

NHSScotland Workforce Conduct Policy

1. Conduct

1.1 Aim

1.1.1 To provide a process to ensure that concerns about standards of conduct, inappropriate behaviour or wilful misconduct are managed in a fair, consistent and timely manner.

1.2 Scope

1.2.1 This policy applies to all employees with the exception of medical and dental staff in relation to their professional conduct or competence for which the extant circulars apply until such time as they are superseded by the new policy for medical and dental staff. It also applies to workers i.e. bank, agency and sessional workers. References to employees should be taken to apply to workers unless otherwise stated. The relevant circulars for medical and dental staff are: [1990 \(PCS\) 8](#)¹ amended by [1990 \(PCS\) 32](#)², [PCS \(DD\) 1994/11](#)³, [PCS \(DD\) 1999/7](#)⁴, [PCS \(DD\) 2001/9](#)⁵ and [SGHD/CMO \(2013\) 22](#)⁶.

1.2.2 It relates to any type of behaviour or conduct that falls below the standard required by the employer or is in breach of organisational policies. Read the [Guide to expected standards of behaviour](#)⁷. Concerns relating to breaches of regulatory standards can only be determined by the relevant regulator. Read the [Criteria for referral to external agencies](#)⁸. The employer may be unable to determine the outcome of a conduct process in advance of the regulator considering the referral. However, the employer may be in a position to determine an outcome based on employment standards and contractual obligations.

1.2.3 This Policy is compliant with current legislation and will meet the aims of the [Public Sector Equality Duty](#)⁹ of the [Equality Act 2010](#)¹⁰.

1.3 Definitions

1.3.1 A **first written warning** is a conduct sanction where there is no existing conduct warnings in place.

1.3.2 A **final written warning** is a conduct sanction where there are existing conduct warnings in place and there has been a further breach of standards of conduct.

1.3.3 A **first and final written warning** is a conduct sanction where the matter is so serious that the actions have had or are liable to have a serious or harmful impact on the organisation and there are no current conduct warnings in place.

1.3.4 **Gross misconduct** is deliberate wrongdoing or gross negligence by the employee which is so serious that it fundamentally undermines the employment relationship. Gross misconduct entitles the employer to dismiss the employee without notice. Read the [Guide to expected standards of behaviour](#)⁷.

1.3.5 **Misconduct** is unacceptable or improper behaviour, which can include an employee acting in an intentional or premeditated manner. Read the [Guide to expected standards of behaviour](#)⁷.

1.4 Roles and responsibilities

1.4.1 There are a range of standard expectations on all parties including HR, Trade Union representatives and Occupational Health which underpin all policies. Read more about standard [roles and responsibilities](#)¹¹. In addition, the following specific responsibilities apply to this policy:

1.4.2 Line manager

The line manager should:

- communicate with the employees for whom they are responsible and make them aware of the standards of conduct required
- ensure that good standards of conduct and special effort by individuals and teams are acknowledged, encouraged and reinforced
- assess the seriousness of the conduct issue and determine whether the matter can be addressed under early resolution
- keep employees fully informed of progress relating to the conduct process

1.4.3 Employee

The employee should:

- be aware of the standards of conduct expected of them, and discuss with their line manager if unclear
- adhere to the expected standards of conduct
- actively participate in the process to avoid delays
- comply with any support / monitoring mechanisms put in place
- raise concerns with the appropriate manager where they perceive others not to be adhering to expected standards of conduct

1.5 Procedure

1.5.1.1 The route for conduct is shown in the [Conduct policy flowchart](#)¹² which outlines the procedure through both the early resolution and formal stages.

1.5.1.2 The manager is expected to take action in a prompt and timely manner when alleged misconduct is initially raised.

1.5.1.3 There may be circumstances where it is unclear whether the issue is one of conduct or capability, and an investigation is required to determine this question. If so, this investigation must take place in advance of any formal conduct process. Find out more about the [NHSScotland Workforce Policies Investigation Process](#)¹³.

1.5.2 Early resolution

1.5.2.1 Managers should assess whether there are ways of addressing the alleged misconduct in a supportive way prior to progressing to use of the formal stages.

1.5.3 Initial meeting

1.5.3.1 The aim of the initial meeting is to provide a supportive environment for employees which seeks to ensure appropriate standards of conduct and behaviour.

