



DISCIPLINARY POLICY

Compiled by: Human Resources Department

Status: Approval date: September 2021

Ratified by: Trust Executive Committee

Review date: September 2024

Patients first • Personal responsibility • Passion for excellence • Pride in our team

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History

Issue	Date Issued	Brief Summary of Change	Approved by
1	Apr 1999	New Policy	TEC
2	Mar 2004	Section 4, 1 st sentence new Section 10, 2 nd paragraph new, Appendix 1 new	Management Board
3	Dec 2005	Changes to comply with Statutory Disciplinary Procedures and latest DOH and legal guidance	Policy Group Management Board
4	Aug 2006	Changes to Disciplinary rules and representation	Policy Group Management Board
5	Dec 2012	General review and policy update	TEC
6	Sep 2021	General review and policy update	TEC

For more information on the status of this document, please contact:	HR Business Partners, Employee Relations Manager, HR Advisors
Policy Author	HR Business Partners, Employee Relations Manager, HR Advisors
Date of issue	October 2021
Review due	September 2024
Ratified by	TEC
Audience	All non-medical staff

DISCIPLINARY POLICY

See also:

- Appeals Policy
- Performance and Capability Policy
- Sickness Absence Policy
- Single Equality Scheme
- Alcohol and Drugs at Work Policy
- Dignity At Work Policy
- Policy & Procedure for Grievance
- Conduct, Capability, Ill Health And Appeals Policies And Procedures For Practitioners (Doctors And Dentists)
- Smoke-free Site Policy
- Professional Registration Policy
- Temporary Staffing Policy
- Social Media Policy

1. INTRODUCTION

This policy forms part of Ashford & St. Peter's Hospitals NHS Foundation Trust's commitment to create a positive culture of respect for all individuals including staff, patients, their families and carers as well as community partners. The Trust's Values (the '4P's') and Staff Pledge are integral to all aspects of day-to-day life in the organisation and underpin the application of all our employment policies and procedures.

The primary purpose of the policy is one of guidance and problem-solving, and aims to encourage employees to achieve and maintain high standards and to encourage improvement amongst employees whose conduct is unsatisfactory.

2. SCOPE

The policy applies to all staff employed by the Trust except medical and dental staff to whom the Conduct, Capability, Ill Health and Appeals Policies and Procedures for Practitioners (Doctors and Dentists), applies.

For staff who are required to maintain current registration with a professional body, (such as nurses, midwives and allied health professionals), disciplinary issues may be reported to the appropriate professional body such as the Nursing and Midwifery Council or Health Professions Council if appropriate.

This policy is intended to cover acts of misconduct.

In the case of disciplinary action against employees who are accredited trade union representatives, a full-time official of the union or organisation should be contacted by a Workforce & OD manager at an early stage and allowed to accompany the employee at any investigatory interviews and disciplinary hearings if the employee wishes.

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The Trust is committed to compassionate, fair and inclusive practices and to ensuring that colleagues are treated with dignity, civility and respect irrespective of what concerns may have arisen and what proceedings, if any, may need to be initiated, irrespective of background, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. Everything we do is guided by our vision and core values of Patients First, Personal Responsibility, Passion for Excellence and Pride in our Team.

3. DUTIES

Corporate/trust-wide duties:

- Corporate responsibility for this policy lies with the Director of Workforce Transformation

Managers:

- To promote and embed the Trust Values (4P's) and Pledge
- To ensure that their own staff who have any responsibility for managing or supervising staff are made aware of this policy
- To ensure that both they and their staff are **aware**, trained and updated in the use of employment policies
- To implement this policy and appendices, fairly and consistently, ensuring that principles of equality of opportunity are adhered to
- Take all reasonable steps to maintain confidentiality within the application of this policy
- To ensure informal stage is used wherever possible
- To carry out the initial assessment enquiry within 48 hours when required
- To keep appropriate written documentation relating to incidents of alleged misconduct

Human Resources:

- To advise managers and staff on the interpretation and application of this policy
- To monitor and evaluate the application of this policy
- To provide HR support during investigations and hearings

Employees:

- To use the Trust Values (4P's) and Pledge as the point of reference for their conduct and behaviour at work
- To communicate effectively with their line manager, raise any issues of concern in an appropriate manner and be willing to work constructively to resolve concerns regarding their personal or professional conduct
- Take all reasonable steps to maintain confidentiality regarding the application of this policy
- To take all reasonable steps to attend any meetings that are arranged, including as a witness
- To arrange their own representation or support for formal meetings.
- To arrange for their own witnesses to attend Disciplinary hearings. In cases of suspension, the union representative or HR representative can contact witnesses on behalf of the employee.

