appropriate)

Opening the Disciplinary Hearing

All employees are entitled to be accompanied by their Trade Union representative or a work colleague. Where an employee is not accompanied, the employee must be reminded of this right, and if declined, this must be recorded.

Those 'hearing' the disciplinary must introduce those present and outline the reasons for the disciplinary meeting taking place (the reason/s outlined in the invite to disciplinary letter) and the format the meeting will take.

Summary of Allegation

At this stage the investigating officer(s) must summarise the case on behalf of management. The investigating officer(s) presenting the case must adhere to the facts and not introduce opinions, hearsay or issues that have not previously been

mentioned. All documentation that will be used as evidence (including previous relevant warnings and witness statements where applicable) will already have been made available to the individual prior to the disciplinary hearing taking place (copies will have been sent with the invite to disciplinary meeting letter).

Should a new matter arise during the disciplinary meeting then the Disciplinary Panel should adjourn in order that consideration may be given to the appropriateness of the introduction of this new matter. To avoid unnecessary duplication of the process as well as ensuring fairness, it may be more beneficial to adjourn the disciplinary meeting in order that further investigations may be carried out in relation to the new matter.

The aim of the disciplinary meeting is to seek verification and clarification about the issues of concern, through questions. Where it is appropriate to call witnesses, either party may call and question them.

After the investigating officer has stated their case the employee will be given the opportunity to ask questions and state their case. The employee's representative will be able to ask questions for clarification purposes.

If the disciplinary hearing is dealing with multiple issues, each issue should be addressed in turn and the employee and/or their representative be allowed to state their case in relation to each issue as it is addressed.

Exploration of any differences in facts, as they appear to the manager and employee should be carried out in a constructive manner to gain an understanding of the facts which are, as far as possible, acceptable to both manager and employee.

The investigating officer should remain present during the disciplinary hearing to allow for any questions.

Both parties will be given the opportunity to sum up their case if they so wish. The summing up shall not introduce any new matter. If at any stage new facts are alleged or new evidence produced, the Disciplinary Panel may adjourn the meeting (of its own volition or at the request of one of the parties) for so long as it thinks fit.

Adjournment

Before any decision is taken, it is necessary to adjourn the disciplinary hearing to give adequate consideration to the facts as they have been presented and the responses that have been given to the allegations, including any mitigating circumstances. At this stage both parties will be asked to leave the room and the panel must decide the facts of the case, with advice from an HR Representative, where appropriate, and whether the behaviour requires disciplinary action to be taken and if so, at what level.

Where possible, an indication of the length of time of the adjournment should be given, including the reasons for the adjournment, i.e. to consider what action to take, if any.

The disciplinary hearing may also be adjourned to consider other issues, e.g. to direct further investigations to take place or to investigate new information/facts that have been brought to light.

There is no set time for an adjournment and adjournments can be called at any time during the disciplinary meeting, by either party.

Taking disciplinary action is not a matter to be taken lightly and should only be taken if it is to be constructive in attempting to produce the desired behaviour. Managers will also need to consider, if disciplinary action is to be taken, whether any other sanctions will be attached to the warning (see Part 2 – Disciplinary Procedure, Section 3.1 of this procedure - Potential Additional Sanctions).

Action

When the disciplinary hearing is reconvened the Panel Chair should explain that consideration has been given to all of the issues raised at the beginning of the hearing, and all of the facts and issues raised during the course of the hearing. The Panel Chair must then outline what action, if any, will be taken including any sanctions.

It is important that where a warning/sanction is given, the employee is informed of the length of time it will remain on their record, their right of appeal, the procedure that will be followed in relation to confirming the action in writing and any arrangements for the review of sanctions imposed.

Appeals Hearing Procedure

Appeals will normally be heard by a more senior manager to the person taking the first instance disciplinary action. In cases of dismissal of a Director, the appeal will be heard by a panel of ICB members. All appeals will include a representative of the Human Resources Department, in an advisory capacity, wherever possible.

An employee may choose to appeal if, for example:

- They think a finding or penalty is unfair
- New evidence comes to light
- They think the Disciplinary procedure was not used correctly

Should either party require an adjournment then this request should be made to the Hearing Panel, with an indication of the length of time required.

The procedure for an appeal hearing is as follows:

1. The appellant will present their case first, detailing the grounds for their appeal including the calling of any witnesses.
2. The management side will then be able to ask any questions about the case the appellant has presented
3. The appeal panel members will also have an opportunity to ask any questions.
4. The management side will then be asked to present their case, explaining the reasons for the action taken, including the calling of any witnesses.
5. The appellant may then wish to ask management side any questions about the case.
6. The appeal panel members will also have the opportunity to ask any questions.
7. Both parties will have the chance to sum up their case.
8. There will then be an adjournment when both sides will be asked to leave the room while the appeal panel consider the information they have heard and reach their decision.
9. The decision of the panel will be communicated to both parties verbally, following the adjournment wherever possible, and in any case will be confirmed later in writing (again to either party), no later than 5 working days after the Appeal Hearing.

