

Disciplinary Policy and Procedures

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The Trust is committed to a duty of candour by ensuring that all interactions with patients, relatives, carers, the general public, commissioners, governors, staff and regulators are honest, open, transparent and appropriate and conducted in a timely manner. These interactions be they verbal, written or electronic will be conducted in line with the NPSA, 'Being Open' alert, (NPSA/2009/PSA003 available at www.nrls.npsa.nhs.uk/beingopen and other relevant regulatory standards and prevailing legislation and NHS constitution)

It is essential in communications with patients that when mistakes are made and/or patients have a poor experience that this is explained in a plain language manner making a clear apology for any harm or distress caused.

The Trust will monitor compliance with the principles of both the duty of candour and being open NPSA alert through analysis of claims, complaints and serious untoward incidents recorded within the Ulysses Risk Management System.

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1 Executive Summary

1.1 Policy Scope

- i. This procedure applies to all employees of the Trust.
- ii. In the first instance, concerns or allegations involving medical staff must be managed via the Trust's policy for Maintaining High Professional Standards and Health of Medical Staff employed by the Liverpool Women's NHS Foundation Trust.
- iii. Where professional misconduct is alleged, the professional head of service (or other appropriate professional advisor or regulatory body) must be consulted for advice.

2 Introduction

- i. The Trust is committed to treating all staff with fairness and consistency and when potential misconduct arises, to ensure that all options for resolution are fully considered. The Disciplinary Standards of Conduct attached as an appendix to this policy aim to provide a framework within which consistent management of conduct can be applied.
- ii. This policy is also used to ensure that managers, employees, and recognised Trade Unions/Professional Bodies are aware of their rights and obligations in matters relating to discipline and dismissal and that disciplinary action is taken in a correct and fair manner throughout the Trust.

3 Policy Objectives

- i. The aim of this policy is to help and encourage all employees to achieve high standards of conduct at work.
- ii. This policy also aims to ensure a fair and consistent approach to the management of issues of misconduct within the Trust. To this end the following principles will apply:
 - An employee who is a member of a recognised Trade Union/Professional Body will have the right to be accompanied by an accredited representative. All employees have the right to be accompanied by a workplace colleague.
 - Employees will not normally be dismissed for a first offence except in cases of gross misconduct.
 - Employees will have the right of appeal against any formal disciplinary sanction applied.
 - This procedure is intended to be followed in every case although there may be circumstances requiring an alternative approach. In these exceptional cases, the Director of Workforce & Marketing will agree an approach in partnership with the Staff Side Chair, Regional Officer or professional or regulatory body.

- The procedure may be implemented at any stage dependent upon the individual circumstances of each case. Sanctions need not be applied sequentially.
- Confidentiality will be maintained throughout any disciplinary process by all those involved. Breaches of confidentiality will be investigated, and may lead to a disciplinary sanction.

4 Fair & Just Culture

- We at Liverpool Women's accept that a good person can have a bad day. If this happens, we will seek evidence to understand what occurred and how likely it is to happen again. We will then work together to ensure our systems and ways of working reduce the likelihood of recurrence and ensure our people remain at their best for the benefit of our patients, their families and our colleagues. This policy is written with this ethos in mind. We strive to ensure its application is both fair and just.

5 Duties / Responsibilities

5.1 Chief People Officer

- The Chief People Officer is responsible for ensuring that an appropriate Disciplinary Policy and Procedure is in place, which promotes good employment relations.
- They are also responsible for ensuring that managers are supported in the implementation of the policy and procedure and that it is reviewed and monitored regularly.

5.2 Line Managers

- In addition to their responsibilities under the Code of Conduct for NHS Managers, Line Managers will not take any formal disciplinary action outside of this policy. They will manage any potential issues of misconduct promptly and maintain a consistent approach with all of their direct reports.
- They will be accountable for decisions that they make in connection with the management of potential misconduct.

5.3 Investigating Officer

- The Investigating Officer is responsible for investigating a case within the terms of reference and ensures that the Line Manager / Commissioning Manager is updated on progress at regular intervals.
- The investigating Officer must be objective with no conflicts of interest in relation to the issues being investigated. On occasions an external Investigating Officer may be commissioned, on the advice of the Chief People Officer or Deputy Director of Workforce.
- The Investigating Officer will promptly advise the Line Manager / Commissioning Manager of additional issues that arise during the investigation that may alter the terms of reference.

- iv. The Investigating Officer will write the investigation report and will attend the disciplinary or appeal hearing to support or present the management case.

5.4 All Staff

- i. All employees are required to comply with the working practices and policies within the Trust. All employees, volunteers, agency workers and honorary contract holders are required to observe the disciplinary standards of conduct within this document.
- ii. If at any time during the disciplinary process an employee feels aggrieved they may raise their concerns through the Trust's Grievance Policy.
- iii. All employees who are members of a recognised Trade Union/Professional Body are responsible for liaising with their representative regarding representation.