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4. KEY PRINCIPLES

- The 'Pledge' (values and behaviours) provides an overarching framework in respect of personal and professional conduct for **all** employees of Ashford & St. Peter's Hospitals
- All staff are dealt with in a fair and consistent manner
- Member of staff will be notified of any alleged concerns as part of the initial enquiry process.
- All disciplinary issues are dealt with in a timely manner
- The formal disciplinary procedure will only be used when either:
 - informal procedures have failed to achieve the desired results or
 - the issue is sufficiently serious to warrant formal action being taken
- At every stage, the member of staff will be informed of the allegations against them and they will have the right to state their side of events.
- The member of staff has the right to be represented at all formal stages by a staff representative from a trade union or staff association or by a colleague employed by the Trust or by another NHS employer
- If the employee has difficulty reading or if English is not the first language, the manager should take all reasonable steps needed to ensure that the employee fully understands the allegations and the process. This can include the provision of an interpreter or translator if requested by the employee. Where the employee has communication difficulties as the result of a disability, consideration should be given to whether, for example, a British sign language interpreter or loop system is needed.
- No dismissal will normally be made for a first offence except in cases of gross misconduct.
- All disciplinary matters will be dealt with confidentially.
- Where appropriate, training, and/or other supportive measures may be provided at all stages short of dismissal and in a reasonable period of time in order to avoid recurrence of the problem.
- Employees will have the right of Appeal against any formal action taken under this policy, in line with the Appeals Policy.

5. MANAGEMENT PRIOR TO DISCIPLINARY PROCEDURES

The disciplinary procedure is not intended to replace the normal management/employee relationship. Therefore, the line manager will consider offering appropriate training, mentoring, coaching, or any other support as appropriate to improve standards of conduct in an effort to avoid formal action.

When an employee's conduct is below acceptable standards, the manager should meet informally with them to discuss any perceived problems. These meetings are part of the normal management and employee relationship and do not constitute part of the formal disciplinary procedure.

The purpose of these meetings is to ensure that the employee clearly understands what is expected by the Trust, the acceptable standards of behaviour, and the potential consequences (disciplinary action up to and including dismissal) of failure to comply. It is also to help the employee rectify faults by discussing problems with the manager and thereby avoiding the use of the formal disciplinary procedure wherever possible.

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The manager will write to the employee advising them of the content and outcome of the informal meetings and a copy of the letter or email will be placed on the employee's personal file.

The Counselling Guidelines based on ACAS are enclosed at Appendix 3

6. WHO CAN TAKE DISCIPLINARY ACTION

Formal disciplinary action (disciplinary warnings or dismissal) may only be taken in the following circumstances:

- after a formal hearing,
- Following an agreed outcomes process as described in section 13ii of this policy

Only designated managers may take disciplinary action or managers authorised to do so, on their behalf, in accordance with this policy. All designated managers or those with delegated authority will receive coaching and/or training in order to apply this policy fairly and consistently. At all stages of the formal process, advice may be obtained from HR Business Partner, Employee Relations Manager or HR Advisors.

The manager hearing a disciplinary case in a formal disciplinary hearing must not be the same manager that carried out the investigation and should be a more senior manager than the investigating manager.

The designated managers are listed in Appendix 1.