Equality Impact Analysis Form

Project Name:	NHS Lincolnshire ICB Disciplinary Policy
EA Author:	HRBP
Team:	HR Team
Date completed:	July 2021
Version:	V.1

What is the aim of the project/proposal?

To establish the ICB suite of policies following the joining of 4 ICBs into 1 ICB for Lincolnshire – NHS Lincolnshire Disciplinary Policy

Who will be affected by this work? e.g. staff, patients, service users, partner organisations etc.

The policy is applicable to employed workers of the ICB.

Stage 1, Scoping point

Is a full Equality Impact Analysis required for this project?

You should consider whether a full EIA is required, referring to the relevant guidance for information and guidance on making this decision.

It is important this decision is made with an open mind and correctly, advice should be sought from the EIHR team if you are unsure.

Yes	<input checked="" type="checkbox"/>	Proceed to the full Equality Impact Analysis form	No	<input type="checkbox"/>	Explain why further analysis is not required.
------------	-------------------------------------	---------------------------------------------------	-----------	--------------------------	-----------------------------------------------

If no, explain below why further Equality Impact Analysis is not required. E.g. 'This report is for information only' or 'The decision has not been made by the ICB' or 'The decision will not have any impact on patients or staff'. (Very few decisions affect all groups equally and this is not a rationale for not completing an EIA.)

Equality Impact Analysis Form

If at an initial stage further information is needed to complete a section this should be recorded and updated in subsequent versions of the EIA. An Equality Impact Analysis is a developing document, if you need further information for any section then this should be recorded in the relevant section in the form and dated.

1. Evidence used

To demonstrate that the decision made has been informed you should include examples of the information used to determine the impact and complete the EIA.

Examples are likely to include:

- **Population Data** - e.g. demographic profile (Census),
- **Service Activity Data** e.g. profile of patients using a service
- **Consultation and Involvement findings** - e.g. any engagement with service users, local community, specific groups.
- **Research** - e.g. good practice guidelines, service evaluations, literature reviews, reports
- **Participant knowledge** - e.g. experiences of working with different or population groups, experiences of service users in other service areas / localities

The Disciplinary Policy has been reviewed against ACAS best practice.

2. Impact of decision

In the following boxes detail the findings and impact identified (positive or negative) within the research detailed above; this should include any identified health inequalities which exist in relation to this work.

As part of these considerations you should consider how the ICB will be meeting the requirements of the Public Sector Equality Duty

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

Before completing this section you should ensure you can suitably answer the following:

What is the equality profile of the population i.e. service users/patients and/or workforce that is intended to benefit from the activity/project?
(By collecting and analysing demographic data of protected characteristics relating to patients/service users and/or workforce, within the geographical area concerned, the ICB will be able to identify the groups that may be adversely affected at a greater proportion to others).

2. Impact of decision

In the following boxes detail the findings and impact identified (positive or negative) within the research detailed above; this should include any identified health inequalities which exist in relation to this work.

2.1 Age

Describe age-related impact and evidence. This can include safeguarding, consent and welfare issues.

The policy applies equally to all staff.

2.2 Disability

Describe disability-related impact and evidence. This can include attitudinal, physical, communication and social barriers as well as mental health/learning disabilities, cognitive impairments.

To support an individual involved in the disciplinary process; where adjustments are required these are acted upon, for example access to independent counselling through the Employee Assistance Programme, support from Occupational Health, additional time during interviews or hearing or providing the information in a relevant format.

2.3 Gender reassignment (including transgender)

Describe any impact and evidence in relation to transgender people. This can include issues such as privacy of data and harassment.

This policy applies to all, due consideration is taken in regard to the needs of the people involved in the process.

2.4 Marriage and civil partnership

Describe any impact and evidence in relation to marriage and civil partnership. This can include working arrangements, part time working and caring responsibilities.

This policy applies to all, due consideration is taken in regard to the needs of the people involved in the process.

2.5 Pregnancy and maternity

Describe any impact and evidence in relation to Pregnancy and Maternity. This can include working arrangements, part time working and caring responsibilities.?

This policy applies to all, due consideration is taken in regard to the needs of the people involved in the process.

2.6 Race

Describe race-related impact and evidence. This can include information on different ethnic groups, Roma gypsies, Irish travellers, nationalities, cultures and language barriers.

2. Impact of decision

In the following boxes detail the findings and impact identified (positive or negative) within the research detailed above; this should include any identified health inequalities which exist in relation to this work.

This policy applies to all, due consideration is taken in regard to the needs of the people involved in the process.

2.7 Religion or belief

Describe any impact and evidence in relation to religion, belief or no belief on service delivery or patient experience. This can include dietary needs, consent and end of life issues.

This policy applies to all, due consideration is taken in regard to the needs of the people involved in the process.

2.8 Sex

Describe any impact and evidence in relation to men and women. This could include access to services and employment.

This policy applies to all, due consideration is taken in regard to the needs of the people involved in the process.