5.5 Human Resources

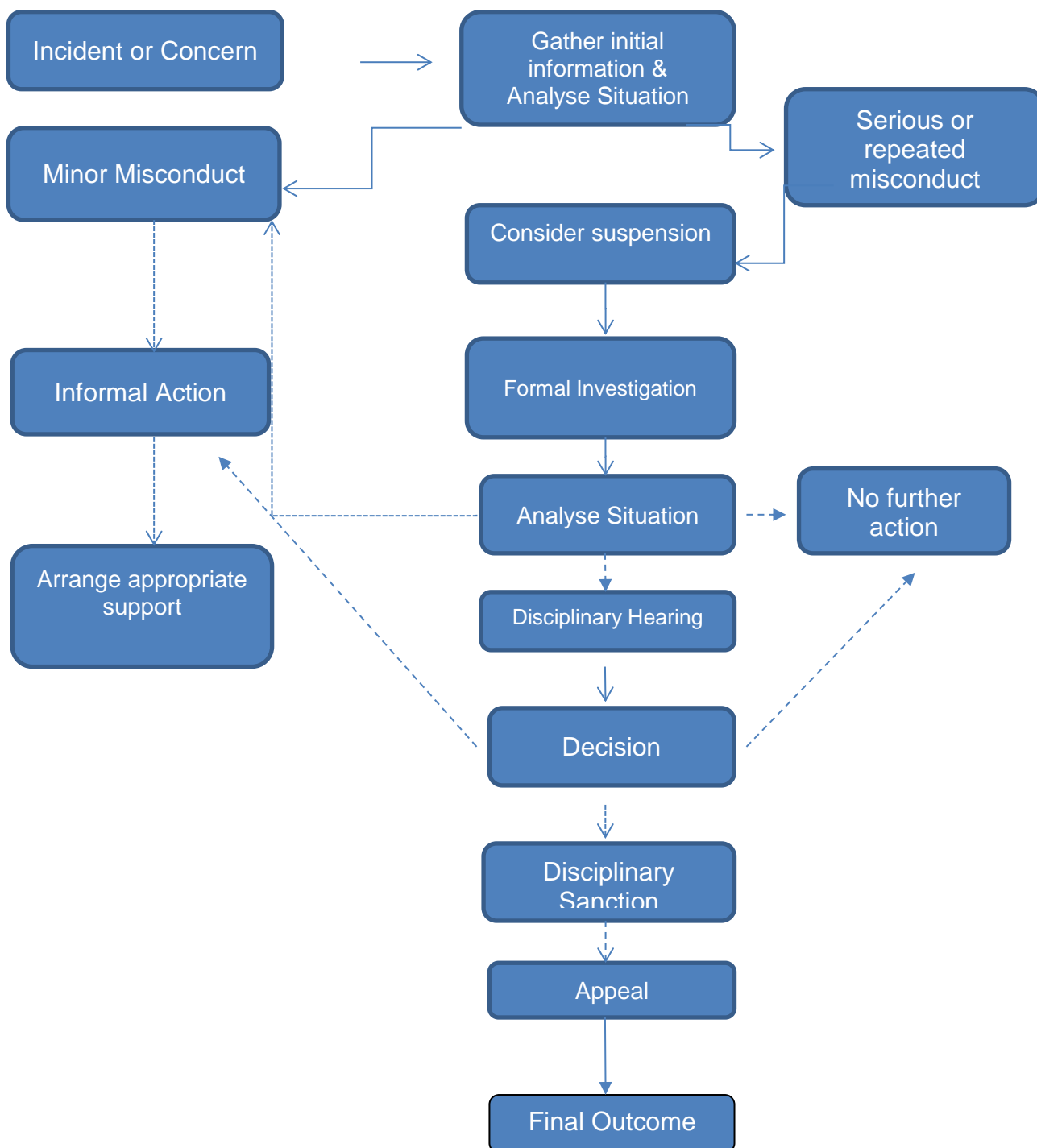
- i. Human Resources has an important advisory role in all disciplinary matters to both managers and employees. Their role also ensures that an equal standard of treatment applies and ensure procedures are managed fairly and consistently across the Trust.
- ii. They will be responsible for the delivery of the policy across the organisation and for auditing and reviewing the application of the policy and providing an annual report to the Putting People First Committee.

5.6 Putting People First Committee

- i. The Putting People First Committee will hold the Human Resources team and Line Managers to account for the consistent application of this policy.