7. MANAGING ALLEGATIONS AGAINST STAFF SUSPECTED OF ABUSE OF VULNERABLE ADULTS

See the "Safeguarding Adults in the Trust: Safeguarding Adults Policy" <http://trustnet/documents/menu801.htm>

8. MANAGING ALLEGATIONS AGAINST STAFF SUSPECTED OF ABUSE OF CHILDREN/YOUNG PEOPLE

See the "Safeguarding Children Policy". <http://trustnet/documents/menu858.htm>

9. MANAGING ALLEGATIONS AGAINST STAFF SUSPECTED OF FRAUD/CORRUPTION

See the "Counter Fraud and Corruption Policy" <http://trustnet/documents/menu127.htm>

10. ALLEGATIONS OF MISCONDUCT RELATED TO ACTIVITY UNDERTAKEN ON-LINE

This policy provides advice and guidance to managers and employees regarding their personal and professional conduct in relation to their work. Allegations of misconduct can also relate to activity undertaken on-line, through Internet and e-mail usage, including activity on social networking sites, personal websites and blogs, discussions boards, e-mail groups and instant messaging. The key principle that

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applies in this situation is that conduct on-line and conduct in the real world should be judged in the same way, and should be at a similar high standard.

11 CRIMINAL OFFENCES

Where the misconduct is the subject of a police investigation or legal process, the Trust has the discretion to proceed with its own investigation and disciplinary action in accordance with this procedure, without awaiting the outcome of any police investigation or prosecution.

The Trust may decide to stay relevant internal proceedings, pending police/legal proceedings.

Where an employee is questioned or arrested; and or cautioned; and or convicted of a criminal offence; and or issued with a reprimand letter for an offence committed outside of work, it is the employee's responsibility to inform their manager of the circumstances. Failure to report or disclose this information will/may result in disciplinary action being taken up to and including dismissal.

Where an employee is charged with or convicted of a criminal offence not related to work this is not in itself reason for disciplinary action. The facts of the case will be established and consideration given to whether the matter is serious enough to warrant starting the disciplinary procedure. Consideration will be given to what effect the charge or conviction has on the employee's suitability to do their type of work and their relationship with their employer, work colleagues and service users. Consideration will also be given to whether an incident which is or has become public knowledge, might as a result bring the trust into disrepute. A risk assessment will be completed to inform the impact on an individual's employment.

12. REQUEST TO SEARCH PROPERTY

When undertaking an investigation, an investigating manager may need to request to search an employee's personal property. Such a request would normally be appropriate, for example, where there were allegations of theft. A request to conduct a search should be on the basis of a reasonably held belief, and if so, would constitute a reasonable management request. A refusal to allow a search may in itself be seen to be a disciplinary matter.

13. DISCIPLINARY PROCEDURE

Initial Assessment Inquiry

Prior to a disciplinary investigation being commissioned, the line manager should provide staff with the opportunity to respond to any alleged concerns and gather further information before a decision is made about what the next steps, if any, should be. The manager should gather information relevant to the alleged incident:

- Speak to the member of staff for their response to the alleged concern
- Determine whether any immediate action/s is required whilst the whilst undertaking the initial inquiry.
- Request statements from the member of staff and any immediate potential witnesses where appropriate
- Collate/ review any relevant paperwork, for example, patient notes, Datix

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report and / or Health roster information.

The Line Manager should discuss if the individual would like a referral to occupational health and sign post the individual to the Trust Employee Assistance Programme and advocate that the individual contact their trade union, if they are a member. If Commissioning Manager decides that formal proceedings should be initiated, they should assign a named person for pastoral support.

The Initial Assessment Report (Appendix 8) is not intended to be and cannot be a thorough investigation of all the issues arising from the concern. The Line Manager is *only concerned in investigating the concern to the extent that it is necessary to make a preliminary decision on how matters should be taken forward*. The Initial Assessment Report should be signed and dated.

The Line Manager should provide the Initial Assessment Report to their Manager (Commissioning Manager) to determine how the matter should be taken forward.

The Commissioning Manager should write to the member of staff, outlining the findings of initial assessment and set out how the matter will be dealt with.

13.i Investigation

See ACAS Investigation Guidelines at Appendix 4

When an employee's conduct appears to warrant consideration of disciplinary action an investigation should be commissioned by an appropriate manager (Commissioning manager) who will determine the terms of reference and /or allegations. These are then forwarded on to the investigating officer for them to instigate the investigation process. The investigation is then carried out by the 'investigating officer' who may be the line manager or other appropriate manager. If during the course of an investigation further concerns are identified that need to be addressed these can be reported to commissioning manager and the terms of reference may be extended to reflect this.

