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Lewisham
Clinical Commissioning Group

DISCIPLINARY POLICY

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CCG Policy Reference:

This policy replaces or supersedes Policy Ref:

Target Audience	Governing Body members, committee members and all staff working for, or on behalf of, the CCG
Brief Description (max 50 words)	<p>This policy sets out the principles by which the CCG will:</p> <ul style="list-style-type: none">• Ensure that when dealing with disciplinary matters employees are treated fairly and in a professional manner throughout the process.• Where appropriate informal discussions with an employee will be undertaken before invoking the formal disciplinary process <p>In adopting the following procedure account has been taken of the ACAS Code of Practice on Disciplinary Practice and Procedures.</p>
Action Required	Communication to CCG employees

Approved: CCG Management Team

Review date: 2017

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Document Information:

Title /Version Number/(Date)	Disciplinary Policy
Document Status (for information/ action etc.) and timescale	For implementation (x/x/2015)
Accountable Executive	Chief Officer
Responsible Post holder/Policy Owner	Head of Strategy & OD, Lewisham CCG
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Author	Head of HR, South East CSU
Stakeholders engaged in development or review	Staff Engagement Group CCG Management Team
Equality Analysis	<p>Equality Analysis</p> <p>This policy applies to all permanent and fixed term employees within the CCG. This document has been assessed for equality impact on the protected groups, as set out in the Equality Act 2010. This document demonstrates Lewisham CCG's commitment to create a positive culture of respect for all individuals, including staff, patients, their families and carers as well as community partners.</p> <p>The intention is, as required by the Equality Act 2010, to identify, remove or minimise discriminatory practice in the nine named protected characteristics of age, disability, sex, gender reassignment, pregnancy and maternity, race, sexual orientation, religion or belief, and marriage and civil partnership. It is also intended to use the Human Rights Act 1998 and to promote positive practice and value the diversity of all individuals and communities.</p>
Contact details for further information	

Glossary

Term	Definition
Accountable Executive	CCG Executive accountable for development, implementation and review of the policy
Policy Owner	Post holder responsible for the development, implementation and review of the policy
Document definitions	These are provided in Section 1

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1. Introduction

1.1 Introduction

1.1.1 The procedure provides a defined set of stages that meet statutory requirements when dealing with disciplinary matters. It is important that employees are made aware of the standards of conduct expected of them through Induction, the Appraisal Process and day to day management.

1.1.2 Where a problem exists that relates to unsatisfactory conduct informal discussions between the member of staff and their manager are encouraged where appropriate. The formal disciplinary procedure will be invoked if informal discussions have failed to achieve the desired effect or when an offence is serious enough to warrant immediate formal action. The formal disciplinary procedure may also be invoked where an investigation has been carried out under the CCG's Grievance and Bullying and Harassment Policy.

1.2 Policy Statement

1.2.1 The aim of the Disciplinary Policy is to ensure consistent and fair treatment of all employees of Lewisham CCG in relation to standards of behaviour and conduct.

1.3 Scope

1.3.1 This policy applies to all staff employed by the CCG.

Disciplinary procedures will be considered when an employee's conduct, standard of work and/or adherence to the CCG's rules on performance, conduct or behaviour is unsatisfactory.

In poor performance cases where the reason is not within the control of the employee e.g. due to a lack of ability, inadequate training or lack of experience, this will be dealt with under the CCG's Capability Procedure.

In the case of sickness absence, either repeated episodes of short term absence or long term sickness absence, the CCG Sickness Absence Management procedure should be used

2. The Disciplinary Procedure

When an issue is brought to the attention of a manager they should undertake a preliminary investigation to verify the facts of the matter. Cases of minor misconduct are usually best dealt with informally. However, there will be situations where matters are considered to be too serious to be classed as minor and formal action will be taken.

The employee will have full access to a copy of the Disciplinary Policy at both the informal and formal stage.