6 Main Body of Policy

6.1 Disciplinary Process Flowchart



6.2 Assessing the Situation

- i. When a potential disciplinary matter arises, the Line Manager or the manager in charge (if not the Line Manager) needs to ascertain the facts about what has happened as quickly as possible.
- ii. An initial fact finding assessment must be promptly undertaken when an incident has occurred or a concern has been reported. The individual conducting this must:
 - Act immediately
 - Consider suspending any employee involved in the incident from their duties in line with section 6.4 and after taking HR advice where possible.
 - Retain any physical evidence
 - Record other factors that may have had an impact on the incident (e.g. environment, staffing, activity)
 - Record the names of all involved and witnesses
 - Speak to those involved, and any witnesses
 - Take written statements from those involved and witnesses
- iii. Where during the initial assessment the manager speaks to any employee involved in the issue, they should make clear that they are not conducting a disciplinary meeting and if the matter progressed to a disciplinary investigation, they would be formally interviewed at that stage. The employee is not entitled to representation at this stage of the procedure.
- iv. Having established the facts, the relevant manager must decide on the appropriate action to take. When making this decision, the manager will seek HR advice and will refer to the 'Just Culture Algorithm' to determine whether the issue should be considered as *human error*, *at risk behaviour* or *reckless behaviour*. If there are system issues or human error, the issue would usually be treated as a learning incident rather than a disciplinary incident.

6.3 Informal Action

- i. Informal action should always be considered as the preferred first option in cases of minor misconduct, an example of this would be lateness.
- ii. Where a concern is managed informally, the manager must:
 - Write to the employee summarising the concern
 - Summarise any action to be taken to support the employee (including timescales)
 - Summarise any other remedial action that has been agreed with the employee (including timescales)
 - Advise the employee that further incidents of the same nature may result in formal action being taken against them.
- iii. If informal action does not bring about an improvement or where inappropriate behaviour is repeated employees must be clearly informed that formal action will be taken.

6.4 Suspension

6.4.1 Deciding to Suspend

- i. Suspension may be considered in the following circumstances:
 - Where gross misconduct is suspected
 - Where there are concerns that any investigation could be compromised by the employee(s) remaining on site
 - Where any repeat of the alleged misconduct could put any individual in danger
- ii. It is important that any decision to suspend an employee from the Trust is not made without a full review of the circumstances with a member of the HR team. The Deputy Director of Workforce will make the final decision on whether suspension is the appropriate course of action.
- iii. Every effort must be made to prevent the necessity of formal suspension. Examples of how to avoid formal suspension include:
 - Assignment in a broadly similar role in another service or location
 - Restricted duties in the employee's existing role
 - Assignment to a different role that is within the skills and knowledge of the employee.
- iv. However, where alternatives have been considered and ruled out, the manager making the decision to suspend must keep a record of their decision.

6.4.2 Terms and Conditions during Suspension

- i. Suspension from duty is always on full pay and the employee must not suffer a financial detriment or any loss in their terms and conditions of service as a consequence.
- ii. Whilst on suspension the following terms will usually apply:
 - The employee must not enter any premises of the Trust except for any other legitimate reason, e.g. to receive any medical treatment, as a patient visitor or for a meeting with their TU representative. In these situations the member of staff should inform their manager in advance of the appointment.
 - The employee must not contact any members of staff (other than their line manager, investigating officer or employee representative) to discuss the content or detail of the allegations as this may prejudice the investigation. Failure to follow this instruction may result in further disciplinary action.
 - The employee must not usually access Trust documents or files using their remote access, the employee must not access the Trust's email system without specific permission. They will usually be asked to return Trust laptops and mobile phones.

- All Trust equipment must be returned if deemed necessary and appropriate.
- If the employee requests access to the workplace during the suspension, for example to retrieve personal property, the line manager or investigating officer should assess the request and the reason for it and decide whether or not it is reasonable to allow the employee access. It may be possible to allow the employee access to the workplace outside of working hours to avoid them coming into contact with colleagues.
- The line manager or investigating officer should also consider any requests by the employee to be allowed to contact colleagues if this is necessary in connection with preparing their response to the disciplinary case.
- The employee, while not required to attend work, should remain available to assist in the disciplinary investigation, attend investigation or disciplinary meetings, or deal with any work-related questions. Further, if the suspension is lifted earlier than anticipated, the employee would be expected to return to work.
- If the employee wishes to request annual leave via their manager during the suspension period this should be considered in the normal way.
- Where the suspended employee has already booked a period of annual leave, the employer can cancel it only if it gives adequate notice in accordance with reg.15 of the Working Time Regulations 1998 (SI 1998/1833) (i.e. notice equivalent to the amount of leave requested).