When investigating a disciplinary matter the investigating officer should take care to deal with the employee in a fair and reasonable manner. The investigation is a neutral process and not aimed to prove or disprove guilt. It is a process for obtaining facts and presenting them in a logical fashion. It is the manager with authority to discipline (the hearing manager) who ultimately decides whether or not to convene a disciplinary hearing based on the report of the investigating officer. The commissioning manager usually but not necessarily acts as the hearing manager.

The investigating officer will carry out an investigation as soon as possible to establish the facts promptly before memories of events fade. This will include the collection of statements and where appropriate, interviews with those involved. All witnesses and the employee should be reminded of the requirement for confidentiality. The investigation will normally be completed within a reasonable time taking into account the complexity of the case and the availability of witnesses; preferably within four weeks. If there is to be any delay, the investigating officer will keep all concerned informed as to the reasons why.

The employee under investigation has the right to be accompanied (see section 2 above) at any investigatory interviews about his/her conduct. Before any such

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interview, the employee should be informed of the allegations against him/her and given time to prepare but will not have the right to see any written statements or evidence or be informed of the names of witnesses until the matter is submitted to a formal disciplinary hearing. Where an investigatory meeting is held solely to establish the facts of a case, it should be made clear to the employee involved that it is not a disciplinary hearing but could lead to a formal disciplinary hearing.

The investigating officer will be expected to carry out the investigation and is responsible for the production of the final report and presentation of the findings to any resulting disciplinary hearing.

An HR Business Partner or Advisor will be informed of the circumstances of the investigation and will be available to advise on the investigation process and should attend investigatory interviews, meetings and disciplinary hearings in an advisory capacity.

Having established the facts the investigating officer will complete a report of the investigation to include a summary of the investigatory meetings, a description of the findings and a clear and logical conclusion based upon obtained evidence with a recommendation as to whether the matter should be presented to a disciplinary hearing. This report will be sent to the commissioning manager. The employee will be informed as soon as possible by the commissioning manager the outcome of the investigation:

- whether the matters investigated are to be resolved informally or formally
- if informally the date of the meeting to discuss this outcome and any informal measures to be imposed,
- if formally the arrangements for a hearing reference section 13iv.

Where Police Involvement may be necessary, please contact an HR Business Partner.

13.ii Agreed Outcomes

It is recognised that lengthy disciplinary proceedings can create anxiety for all those involved in the process. It is further recognised that lengthy processes, can create additional pressure on service delivery; as such an 'agreed outcomes' option is available to support the process.

Where the employee has admitted and accepted the allegations, the agreed outcomes framework may be used at any point in the process if:

- The manager considers it is appropriate to conclude the matter without the need for a disciplinary hearing, by using an agreed outcomes procedure and
- The employee requests that the agreed outcome framework be followed.
- This is decided in consultation with a member of the HR team.

Where the manager feels it is not appropriate to proceed to an agreed outcome they will provide the individual with written reasons for this. There will be no right of appeal or of grievance against this decision. It may not always be appropriate to use agreed outcomes (e.g. in cases of gross misconduct where dismissal is a potential outcome), although it may be appropriate where the employee has expressed admission of the alleged offence(s) and contrition for it/them. Where the employee is already subject to a current final written warning for similar or related misconduct the agreed outcome process will not be followed. This approach should therefore only be considered where the alleged conduct is likely to result in some level of warning, and only

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following receipt of advice from a member of the HR team. The possible agreed outcomes are those contained in section 13 of this policy, excluding those of dismissal or summary dismissal.

Agreed outcomes will only proceed if the employee and their representative (if they have one) are agreeable to the process and have accepted that there is substance to the allegations and that the facts gathered support it, i.e. there must be mutual consent. It is open to either party, without prejudice, to suggest an agreed outcome at any stage of the disciplinary process. If there is not agreement with a proposal for an agreed outcome then the formal disciplinary process must be followed.