2.1 Resolving Disciplinary Issues Informally

- a. A quiet word is often all that is required to improve an employee's conduct. In some cases additional training, coaching and advice may be what is needed.
- b. Listen to whatever the employee has to say about the issue. It may become evident there is no problem – if so make this clear to the employee.
- c. Where improvement is required make sure the employee understands what needs to be done, how their conduct will be reviewed, and over what period.
- d. Keep brief notes of any agreed informal action for reference purposes. There should be regular reviews of progress over specified periods.
- e. It important to confirm in writing what has been decided. If, during the discussion, it becomes obvious that the matter may be more serious, the meeting should be adjourned. The employee should be told that the matter will be continued under the formal disciplinary procedure.
- f. The employee will not normally require representation at the informal stage, however, they are free to consult with their trade union representative or work colleague. Please refer to Section 7.

2.2 Resolving Disciplinary Issues Formally

Establishing the facts

It is important to investigate potential disciplinary matters without unreasonable delay. If there is undue delay the reasons for the delay will be fully explained to the employee. Line managers should consult with Human Resources at all stages of the formal procedure. They will discuss the case and Human Resources will attend all formal meetings.

The investigation process will involve:

- a. The employee must be informed in writing at the outset that an investigation is to be carried out, the nature and seriousness of the allegations, the requirement for them to attend an investigatory meeting as well as their right to be accompanied when being questioned. The employee will be given 5 working days notice of an investigation meeting.
- b. Interviews will be carried out with the employee and all witnesses to the alleged misconduct and signed statements obtained. (Appendix 1) It should be made clear to witnesses who are employees that they may be required to attend a disciplinary hearing to confirm the evidence contained in their statements
- c. Once all the evidence related to the case has been collated a report of the investigation will be produced by the investigating officer and submitted to the disciplining manager. Having liaised with Human Resources the disciplining manager will make a decision on whether a formal disciplinary

hearing is required, based on the evidence obtained during the investigation and the recommendations of the investigating officer. The investigating officer will present the findings at the disciplinary hearing should one take place.

- d. If after investigation there is no evidence to substantiate the need for further proceedings the employee will be informed in writing of this and if under suspension will return to work immediately.

Normally the employee's line manager would carry out the investigation, however, if the line manager is a witness to the alleged incident or behaviour another manager of appropriate seniority should be nominated to carry out the investigation.

If there is an allegation of fraud or corruption advice must be sought from the Local counter Fraud Specialist. The employee concerned must not be informed of the allegation prior to such advice and only if the Local Counter Fraud specialist confirms.

2.3 Suspension or Transfer to Other Duties

If the employee is accused of gross misconduct, the CCG, where necessary, may suspend him/her from work, on full pay, while it investigates the alleged offence. In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible, should be kept under review and it should be made clear that this suspension is not considered a disciplinary action. The CCG will explain its reasons in writing. Suspension will always be on full pay and is used purely for precautionary reasons not as a punishment.

2.4 Disciplinary Hearing Procedure

Once the investigation has been concluded and it has been established there is a case to be answered the disciplining manager will be responsible for setting up and hearing the disciplinary with support from Human Resources. The purpose of the hearing is to ensure that all the relevant facts and the circumstances of the allegations are fully heard and to decide whether or not disciplinary action should be taken and the appropriate level of disciplinary sanction.

Before all formal meetings the employee will be advised of his or her right to be accompanied by a Trade Union representative or work colleague employed by Lewisham CCG, who is not acting in a legal capacity. It is the employee's responsibility to arrange this representation.

The employee, and their representative, where they are known, will be advised in writing 5 working days prior to the disciplinary hearing, of the following:

- The date, time and venue of the hearing
- The reason for the hearing, a full description of the allegations or concerns and where appropriate that the hearing may lead to formal disciplinary action

including dismissal. The full management case will be sent at this time containing relevant documents and written statements.

- His/her right to be accompanied during the hearing and to present evidence/call witnesses. Please refer to Section 7.
- The names and job titles of those hearing and assisting at the disciplinary hearing
- A list of any management witnesses to be called

The requirement to supply management with any documentation, including witness statements which the employee intends to present at least 3 working days prior to the hearing.

A copy of the current disciplinary policy will be enclosed with the letter.

Every employee has a responsibility to attend any meeting arranged as part of the disciplinary process i.e. investigation meetings, disciplinary and appeal hearings. Should they fail to attend up to two meetings without reasonable grounds the meeting may go ahead in their absence and a decision may be made on the information available.