6.4.3 Informing the Employee

- i. The checklist of information to provide to employees when conveying the decision to suspend is at appendix A to this policy.
- ii. The decision to suspend the employee from work must be communicated to them as soon as possible by the manager making the decision.
- iii. Where practicable, support may be offered to the employee via their Trade Union/Professional Body; alternatively where a Trade Union representative is not available, a senior member of staff who is not involved in the incident or investigation may offer immediate support to the employee.
- iv. The employee should be provided with the contact details of the confidential staff support service.
- v. The employee should be provided with the name and contact details of an independent manager unconnected with the case who can provide advice and support throughout the suspension process. The manager should telephone the member of staff within the first few days of their suspension to make contact and offer support.
- vi. The employee will be advised in writing of the reasons for suspension, including the allegations of misconduct that are to be investigated, the terms of

suspension and that the suspension does not in itself constitute any disciplinary action. A copy of the written notification will be retained. A template suspension letter is available at appendix B of this document.

- vii. Complete a contract change e-Form available on the HR transactional page on the staff intranet changing the assignment status of the suspended employee to “suspended full pay” with the date of the suspension.

6.4.4 Duration of suspension

- i. It is imperative that the period of suspension should be as short as possible to enable a reasonable investigation. The period of suspension will be reviewed on a 2 weekly basis to ensure it is still necessary.
- ii. The HR team is responsible for ensuring that the investigation is conducted within a reasonable timescale of 6 weeks.
- iii. The Line Manager is responsible for ensuring that the employee is updated as to how long the suspension is likely to last. If there is a delay, the employee must be informed.
- iv. The HR team will ensure that the individual suspended is receiving the appropriate support via the independent manager, occupational health or other means.

6.5 Advising the Employee

- i. The employee should be advised of the alleged misconduct without delay. If the employee has been suspended this must be confirmed to them in writing as soon as possible after they have been informed verbally.
- ii. Where an employee is not suspended from duty, they must be informed of the alleged misconduct verbally followed by a letter confirming the allegations.
- iii. The letter should contain enough information for the employee to be able to understand the alleged misconduct and the matters that are to be investigated. (A template letter is attached as appendix C). The employee must be provided with a copy of the Trust’s Disciplinary Procedure.

6.6 Right to be Accompanied

- i. Employees have the right to be accompanied at formal meetings by either their trade union / staff side representative, or a workplace colleague.
- ii. It is the responsibility of the employee to communicate the arrangements for meetings with their representative.
- iii. A meeting should not be unreasonably delayed due to the non-availability of a representative. If an employee indicates that their representative is not available for the first proposed date, it is reasonable to agree to a postponement providing that the meeting can take place within a reasonable time frame (e.g. two weeks). An

employee may be asked to appoint another representative to avoid any unreasonable delay.

- iv. The role of the representative can be to present the employee's case, make statements on their behalf and ask questions, but they are not allowed to answer questions directed at the employee.

6.7 Investigation

6.7.1 Investigation Process

- i. Once a decision is made that an investigation is required a decision on who is to conduct the investigation must be made quickly. The investigating officer may be the line manager, or an alternative individual. In all cases, the Investigating Officer must not be involved in the incident under investigation. The Trust may with the agreement of the Chief People Officer request the services of an external investigating officer. The investigating officer will endeavour to complete the investigation within 6 weeks.
- ii. Terms of reference for the investigation will be agreed prior to commencing the investigation and the estimated timescale for completion communicated to the employee (template attached as appendix D (i)).
- iii. No disciplinary action will be taken without an investigation.
- iv. The purpose of the investigation is to:
 - Ascertain the facts as far as is reasonably possible
 - Look at the facts of the situation as a whole and not seek to 'prove' or 'disprove' any allegation.
 - Give the employee the opportunity to offer explanation / mitigation / counter argument
 - Take a balanced view of the information that emerges and reach a conclusion about the probability of the misconduct having occurred
 - To prepare an investigation report detailing the main findings.
- v. Confidentiality for those involved must be respected at all times. The Investigating Officer should limit their enquiries to witnesses to the alleged misconduct, professional advisers or others who are able to provide evidence that is required for a full investigation (e.g. CCTV evidence).
- vi. Where the Investigating Officer requires a meeting with the employee under investigation, they should be provided with five working days' notice of the meeting date.
- vii. Further guidance on conducting an investigation can be found at appendix D.

6.7.2 Investigatory Report

- i. On completion of the investigation, the Investigating Officer will present the findings in the form of a report. The Investigating Officer may form a number of

conclusions and recommendations in their report, but must as a minimum the investigation report must provide a conclusion as to whether they have found evidence to support the alleged misconduct.