1.5.3.2 Both managers and employees are responsible for ensuring that such discussions take place promptly when issues arise and that they are managed confidentially.

1.5.3.3 The manager should have a two-way open and honest discussion with the employee which may determine any underlying issue(s) and identify potential solutions.

1.5.3.4 The manager will provide guidance on acceptable standards of conduct and behaviour and set targets and timescales for improvement where appropriate. The outcome of these meetings should be documented and a copy kept by both parties to ensure clarity of expectations and commitments.

1.5.3.5 The timescales for any follow up / review meetings will be by agreement by both parties.

1.5.4 **Review meeting(s)**

1.5.4.1 The follow up / review meeting(s) will involve the manager meeting with the employee to review whether the standards of conduct and behaviour have been met and any targets set have been achieved.

1.5.4.2 At the end of the agreed timescales, where the required improvement has been met, the manager will confirm that no further action will be taken. Where the required improvement(s) are not met, the manager will advise the employee that the formal procedure will be initiated.

1.5.4.3 The outcome of these meeting(s) must be confirmed by the manager in writing to the employee within 7 calendar days, using the [standard letter template](#) ¹⁴.

1.5.5 **Suspension**

In all cases suspension should be a last resort. The use of suspension is not in itself a conduct action but does form part of this policy. The manager should assess if there is a significant risk to the organisation in areas such as clinical care, the safety of other persons and / or any investigation. Where these risks can be managed alternatives to suspension should be used. These will include temporarily moving the employee to another work area, or considering other duties. Where this is not possible suspension may be appropriate. Read the [Guide to suspension](#) ¹⁵ for more information.

1.5.5.1 Employees who are suspended during investigations and formal processes will be paid as if at work and for as short a time as possible. However, where an individual is suspended and subsequently reports as being sick, whilst the terms of the suspension will remain in place, the employee will receive occupational sick pay (according to their entitlement) during the sickness absence period.

1.5.5.2 Where workers are removed from duty under this policy they will be entitled to payment for any pre-arranged shifts / work but will receive no further payment for the duration of the investigation / conduct process.

1.5.5.3 There will be regular contact with the employee during suspension to offer support and keep the employee advised of progress with the investigation. The employee should remain available to participate and attend in any investigation and conduct hearings as required. Annual leave can be requested as long as it does not interfere with the investigation or conduct process. Read the [Guide to suspension](#) ¹⁵ for more information.

1.5.6 **Formal approach**

1.5.6.1 Where early resolution has not been successful, or in more serious cases, a formal approach will be required.

1.5.6.2 Prior to any formal conduct process starting, a full and thorough investigation must be carried out in line with the [NHSScotland Workforce Policies Investigation Process](#) ¹³. This should be undertaken in a timely manner to establish the facts of the case.

1.5.6.3 Once an investigation has been concluded and it is determined that the matter should be referred to a conduct hearing, written notification will be sent to the employee within 7 calendar days of the manager receiving the final investigation report.

1.5.7 **Conduct Hearing**

1.5.7.1 The conduct hearing will comprise of a Chair, according to the scheme of delegation, and two other panel members one of whom will be an HR representative. In matters of technical or clinical misconduct, it may be necessary to have a relevant advisor as one of the three panel members. To ensure impartiality, panel members, including the Chair, must have had no prior involvement in the case. Read the [Formal hearings guide](#) ¹⁶ and [scheme of delegation principles](#) ¹⁷ for more information.

1.5.7.2 Other Persons in attendance will normally include:

- the employee
- a Trade Union Representative or work colleague
- the investigating manager
- the HR representative supporting the investigating manager
- any witnesses called by either party. Witnesses will have the right to be accompanied and will only be present when giving their own evidence

1.5.8 **Process**

1.5.8.1 The nominated Chair will be responsible for identifying the membership of the conduct hearing panel.

1.5.8.2 The Chair will write to all parties advising of the arrangements no later than 14 calendar days prior to the hearing, using the [conduct hearing invite letter](#) ¹⁸. This should include a copy of the investigation report and information regarding any witnesses to be called.

1.5.8.3 Should the employee wish to provide a written statement of case, this should be submitted no later than 7 calendar days before the hearing and will be shared with all other parties.

