**Disciplinary policy and procedure**

*Approved by the Board, 24/09/2020, due for review 24/0/2023*

**Policy Statement**

The New Cross Gate Trust (The Trust) expects members of staff to conduct themselves in an appropriate manner. It also recognises that if an individual’s behaviour (conduct) or performance (capability) is unacceptable, a fair and effective disciplinary policy needs to be in place.

This disciplinary procedure is designed, except in the case of proven gross misconduct, to offer all members of staff the opportunity and encouragement to improve their behaviour / performance.

**Principles**

The Trust will work within the principles of natural justice and follow ACAS advice on good practice in this area. Therefore:-

* An employee will be given written notification of the complaint/allegation against and the possible outcomes of the disciplinary hearing.
* An employee will have the right to see any evidence against them and submit their own evidence.
* Disciplinary action will not be taken against any employee until the case has been fully investigated.
* Employees will have the right to be accompanied by a work colleague, trade union representative or a friend at all formal stages, including investigatory interviews. Employees may not be legally represented at any stage of the procedure.
* Your companion may state your case during the hearing, sum up your case at the end or respond on your behalf to any view expressed at the hearing. They may also confer with you but do not have the right to answer questions on your behalf or address the hearing if you do not want them to do so, or prevent anyone from making their contribution at the hearing.
* No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will be dismissal without notice or payment in lieu of notice;
* An employee will have the right to appeal the outcome of any disciplinary meeting as described in the appeals procedure.

***Note: Grievances / Whistleblowing:-***

*Where a grievance or whistleblowing concern is raised during a disciplinary process, The Trust may temporarily suspend the disciplinary process to deal with the grievance or whistleblowing concern. Where the grievance or whistleblowing matter is related to the disciplinary case, The Trust may decide it is appropriate to deal with both issues concurrently.*

**Examples of misconduct**

This lists below are not to be considered as either complete or exhaustive.

* Examples of *misconduct* include: persistent lateness ; abuse or misuse of property or equipment in the care of The Trust; poor standards of work; serious incompetence; misuse of email or internet; unauthorised absence from work; failure to carry out reasonably requested, legitimate tasks; behaviour likely to bring The Trust into disrepute; breach of trust or confidentiality; failure to follow Health and Safety procedures, etc. (this latter may also constitute gross misconduct); failure to abide by the Code of Conduct.
* Examples of *gross misconduct* include: Persistent repetition of any proven misconduct; acts of rude/offensive behaviour of any kind; being under the influence of alcohol or a prohibited substance; violence, harassment or bullying of any kind, including assault or threats of assault; discrimination, harassment or victimisation of another person; criminal charges and/or convictions that adversely impair the employment relationship; theft, fraud or misappropriation of Trust or another employee’s property.

***Informal verbal warning***

If an employee fails to meet the standards required by The Trust they will initially be given an informal warning by their line manager. This will not be recorded on their personnel records.

***First written warning***

If the employee’s conduct or performance fails to improve they will attend a disciplinary hearing with their line manager at which they may be accompanied by a work colleague, trade union representative or a friend.

If the outcome of the meeting is a first written warning this will be kept on record for six (6) months and disregarded for disciplinary purposes after that period.

***Final written warning***

If the employee’s offence is sufficiently serious, or there is a failure to improve within six months of the first written warning they will receive a final written warning.

The employee will attend a disciplinary hearing at which they may be accompanied by a work colleague, trade union representative or a friend.

If the outcome of the meeting is a final written warning this will be kept on record for twelve (12) months and disregarded for disciplinary purposes after that period.

***Gross misconduct***

If an employee commits an extremely serious disciplinary offence The Trust may dismiss them with out prior warnings and without notice.

If the employee is alleged to have carried out such an act of gross misconduct The Trust will suspend them on full pay whilst it carries out an investigation into the alleged offence.

At the disciplinary hearing the employee will be given the opportunity to state their case and be accompanied by a work colleague, trade union representative or a friend.

If, after investigation, it is confirmed that an employee has committed an act of gross misconduct the normal consequence will be dismissal without notice or payment in lieu of notice.

**Three step statutory discipline and dismissal procedure**

If an employee faces dismissal or action short of dismissal such as loss of pay, demotion or suspension without pay the three step statutory disciplinary and dismissal procedure will apply. This involves:

* *step one:* a written note to the employee setting out the allegation and the basis for it
* *step two:* a meeting to consider and discuss the allegation
* *step three:* a right of appeal including an appeal meeting.

The employee will be reminded of their right to be accompanied.

**Appeals**

An employee who wishes to appeal against any disciplinary decision must appeal to the Chair of the HR Committee within five working days. The Chair will set up a panel to hear the appeal and decide the case. The panel will consist of at least two trustees who have not been involved in the earlier meetings, at least one of whom will be a member of the HR committee.

**Links to other policy documents:**

Whistleblowing

Staff Code of Conduct

Grievance policy and procedure

**Data protection**

The Trust processes personal data collected during the formal disciplinary procedure in accordance with its [data protection policy](http://www.xperthr.co.uk/policies-and-documents/data-protection-policy-compliant-with-the-gdpr-/162690/). In particular, data collected as part of the disciplinary procedure is held securely and accessed by, and disclosed to, individuals only for the purposes of conducting the disciplinary procedure.