- ii. The Investigating Officer will present their findings to the Disciplinary Panel hearing the case.
- iii. A template investigatory report is attached at appendix E.
- iv. The employee must be informed as soon as the investigation has concluded.
- v. Where misconduct is upheld and the employee has been suspended, the period of suspension will continue pending the Disciplinary Hearing. The employee must be advised of this in writing.
- vi. In cases where there has been a period of suspension and the investigation finds that there is no case to answer or the matter can be progressed informally, the employee must be advised immediately that the period of suspension is ended and arrangements made for their return to duty.
- vii. The employee's assignment status must be changed immediately from "suspended full pay" to "active assignment" by submitting an employee change.
- viii. If the employee resigns before the matter reaches a disciplinary hearing, they will be informed that any references will clearly state that they left whilst a disciplinary hearing was pending. A referral to the appropriate professional body (if applicable) should be considered at this point.

6.8 Disciplinary Hearing

6.8.1 Roles in Disciplinary Hearing

- i. The HR representative will be responsible for ensuring that the Disciplinary Panel is organised and conducted according to this policy. An HR representative will support the disciplinary panel chair (Panel HR Adviser).
- ii. The Panel HR Adviser will be responsible for:
 - Co-ordinating paperwork and correspondence to support the hearing
 - To accommodate dates/times highlighted by the employee where he/she may not be available due to religious observations.
 - Ensuring that all panel members and both parties receive all relevant paperwork in accordance with the timescales in this policy
 - Attending the hearing to provide advice on matters of policy and process to the panel
 - Taking notes during the hearing (the HR Administrator may also be in attendance to undertake this role)
 - Ensuring that correspondence from the Panel Chair is complete and sent out in a timely manner.

- iii. The Disciplinary Panel Chair will be responsible for:
 - Ensuring that a complete set of evidence from all parties is presented
 - Ensuring that the employee attending the hearing fully understands the allegations against them
 - Ensuring the employee understands the process being followed and is offered an interpreter if their first language is not English.
 - Ensuring that the employee attending the hearing understands the consequences should the panel find that the alleged misconduct has taken place
 - Ensuring that the protocol of the hearing is observed (attached as appendix G)
 - Communicating the decision to the employee at the close of the hearing.
- iv. The employee has the right to be represented by their Trade Union representative at the hearing. As an alternative they may choose to be accompanied by a workplace colleague.
- v. The Employee's Representative is responsible for:
 - Preparing the employee's response including any documentary evidence that they wish to present to the Disciplinary Panel
 - Submitting documentation to support the employee's case in line with the timescales in this policy
 - Speaking on behalf of the employee during the hearing
 - Calling and questioning witnesses to support the employee's case
 - Questioning the person presenting the management case
 - Questioning witness called to support the management case

6.8.2 Constitution of Disciplinary Panel

- i. The composition of the panel will be dependent upon the severity of the allegation and potential sanction (see appendix F Scheme of Delegation). The Disciplinary Panel may request the input of a professional adviser to assist the panel in understanding any technical or professional considerations which may inform their decision. The professional adviser will not be involved in making the decision at the close of the hearing.

6.8.3 Timescales

- i. The letter advising the employee of the date of the disciplinary hearing must provide at least ten working days' notice of the hearing date. A copy of the investigation must be attached with this letter. It is the responsibility of the Panel HR Adviser to ensure that the employee receives documentation inviting them to the hearing and that they have responded to confirm their attendance.
- ii. The employee has the right to respond to the evidence presented in the Investigatory Report. If they intend to rely on documentary evidence in responding to the alleged misconduct they must ensure that this is provided to the Panel HR Adviser at least five working days in advance of the hearing.

6.8.4 Postponement

- i. Exceptional circumstances that prevent the employee's attendance at short notice must always be taken into consideration when deciding whether to proceed.
- ii. An employee who is unable to attend the Disciplinary Hearing must inform the Panel HR Adviser at least five working days' prior to the hearing giving the reason for their non-attendance. The Trust reserves the right to continue with the Disciplinary Hearing in the employee's absence where there are reasonable grounds to do so.
- iii. The Panel Chair will decide whether to proceed after taking advice from the Panel HR Adviser.
- iv. Disciplinary Hearings will not normally be postponed where the timescales in the policy have been met, and where the employee has not provided advance notice of their unavailability.
- v. If the Employee's Representative is unable to attend on the proposed date, the employee can suggest another date so long as it is reasonable and is not more than five working days after the originally proposed date. This five day time limit may be extended by mutual agreement.

6.8.5 Disciplinary Hearing Protocol

- i. All formal disciplinary meetings must follow the format in appendix G.

6.8.6 Decision

- i. At the end of the formal disciplinary meeting, the Panel Chair must decide whether disciplinary action is warranted and communicate the outcome to all parties verbally and in writing.