1.5.8.4 It is the responsibility of any party calling witnesses to inform them of the arrangements for the hearing.

1.5.9 **Outcome**

1.5.9.1 Following the hearing, the panel will adjourn to consider the case.

1.5.9.2 There are three potential outcomes:

- The allegation is not upheld
- learning outcomes and / or
- formal conduct sanction

1.5.9.3 The formal conduct sanctions available to the panel are as follows:

- First Written Warning – 6 months
- Final Written Warning – 12 months
- First and Final Written Warning – 12 months
- Alternatives to Dismissal
- Dismissal

1.5.9.4 The sanction applied by the conduct panel should take into account the seriousness of the allegations against the employee, the evidence presented and any mitigation which is offered.

1.5.9.5 Previously issued warnings which have expired must be disregarded. However, consideration may be given to circumstances where the background to such warnings

demonstrates a repeated pattern of behaviour taking into account the time that has elapsed.

1.5.9.6 Where the outcome of the conduct hearing is such that dismissal would be an appropriate action, it may be that because of mitigating circumstances, an alternative to dismissal may be considered appropriate. Any such alternatives should be based on the general principles of equity and consistency, and will be in conjunction with an appropriate level of warning.

1.5.9.7 Alternatives to dismissal may include:

- a period of re-training
- a permanent or temporary demotion (protection of earnings will not apply in such cases)
- redeployment / relocation to another suitable post / location

1.5.9.8 Movement into another post (including demotion) will only be an option where it is identified that such a post exists. A post will not be created to facilitate such a move.

1.5.9.9 Dismissal as a result of repeated misconduct will be with notice. In cases of gross misconduct there is no entitlement to notice.

1.5.9.10 In misconduct cases involving [Workers](#)¹⁹, if the behaviours / actions are considered so serious that continued engagement with the organisation is not appropriate the individual will be offered no further shifts / work. In less serious cases the application of a warning may be appropriate.

1.5.9.11 All conduct hearing outcomes will be confirmed in writing to the employee and their representative within 7 calendar days following the hearing, informing of the right of appeal within 14 calendar days. The [standard conduct hearing outcome letter](#)¹⁴ is used.

1.5.9.12 Outcome letters should be copied to the employee's manager to ensure they are aware of the outcome and any matters that may need to be taken forward or implemented.

1.5.9.13 If a conduct outcome of dismissal or alternative to dismissal relates to a registrant it may be necessary to refer them to a regulatory body. Employees in regulated work will also be referred to Disclosure Scotland where they have been removed from regulated work. Employees should be informed in advance that a referral will be made. In the case of Workers appropriate referrals will also be made.

1.5.10 **Appeal hearing process**

1.5.10.1 All employees will have a right to appeal within 14 days against any decision taken during the formal approach. When exercising this right, the employee must identify the reason for their appeal.

The appeal panel Chair, in accordance with the [scheme of delegation](#)¹⁷, will be responsible for identifying membership of the appeal hearing panel.

1.5.10.2 The Chair will also be responsible for ensuring that all parties are advised in writing of the arrangements, no later than 14 calendar days prior to the hearing, using the standard [appeal hearing invite letter](#)²⁰ template.

1.5.10.3 The employee and the Chair of the conduct hearing are required to provide a written statement of their case and confirmation of any witnesses attending. These should

be submitted no later than 7 calendar days before the hearing and will be shared with all other parties.

1.5.10.4 An appeal cannot result in any increase in penalty i.e. a warning cannot be replaced by a dismissal, as this may deter employees from appealing.

1.5.11 **Outcome**

1.5.11.1 Following the hearing the Chair will write with the outcome of the appeal hearing to the employee and their representative. This should include the rationale behind any decisions taken in response to the employee's grounds for appeal. The letter will be issued within 7 calendar days following the appeal hearing, using the standard [appeal hearing outcome letter](#) ²¹ template.