No new or supplementary information should be tabled at the meeting. If this happens the hearing will need to be adjourned to allow sufficient time to investigate and absorb the new information.

2.5 Rearrangement of Hearings

If circumstances necessitate, either side can request one postponement of up to 5 working days or more by mutual agreement. All hearings should be held as soon as practicably possible.

2.6 Raising a Grievance Prior to a Disciplinary Hearing

A grievance cannot be lodged in relation to issues being taken forward under this Disciplinary policy and procedure. Those issues should be raised as part of the disciplinary process.

Where a separate grievance process could impact upon allegations being taken forward under the disciplinary process, the grievance investigation may be considered by the chair of the disciplinary hearing before a decision on the disciplinary allegations is made.

Any appeal against the grievance decision can be heard at the same time any appeal against a disciplinary sanction imposed.

2.7 Disciplinary Hearing – Panel Membership

- a. The case will be heard by a senior manager who has not been previously involved in the case.

- b. The Chair will be supported by a senior member of the Human Resources to help ensure fairness, consistency and appropriate standards of conduct.
- c. The line manager will present the case and be supported by Human Resources.
- d. The employee will be supported by a trade union representative or work colleague.
- e. Where considered necessary, a person with specialist knowledge in the field of work of the employee will be invited to join the panel to give advice on matters relating to the professional or technical competence of the employee.

2.8 Hearing Procedure

At the disciplinary hearing the following will take place.

- a. The manager will present the case in the presence of the employee and her/his representative and may call witnesses. In the event that the manager is a witness in the case, the investigating officer may present the case.
- b. The employee and her/his representative will have the opportunity to ask questions of the manager and any witnesses.
- c. Members of the panel will have the opportunity to ask questions of the manager and witnesses.
- d. The manager will have the opportunity to re-examine her/his witnesses on any matters raised by the employee, her/his representative or members of the panel.
- e. The member of staff or her/his representative will present their case in the presence of the manager and may call witnesses.
- f. The manager will have the opportunity to ask questions of the employee, their representative and any witnesses.
- g. Members of the panel will have the opportunity to ask questions of the employee, her/his representative and witnesses.
- h. The employee or her/his representative will have the opportunity to re-examine their witnesses on any matters raised by the manager or members of the panel. The representative is not permitted to respond on behalf of the employee.
- i. The manager and the employee or her/his representative will have the opportunity to sum up their cases, with the employee or her/his representative having the right to speak last. Neither party can introduce any new matters pertaining to the case at this summing –up stage.
- j. The manager, employee and her/his representative shall depart from the immediate panel venue.
- k. The Chair and Human Resources shall adjourn to deliberate in private on the evidence presented. Where there are points of uncertainty, **they will recall both parties**, irrespective of from which side clarification if required.

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- I. Where possible, the full panel will be reconvened and the Chair will verbally deliver the decision, which will be confirmed in writing within five working days of the hearing.
- m. The employee and her/his representative will be advised verbally and in writing of their right of appeal.

3. Appeals Process

Where an employee wishes to exercise their right of appeal they should do so in writing to the manager identified in the warning/dismissal letter within 10 working days of the date of the letter confirming the decision of the Disciplinary Panel. The letter of appeal must specify the reasons for the appeal and any supporting information (please note that new information cannot be presented at this stage).

A meeting to discuss the appeal will be held within 10 working days of the disciplining manager receiving the appeal letter from the employee. The employee should be given a minimum of 5 working days' notice of the meeting.

Appeals will be heard by an appropriate manager and normally one who is senior to the one who made the original decision. The disciplining manager will be required to provide him or her with a copy of the management decision. The disciplining manager will be required to attend the meeting to explain their decision.

Human Resources must be informed that an appeal has been raised and a member of Human Resources will attend the meeting.

The employee has the right to be accompanied at the meeting by a Trade Union representative or work colleague.

The senior manager will write to the employees within 5 working days of the meeting to confirm the outcome.