6.9 Formal Levels of Disciplinary Sanction

6.9.1 Overview

- i. In cases of misconduct it is usual to give employees at least one chance to improve before issuing a final written warning.
- ii. However, in cases of repeated or gross misconduct a final written warning may be issued. Cases of gross misconduct may result in summary dismissal even for first offences.
- iii. A referral to the employee's professional body (if applicable) may be considered at any stage of the process.

6.9.2 First Written Warning

- i. A first written warning will be issued for a breach of misconduct. The warning will be confirmed in writing and should include;
 - Outline of the improvement or change in behaviour required
 - The timescale for achieving this improvement
 - Review date

- Support that will be provided to the employee
 - What action will result should there be no improvement or change in behaviour
 - Failure to improve could lead to a final written warning and/or dismissal
 - The right of appeal against the decision
- ii. A copy of the written warning will be kept and used for the basis of monitoring and reviewing performance, but it should be disregarded for disciplinary purposes after 12 months. A template first written warning letter can be obtained from HR.

6.9.3 Final Written Warning

- i. Where there is a failure to improve or change behaviour in the timescale set at the first formal stage, or where the offence is sufficiently serious, the employee should normally be issued with a final written warning. The warning will be confirmed in writing and should include
- Outline of the improvement or change in behaviour required
 - The timescale for achieving this improvement
 - Review date
 - Support that will be provided to the employee
 - What action will result should there be no improvement or change in behaviour
 - Failure to improve could result in dismissal
 - The right of appeal against the decision
- ii. A formal record of the warning will be kept, but must be disregarded for disciplinary purposes after a period of 12 months. This may be extended to 18 months in exceptional circumstances, for example where gross misconduct has been upheld but the employee has not been dismissed.
- iii. A template final written warning letter can be obtained from HR.

6.9.4 Dismissal

- i. If the employee's conduct or performance still fails to improve, the final stage in the disciplinary process will normally be dismissal. A decision to dismiss should only be taken by a manager who has the authority to do so (refer to appendix F)
- ii. The employee should be notified of the decision for dismissal in writing as soon as possible. The letter will confirm;
- Reasons for dismissal
 - Date on which the contract will terminate
 - Appropriate period of notice
 - Right to appeal against the decision
- iii. Dismissal will not normally take place for a first breach of discipline unless it is a case of gross misconduct but may take place if an employee's conduct remains unsatisfactory (following subsequent warnings). The employee will always be

entitled to the appropriate period of notice unless dismissal occurs on grounds of gross misconduct when dismissal without notice is permitted.

- iv. A template letter of dismissal can be obtained from HR.

6.9.5 Action Short of Dismissal

- i. Certain exceptional circumstances may in cases of gross misconduct result in another enforced penalty short of dismissal such as demotion, transfer or loss of seniority. In such cases the employee will also be issued with a final written warning. (See also Final Written Warning).
- ii. In certain circumstances consideration should be given to other forms of action and may include:
 - Counselling for related parties
 - Mediation (either internal or external)
 - Other work place action, such as redeployment

6.10 Appeals

- i. Employees who have had a disciplinary action taken against them will be given the opportunity to appeal.
- ii. The purpose of the appeal is to consider the case in light of the grounds for appeal and the presumption is that it is not a re-hearing (unless that is necessary). Where there is new evidence this may be heard (adjournments may be appropriate to consider new evidence that comes to light in the hearing).
- iii. Any sanction or penalty applied as a result of the outcome of the disciplinary meeting can be reviewed by the Appeal Panel but the sanctions cannot be increased by the Appeal Panel.
- iv. Under normal circumstances, an appeal may be made on the grounds that:
 - There was a serious procedural error that resulted in a significant detriment to the employee
 - The decision reached at the hearing was unfair and unreasonable in the circumstances having due regard to the severity of the allegations and any mitigating circumstances
 - Further information has come to light, which had it been known by the disciplinary panel at the time of the hearing, may have affected the panel's decisions.
- v. The format to be followed for the Appeal Hearing can be found in appendix H.

6.11 Involving External Agencies or Organisations

6.11.1 Local Counter-fraud Specialist

- i. Investigations of suspected fraud will be undertaken by accredited members of the Local Counter Fraud Service with the authorisation of the Director of Finance. In such cases, interviews will be conducted under caution. The Trust

will ensure appropriate disciplinary, civil or criminal action is consistently applied where fraud is proven.

6.11.2 Local Safeguarding Children Board & Local Authority Designated Officer (LADO)

- i. Where allegations of misconduct are made against an employee relating to neglect or abuse of patients or their relatives, or in cases where breaches of confidentiality relating to patients are alleged, the investigation must be completed.
- ii. This requirement applies to all allegations of this nature, even where the employee resigns from Trust employment before completion of the investigation.
- iii. Where allegations of abuse or neglect of a child or vulnerable adult are raised, the Trust's Policy for Managing Allegations Against People who Work with Children & Vulnerable Adults must be followed.