If the agreed outcomes process is to be used, a meeting should be held at which the manager plus another manager, as well as the employee and their representative, are present. The supporting documents, and investigation report, where applicable, will be provided to the employee and their representative 5 working days prior to the meeting, or lesser period, if agreed. At the meeting all available relevant information must be available to those attending.

The agreed outcome will be confirmed in writing to the employee within 5 working days, by the manager.

The employee will be required to confirm in writing that they accept and understand the agreed outcome. There is no appeal against an agreed outcome which by definition should be mutually agreed. If an employee refuses to accept the outcome, or decides to withdraw from the agreed outcome process at any time, then the manager will arrange for matters to be considered at a formal disciplinary hearing in accordance with this policy. In all such situations further advice should be sought from HR.

Any disciplinary sanction issued in this way has the same status as one issued after a disciplinary hearing. Any decisions taken as part of this process will impact upon future disciplinary issues in the same ways as a sanction issued after a full disciplinary hearing. For example, if a first written warning is an agreed outcome, any further repetition of the behaviour (or similar behaviour) that led to that level of warning may result in more serious action being taken.

13.iii Suspension

In certain cases, consideration should be given to a period of suspension from work duties with full pay whilst an unhindered investigation is conducted. Managers should consult HR Business Partner or Employee Relations Manager at the earliest opportunity where suspension of an employee is under consideration. The suspension should be carried out by a manager with the authority to act, see Appendix 1.

Examples where suspension may be considered include:

- There is a risk of harm to patients, colleagues or Trust property as a result of the employee remaining at work during the investigation;
- where relationships have broken down;
- where there are reasonable grounds for concern that evidence may be tampered with or destroyed during the investigation

This is not an exhaustive list.

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Suspension is a neutral act and does not necessarily imply guilt; it is simply a mechanism to achieve safety, (protecting the individual, the trust, staff, patients and property). Before deciding to suspend other ways of achieving safety should be explored, such as temporary redeployment, additional supervision, and temporary diminished duties and so on. Where safety cannot be obtained satisfactorily with the employee remaining at work suspension will usually be the outcome.

The manager should inform the employee exactly why they are being suspended, and that they will be contacted in order to attend an investigatory meeting as soon as possible. Guidance notes on carrying out suspensions are attached in Appendix 6.

The suspension will be reviewed regularly - at the fourth week and every two weeks thereafter - to ensure it is not unnecessarily protracted. It should be made clear that the suspension is not considered a disciplinary sanction. Approval must be obtained from the **Deputy Director of HR** (or designated deputy) before any suspension is made except out of hours when the on-call senior support manager must be contacted for approval. An HR Business Partner should be informed on the next working day.

Where practicable the member of staff will normally have the opportunity to be accompanied by a representative when they are suspended. While suspended, staff will not be allowed on Trust premises except by prior arrangement, for example to attend meetings or as a patient. Staff members will be permitted to access the Trust's Freedom to Speak Up Guardian, a Trade Union Representative or Occupational Health when they are suspended. The suspending manager must be informed by the individual if so.

In order to preserve confidentiality, the individual and suspending manager should agree what explanation will be given to colleagues for the absence from work. At, or immediately following the suspension, the manager should ensure that the member of staff hands in their security pass, name badge, and any workplace keys. Any suspension will be confirmed in writing as soon as practicable.

When under suspension, staff must not work for any other employer without the permission of the Trust.

13.iv Disciplinary Hearing

The disciplinary hearing will be set up as soon as possible after the completion of the investigation, preferably within two weeks. The timing of the hearing will however need to take account of the availability and varying shift patterns of staff and representatives.

The disciplining manager will set up and chair the disciplinary hearing. The investigating officer will present the investigation report at the hearing and the employee will present their response.