4. Levels of Disciplinary Action

4.1 First Written Warning

In cases of misconduct, employees should be given a written warning setting out the nature of the misconduct and the change in behaviour required. The warning should also inform the employee that a final written warning may be considered if there is further misconduct. A record of the warning should be kept but it should be disregarded for disciplinary purposes after 12 months.

4.2 Final Written Warning

If the employee has a current warning about conduct or performance then further misconduct or unsatisfactory performance (whichever is relevant) may warrant a final written warning. This may also be the case where 'first offence' misconduct is sufficiently serious, but would not justify dismissal. Such a warning should normally remain current for 12 months

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and contain a statement that further misconduct or unsatisfactory performance may lead to dismissal.

4.3 Dismissal

If the employee has received a final written warning further misconduct or unsatisfactory performance may warrant dismissal. Dismissals can only be sanctioned at Director level within the CCG. Employees should only be dismissed if, despite warnings, conduct or performance does not improve to the required level within the specified time period. Dismissal must be reasonable in all the circumstances of the case. An employee being dismissed for reasons of gross misconduct should receive the appropriate period of notice.

Any penalty should be confirmed in writing, and the procedure and time limits for appeal set out clearly. There may be occasions when, depending on the seriousness of the misconduct involved, it will be appropriate to consider dismissal without notice.

Details of any disciplinary action should be given in writing to the employee within 5 working days of the hearing. A copy of the notification will be retained by the CCG. The written notification should specify:

- the nature of the misconduct
- any period of time given for improvement and the improvement expected
- the disciplinary penalty and, where appropriate, how long it will last
- the likely consequences of further misconduct
- the timescale for lodging an appeal and how it should be made.

5. Police Involvement

Where the Police themselves initiate investigations on any matter not directly related to an employee's work and as a result an employee is prevented from working, this will not necessarily be regarded as falling within the Disciplinary Procedure. It may be necessary to regard the employee initially as being on paid or unpaid leave of absence as appropriate and the position reviewed in the light of circumstances.

Where the member of staff has been arrested and released on bail or is under police investigation, the relevance of the incident to the work situation must be considered and disciplinary action may be necessary. If relevant then the employee may be suspended from work.

In a situation where the police are undertaking an investigation on a matter relevant to an employees work, whether it happened at or outside work during or not during working hours, the CCG may proceed with its own investigation and hold a Disciplinary Hearing independently of the police. However in certain circumstances the police enquiry will need to be completed prior to any action being taken.

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6. Time Limits

Any reference to working days shall exclude Saturdays, Sundays, Bank and Statutory Holidays.

At each stage the procedure sets out maximum time limits. Because it is important that there is a minimum of delay in pursuing the disciplinary procedure, these limits should be adhered to unless they are extended by mutual agreement. Where either the employee or management exceeds a time limit because of genuine difficulty, this should not be regarded as invalidating the disciplinary procedure.

7. Representation

Employees will be entitled to be accompanied by a work colleague or Trade Union representative, not acting in a legal capacity, during any hearings, formal meetings or appeals relating to the procedure. The colleague or Trade union representative will be allowed to confer with the employee during the meeting and to address the meeting on his/her behalf. The colleague or trade union representative however, does not have the right to answer questions on behalf of the employee. It is the employee's responsibility to arrange this representation.

The trade union representative need not be an employee of the CCG, but if he/she is not a fellow worker or an employee of his/her union, the CCG may insist on him/her being certified by the union as being experienced or trained in accompanying employees at formal hearings.

The choice of companion is a matter for the employee, but Lewisham CCG reserves the right to refuse to accept a companion whose presence would undermine the disciplinary procedure, or where it deems the choice of companion to be unreasonable when there is someone suitable and willing available at the same location. Please note that individual work colleagues are not obliged to agree to accompany employees. Companions will be given appropriate paid time off to allow them to accompany colleagues at a formal hearing.

A member of Human Resources will support the Manager at all stages and during meetings with both parties.

8. Review

Unless there are changes to legislation this policy will be reviewed every three years.