1.5.11.2 The outcome of the appeal will be final.

1.5.12 **Criminal offences or police involvement**

1.5.12.1 Conduct sanctions should not be imposed automatically on an employee because they have been charged with or convicted of a criminal offence committed out with the course of employment. Each situation should be considered individually on the basis of whether the employee's conduct warrants action because of its employment implications or because of its impact on other employees. The manager should also consider information regarding any previous convictions. In a situation where the employee refuses to co-operate they should be advised in writing that unless further information is provided a decision will be taken, up to and including dismissal, on the basis of the information available. In some cases the nature of the offence may have no bearing on the employee's employment but the employee may not be available for work because they are in custody or on remand. In these circumstances, the employer will need to decide whether, considering the needs of the service, the employee's job can be kept open. Read the [Guide for investigations associated with criminal offences](#) ²² and the [Guide to Counter Fraud Services](#) ²³.

1.5.13 **Grievances or bullying and harassment complaints**

1.5.13.1 Where an employee raises a grievance or bullying and harassment complaint during a conduct process, the process may be temporarily suspended in order to deal with the grievance or complaint. Where the grievance or complaint and conduct case are related, it may be appropriate to deal with both issues concurrently.

References

- ¹ Disciplinary procedures for hospital medical and dental staff, community medicine staff and doctors in public health medicine: 1990 (PCS) 8
[http://www.sehd.scot.nhs.uk/pcs/PCS\(1990\)08.pdf](http://www.sehd.scot.nhs.uk/pcs/PCS(1990)08.pdf)
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- ⁴ Report of the short-life working group on suspension of medical and dental staff: PCS (DD) 1999/7
[http://www.sehd.scot.nhs.uk/pcs/PCS1999\(DD\)07.pdf](http://www.sehd.scot.nhs.uk/pcs/PCS1999(DD)07.pdf)
- ⁵ Discipline procedures: classification of conduct: PCS (DD) 2001/9
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- ⁶ Suspension of medical and dental staff: SGHD/CMO (2013) 22
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- ⁷ Conduct Policy : guide to expected standards of behaviour
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- ⁸ Criteria for referral to external agencies
<https://workforce.nhs.scot/supporting-documents/guides/criteria-for-referral-to-external-agencies/>
- ⁹ Public Sector Equality Duty
<https://workforce.nhs.scot/about/principles-and-values/>
- ¹⁰ Equality Act 2010
<https://www.legislation.gov.uk/ukpga/2010/15/contents>
- ¹¹ Roles and responsibilities
<https://workforce.nhs.scot/about/roles-and-responsibilities/>
- ¹² Conduct Policy : flowchart
<https://workforce.nhs.scot/supporting-documents/flowchart/conduct-policy-flowchart/>
- ¹³ NHSScotland Workforce Policies Investigation Process
<https://workforce.nhs.scot/policies/workforce-policies-investigation-process-overview/>
- ¹⁴ Conduct Policy : supporting documents
<https://workforce.nhs.scot/policies/conduct-policy-overview/conduct-policy/#supporting-documents>
- ¹⁵ Conduct Policy : guide to suspension
<https://workforce.nhs.scot/supporting-documents/guides/conduct-policy-guide-to-suspension/>

¹⁶ Formal hearing guide

<https://workforce.nhs.scot/supporting-documents/guides/formal-hearing-guide/>

¹⁷ Scheme of delegation principles

<https://workforce.nhs.scot/supporting-documents/guides/scheme-of-delegation-principles/>

¹⁸ Conduct Policy : conduct hearing invite letter

<https://workforce.nhs.scot/supporting-documents/letter-template/conduct-policy-conduct-hearing-invite-letter/>

¹⁹ Guide to the application of NHSScotland Workforce Policies to workers

<https://workforce.nhs.scot/supporting-documents/guides/guide-to-the-application-of-nhsscotland-workforce-policies-to-workers/>

²⁰ Conduct Policy : appeal hearing invite letter

<https://workforce.nhs.scot/supporting-documents/letter-template/conduct-policy-appeal-hearing-invite-letter/>

²¹ Conduct Policy : appeal hearing outcome letter

<https://workforce.nhs.scot/supporting-documents/letter-template/conduct-policy-appeal-hearing-outcome-letter/>

²² Workforce Policies Investigation Process : guide for investigations associated with criminal offences

<https://workforce.nhs.scot/supporting-documents/guides/workforce-policies-investigation-process-guide-for-investigations-associated-with-criminal-offences/>

²³ Workforce Policies Investigation Process : guide to Counter Fraud Services

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