2.9 Sexual orientation

Describe any impact and evidence in relation to heterosexual people as well as lesbian, gay and bisexual people. This could include access to services and employment, attitudinal and social barriers.

This policy applies to all, due consideration is taken in regard to the needs of the people involved in the process.

2.10 Carers

Describe any impact and evidence in relation to part-time working, shift-patterns, general caring responsibilities. (Not a legal requirement but a ICB priority and best practice)

This policy applies to all, due consideration is taken in regard to the needs of the people involved in the process.

2.11 Other disadvantaged groups

Describe any impact and evidence in relation to groups experiencing disadvantage and barriers to access and outcomes. This can include socio-economic status, resident status (migrants, asylum seekers), homeless people, looked after children, single parent households, victims of domestic abuse, victims of drug/alcohol abuse. This list is not finite. This supports the ICB in meeting its legal duties to identify and reduce health inequalities.

This policy applies to all, due consideration is taken in regard to the needs of the people involved in the process.

3. Human rights

The principles are Fairness, Respect, Equality, Dignity and Autonomy.

Will the proposal impact on human rights?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Are any actions required to ensure patients' or staff human rights are protected?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>

If so what actions are needed? Please explain below.

4. Health Inequalities.

The Health and Social Care Act 2012 established the first specific legal duties on ICBs to have regard to the need to reduce inequalities between patients in **access** to, and **outcomes** from, healthcare services and in securing that services are provided in an integrated way. These duties had legal effect from April 1st 2013.

The duties require that ICBs properly and seriously takes into account inequalities when making decisions or exercising functions, and has evidence of compliance with the duties, whilst also assessing how well commissioned providers have discharged their legal duties on health inequalities.

1. What evidence have you considered to determine what health inequalities exist in relation to your work?

This can include local and national research, surveys, reports, research interviews, focus groups, pilot activity evaluations or other Equality Analyses. If there are gaps in evidence, state what you will do to mitigate them.

(this may be different or similar to that which has informed the EIA)

This relates to a workforce policy and therefore not applicable

2. What is the potential impact of your work on health inequalities? Can you demonstrate through evidenced based consideration how the health outcomes, experience and access to health care services differ across the population group and in different geographical locations that your work applies to?

If you feel that the project will not impact / be relevant to Health Inequalities, please give a rationale.

This relates to a workforce policy and therefore not applicable

3. How can you make sure that your work has the best chance of reducing health inequalities?

4. Health Inequalities.

The Health and Social Care Act 2012 established the first specific legal duties on ICBs to have regard to the need to reduce inequalities between patients in **access** to, and **outcomes** from, healthcare services and in securing that services are provided in an integrated way. These duties had legal effect from April 1st 2013.

The duties require that ICBs properly and seriously takes into account inequalities when making decisions or exercising functions, and has evidence of compliance with the duties, whilst also assessing how well commissioned providers have discharged their legal duties on health inequalities.

This relates to a workforce policy and therefore not applicable

5. Engagement/consultation

What engagement is planned or has already been done to support this project?

It is expected that the ICB will have carried out a level of engagement with those affected whether formal or informal. This should be focussed to the groups most affected.

Engagement activity	With whom? <i>e.g. protected characteristic/group/community</i>	Date
Policy for review and sign off	Senior Management Team Operational Delivery Group	September 2021
Trade Unions	Recognised trade unions will be consulted	TBC

Please summarise below the key finding / feedback from your engagement activity and how this will shape the policy/service decisions e.g. patient told us, so we will... (If a supporting document is available, please provide it or a link to the document)

This policy will be shared with the above groups as part of the review process.

6. Mitigations and changes

If you have identified mitigations or changes, summarise them below. E.g. restricting prescribing over the counter medication. It was identified that some patient groups require high volumes of regular prescribing of paracetamol, this needs to remain under medical supervision for patient safety, therefore an exception is provided for this group which has resolved the issue.

Are these vital to the project continuing?

7. Is further work required to complete this EIA?

Please state below what work is required and to what section e.g. additional consultation or engagement is required to fully understand the impact on a particular protected group (e.g. disability)

Work needed	Section	When	Date completed
No further action is required			

8. Development of the Equality Impact Analysis

If the EIA has been updated from a previous version please summarise the changes made and the rationale for the change, e.g. Additional information may have been received – examples can include consultation feedback, service Activity data

Version	Change and Rationale	Version Date
e.g. Version 0.1	The impact on wheelchair users identified additional blue badge spaces are required on site to improve access for this group.	26 September 2017
V1	Joining of 4 policies into 1	August 2021

9. Final Sign off

Completed EIA forms must be signed off by the completing manager. They will be reviewed as part of the decision making process. Service lines should maintain an up to date log of all EIAs.

Version approved:	V1	
	Name	Date
Signature of responsible officer	Michelle Jenkins HRBP	1 July 2021
Which committee will be considering the findings and sign off the EA?	Senior Management Team Operational Delivery Group	September 2021
Minute number (to be inserted following presentation to committee)		