6.11.3 Trade Union Regional Officers

- i. Disciplinary action against a local steward, health and safety or learning representative can lead to a serious dispute where it is alleged that the action is undertaken to prevent the representative conducting their trade union activities.
- ii. In these exceptional cases, this policy will apply, however, it should be noted that the trade union representative must be given the opportunity to be represented by their Regional Officer at all stages of the investigation, hearing and appeal.

6.11.4 Disclosure & Barring Service

- i. The Safeguarding Vulnerable Groups Act 2006 places a duty on employers of people working with children or vulnerable adults to make a referral to the Disclosure & Barring Service in certain circumstances. This is when an employer has dismissed or removed a person from working with children or vulnerable adults (or would have done if the person had not left or resigned) because the person has:
 - Been cautioned or convicted for a relevant offence
 - Engaged in relevant conduct in relation to children and/or vulnerable adults (e.g. abuse, harm or neglect)
 - Considered to present a risk of harm, abuse or neglect of children and/or vulnerable adults
- ii. A referral should be made when the employer has completed an investigation and found evidence to support the allegation.

6.11.5 Police

- i. Cases involving assault, serious fraud or child or adult abuse would require the involvement of the police.

6.12 Keeping Records

- i. It is important, and in the interests of both employers and employees, to keep written records during the disciplinary process. Records should include:

- The complaint against the employee;
 - The employee's defence;
 - Findings made and actions taken;
 - The reason for actions taken;
 - Whether an appeal was lodged;
 - The outcome of the appeal;
 - Any grievances raised during the disciplinary procedure; and
 - Subsequent developments.
- ii. Records should be treated as confidential and be kept no longer than necessary in accordance with the Data Protection Act 2018. This Act gives individuals the right to request and have access to certain personal data.

6.13 Sickness

- i. The Trust's aim is to proceed with all disciplinary matters with the minimum of delay. The disciplinary process may therefore continue during an employee's sickness, which will not preclude the Trust from starting or completing the process, including the collection of statements, conducting interviews or hearings. This action will depend on the nature of the illness and the likely length of the absence. Where appropriate, professional medical advice will be sought from Occupational Health.

6.14 Witnesses

6.14.1 Obligations

- i. Employees have an obligation to attend formal disciplinary hearings as witnesses. Therefore, at the request of the Trust, an employee should make him/herself available to attend. In exceptional circumstances, and with the agreement of the Trust, an employee not wishing to attend a formal hearing as a witness will be allowed to submit a witness statement.

6.14.2 Anonymity

- i. The Trust will treat requests for anonymity for witnesses on a case by case basis. However, only in very exceptional circumstances will the Trust uphold any such request.

6.15 Fast-Track Disciplinary Process (FTDP)

- i. In the case of alleged misconduct and where the employee does not wish to contest the allegation, they can opt to have their case dealt with via FTDP.
- ii. The process cannot be used if any of the allegations are contested by the employee or another employee is also subject to a disciplinary in connection with the same incident or if the allegations are considered to amount to gross misconduct.
- iii. The FTDP can be suggested by either the line manager, Human Resources Department, the employee or their Trade Union (TU) representative/work place colleague.

- iv. The employee with their TU representative completes a FTDP request form (see appendix J).
- v. There must be sufficient evidence already for the employee to request FTDP and for the commissioning manager to make a decision on a possible sanction. If the management decision is that the FTDP is not appropriate in a particular case, this decision will be final.
- vi. The commissioning manager (and HR support) will meet with the employee (and their representative) to discuss the allegations, and based on all the information available, propose an appropriate sanction. This will be confirmed in writing to the employee within 3 days.
- vii. The employee/ their TU representative have 3 days from receipt of that letter to accept, reject, or propose a lower sanction. If the employee rejects the sanction and an alternative cannot be agreed, then the matter will proceed to a formal disciplinary investigation, which follows the normal process.
- viii. Recommendations such as further training can also be put forward at this point by either party.
- ix. If the sanction is agreed, this is formalised in a letter to the employee and TU representative. The letter is placed on file with a synopsis of the case and any recommendations.
- x. Under the FTDP there is no right of appeal the disciplinary sanction as this is a mutually agreeable sanction.