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The disciplining manager has several responsibilities in setting up the disciplinary hearing. Unless prior agreement is obtained, they will write to the employee giving at least seven calendar day's notice of the disciplinary hearing. The letter will normally contain the following information:

- the reasons for the hearing, detailing the specific allegation(s), with dates and other relevant information including specific Trust policies or codes of practice that may have been breached if applicable. The allegations detailed in this letter are normally those allegations that have been explored at the investigatory interview(s) with the employee. The allegations cannot normally be amended or added to at the hearing;
- the fact that it is part of the formal meeting held under the Trust's Disciplinary procedure;
- who will present the management case and the names of any witnesses;
- the right of the employee to call witnesses and to submit documents and statements prior to the hearing by a stipulated date;
- the right of the employee to be represented;
- that the potential outcome of the hearing is formal action up to and including dismissal;
- the management case and all witness statements and any other documentary evidence that will be discussed or referred to at the hearing should be attached;

The employee must take all reasonable steps to attend the hearing. An employee who cannot attend a meeting should inform the disciplining manager in advance whenever possible, but before the meeting is due to start at the latest. If the employee fails to attend through circumstances outside their control and unforeseeable at the time the meeting was arranged (e.g. certificated illness) the employer should arrange another meeting. A decision may be taken in the employee's absence if they fail to attend the rearranged meeting without a reason that is satisfactory to the Trust. This should be stated in the letter sent to the employee notifying him/her of the rearranged hearing date. In exceptional circumstances, where there is a history of the employee failing to attend meetings, the employee may be informed from the outset that the first scheduled hearing may be heard in their absence, if they fail to attend without a satisfactory reason.

If an employee's union representative or work colleague cannot attend on the first arranged date, the manager will rearrange the hearing within a reasonable timeframe. The employee must notify the manager in advance of the hearing (no less than two working days prior to the scheduled date) if a second date must be arranged for this reason. The representative's unavailability is not sufficient reason to postpone the hearing for a second time and the employee should make alternative arrangements to be accompanied or represented. A hearing will only be postponed on one occasion for this reason.

The representative may attend in place of the employee, but their evidence will not carry the same weight as oral submissions made by the employee.

The disciplinary panel will consist of the disciplining manager and an HR Business Partner or Advisor.

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In more complex cases, or where specialist information will be discussed, a professional advisor may be co-opted on to a disciplinary panel to provide advice on professional or technical issues at the discretion of the manager.

The decision regarding the outcome of the disciplinary hearing rests with the disciplining manager. Other members of the panel attend in an advisory capacity.

13.v Procedure

See Disciplinary Hearing Guidelines at Appendix 5.

- a) The investigating officer will present their case going through the evidence that has been gathered and calling witnesses as appropriate. The panel members and the employee/their representative will have the opportunity to ask questions.
- b) The employee or their representative will provide their response to the allegations, calling witnesses as appropriate. The panel members and the investigating officer will have the opportunity to ask questions.
- c) Witnesses will attend only whilst giving evidence. Only signed statements which have been available to all parties beforehand can be used at the hearing.
- d) Any party can request an adjournment at any time. The disciplining manager will determine whether it should be allowed.
- e) At the end of the hearing, each side will summarise their case following which the disciplining manager will adjourn to consider the outcome.
- f) Once an outcome has been decided the hearing will be reconvened and the outcome communicated to the employee with details of the right of appeal. At this point the disciplinary process comes to an end.

A representative can carry out all the functions on behalf of the employee, apart from answering questions on their behalf.

14. DISCIPLINARY ACTIONS

Before making any decision, the manager should take account of all the written and verbal evidence submitted at the hearing. The manager should also take into account the employee's disciplinary and general record, and length of service. Possible outcomes are as follows:

NO FORMAL ACTION

The manager may decide to take no formal action but may make recommendations about future management and behavioural standards

FIRST WRITTEN WARNING

This may be given for a first offence of misconduct where this is relatively minor. Appropriate training and support to improve standards of conduct will be given, where deemed necessary/feasible.

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24. ARCHIVING ARRANGEMENTS

This is a Trust-wide document and archiving arrangements are managed by the Quality Department, who can be contacted to request master/archived documents.

25. REFERENCES

The Acas Advisory Handbook Discipline and Grievances at Work and the Acas Code of Practice on disciplinary and grievance procedures at www.acas.org.uk or Acas Helpline: 08457 47 47 47 (or Text Relay: 18001 08457 474747).

Department For Business Innovation & Skills: www.bis.gov.uk

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