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Appendix 1: Disciplinary Investigation Witness Statement Form

Please complete all sections within 24 hours of incident

Name			
Job Title			
Line Manager			
Date of incident		Time of incident	
Venue or site of incident			
Name of Manager notified (please tick whether manager attended)		yes	no
Please state whether any other documentation was completed			
Staff or witnesses present (if yes, please give names)	1. 2. 3. 4. 5.		
(if yes, please describe effect e.g. were they distressed)			

Please describe the incident (Use the continuation sheet if necessary)

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Name.....Signature.....Date.....

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Appendix 2: Examples of Gross Misconduct

Gross Misconduct is behaviour of such a serious nature that the CCG loses confidence and trust in the employee to the extent it can no longer tolerate the continued employment of the individual. Such conduct will warrant summary dismissal i.e. without notice.

The following are examples of behaviour that may be regarded as gross misconduct. It is not an exhaustive or exclusive list.

1. Refusal to carry out reasonable management instructions.
2. Continued unauthorised absence.
3. Corruption – the receipt of money, goods, favours or excessive hospitality in respect of services rendered or in return for preferential treatment.
4. Assault – physical assault including fighting, threatening and intimidating behaviour
5. Wilful failure to follow Lewisham CCG's procedures and regulations under which Lewisham CCG operates.
6. Serious insubordination.
7. Malicious damage – to the property of clients, patients, employees, members of the public or Lewisham CCG.
8. Sexual misconduct at work.
9. Falsification of financial claims or any other fraud.
10. Falsification, destruction or alteration of patient/client records.
11. Theft, unauthorised removal or possession of property belonging to Lewisham CCG (or other NHS institutions), its members of staff, patients or the public.
12. Being under the influence of alcohol or substance misuse including prescribed or unlawful drugs at any time on Lewisham CCG or customer premises or whilst on Lewisham CCG business
13. The possession, distribution or sale of illegal drugs whilst on Lewisham CCG or customer premises or on Lewisham CCG business
14. Recklessness/negligence – any action, or failure to act, that threatens the health or safety of any person including clients, patients, members of the public or employees, or could result in serious damage to property or equipment and injury to patient
15. Serious breaches of confidential information including breaches of relevant laws such as the Data Protection Act (1988). Unauthorised disclosure to a third party of confidential information relating to the commercial, technical or financial affairs of Lewisham CCG or its clients and customers (subject to the Public Interest (Disclosure) Act 2013).

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16. Any act of unlawful discrimination, bullying or harassment.
17. Unauthorised use of, or tampering with, the information technology equipment supplied to the employee by Lewisham CCG or their clients.
18. Serious breach of the organisations rules on e-mail and internet usage.
19. Accepting or soliciting bribes and/or gifts.
20. Committing a criminal offence either at or outside work that undermines the trust between an individual and Lewisham CCG.
21. Dereliction of duty including failure to follow relevant professional codes of conduct.
22. Conduct that brings Lewisham CCG into serious disrepute
23. Imprisonment, where keeping the employee's job open is not a viable or appropriate course of action (may be dismissal for "Some other Substantial Reason").
24. Any serious breach of trust or confidentiality.
25. Unauthorised entry to computer records or deliberate falsification of records.
26. Deliberately accessing internet sites containing pornographic, racist, homophobic, sexist or otherwise offensive or obscene material.

Examples of Misconduct

The following are examples of behaviour that may, be regarded as misconduct. It is not an exhaustive or exclusive list.

1. Failure to arrive at work at the required time/shift.
2. Being absent from work without prior permission or without reasonable cause.
3. Failure to report absence from work without a good reason.
4. Failure to perform to a standard expected to provide an efficient service to clients and other members of staff.
5. Failure to wear appropriate protective clothing or use necessary safety equipment provided to carry out their duties.
6. Malicious or false accusations against an individual's conduct or capability.
7. Smoking on Lewisham CCG premises, in any CCG place of work or within any host Local Authority/NHS buildings to which the employee has access.
8. Leaving the work premises during the hours of duty without permission or a satisfactory reason.

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- 9 Disrespectful behaviour, such as sarcasm, mockery or mimicry, which cause personal offence.
 - 10 Adverse effect of employment outside the CCG upon performance or availability for employment within the CCG.

Appendix 3: Disciplinary Policy and Procedure Flowchart