7 Key References

- i. Employment Rights Act 1996
- ii. Equality Act 2010
- iii. Safeguarding Vulnerable Groups Act, 2006
- iv. Data Protection Act 2018
- v. Working Time Regulations 1998
- vi. Disciplinary and Grievance Procedures, Code of Practice, ACAS, 2009
- vii. Disciplinary and Grievances at Work, The ACAS Guide, ACAS, 2011
- viii. Code of Conduct for NHS Manager, DH, 2002

8 Associated Documents

- i. Maintaining High Professional Standards

- ii. Grievance Policy & Procedure
- iii. Capability Policy, LWFT
- iv. Dignity at Work Policy, LWFT
- v. Substance Misuse Policy, LWFT
- vi. Attendance Management Policy & Procedure, LWFT
- vii. Incident Reviewing & Reporting Standard Operating Procedure
- viii. Policy for Managing Allegations Against People who Work with Children & Vulnerable Adults

9 Training

- i. Managers involved in investigating and conducting hearings and appeals will receive specific training to assist in undertaking their role.

10 Policy Administration

10.1 Consultation, Communication and Implementation

Consultation Required	Authorised By	Date Authorised	Comments
Impact Assessment	PGP Meeting	Oct 20	
GDPR	R Cowell	Oct 20	
Have the relevant details of the 2010 Bribery Act been considered in the drafting of this policy to minimise as far as reasonably practicable the potential for bribery?	Yes		
External Stakeholders	Local Authority Designated Officer(s); Recognised Trade Union/Professional Bodies; Professional Regulatory Bodies		
Trust Staff Consultation via Intranet	Start Date: Aug 20	End Date: Aug 20	

Describe the Implementation Plan for the Policy (and guideline if impacts upon policy) (Considerations include; launch event, awareness sessions, communication/training via CBU's and other management structures, etc)	By Whom will this be Delivered?
<p>This revised policy will be made available to all staff through the Trust's intranet pages.</p> <p>There will be awareness raising for all staff via WOTW, including how to access the revised policy and highlighting the major changes.</p> <p>Also specific awareness raising for managers via e-mail, to highlight their key responsibilities.</p>	Human Resources Department

Version History

Date	Version	Author Name and Designation	Summary of Main Changes
April 2021	3.4.2	DDOW	•
October 2018	3.4	HR Manager	<ul style="list-style-type: none"> new paragraph regarding the right to be accompanied new appendix H covering the process for appeals
February	3.3	HR Manager	• Reformatting

2018			<ul style="list-style-type: none"> • Clarification regarding initial information gathering • Clarification regarding timescales in section 5.7.3 • New section 5.14 on the Fast Track Disciplinary Process
February 2015	3.2	HR Manager	Updated Director of HR & OD title, changed reference from disciplinary rules to disciplinary standards of conduct, added para at 5.4.111, added sentence to 6.6.1.i, updated reference to completion of change forms to e-Forms, update reference from 4 weeks to 6 weeks for anticipated duration investigations, change to Appendix G 4 (Hearing Protocol), changes to Appendix I to standards of conduct, and updated definitions. Changed Staff Side representatives to Trade Union representatives.
November 2013	3.1	HR Business Partner	In response to an internal audit minor amendments made.
February 2013	3.0	HR Business Partner	Reviewed in line with current best practice and employment law. Updated wording and formatting.
August 2008	2.0	HR Manager	

10.2 Monitoring Compliance with the Policy

Describe Key Performance Indicators (KPIs)	Target	How will the KPI be Monitored?	Which Committee will Monitor this KPI?	Frequency of Review	Lead
Timescales detailed in the policy are adhered to: <ul style="list-style-type: none"> • Letter to confirm suspension • Notice of investigatory interview • Investigation completed • Notice of formal disciplinary hearing • written confirmation of disciplinary hearing outcome • written confirmation of appeal outcome 	100%	Audit	HR Operational Committee	Annually	HRBP

10.3 Performance Management of the Policy

Who is Responsible for Producing Action Plans if KPIs are Not Met?	Which Committee Will Monitor These Action Plans?	Frequency of Review (To be agreed by Committee)
HR Business Partners	Putting People First Committee	Annual

11 Appendices

11.1 Appendix A – Suspension Checklist

Before the Meeting

- Ensure that an initial analysis has been undertaken to support the allegation of misconduct.
- Consider the impact of the employee remaining in their post.
- Where the risk of allowing the employee to remain in their post is too great, consider alternatives to suspension from duty.
- Ensure that you have a clear understanding of the alleged misconduct including whether this is potentially gross misconduct.
- Arrange for support to be available for the employee who is to be suspended if this is possible.
- Find a private room where you can meet with the employee.

Suspension

The manager must inform the employee of the following.

- An allegation of misconduct is to be investigated
- Whilst the investigation is on-going that they are to be suspended from duty
- During suspension they will continue to receive their full pay
- The decision to suspend has been made for one of the following reasons:
 - i. gross misconduct is suspected
 - ii. there are concerns that any investigation could be compromised by the employee(s) remaining on site,
 - iii. any repeat of the alleged misconduct could put any individual in danger
- Suspension from duty is a holding action pending investigation and not disciplinary action
- The employee should be provided with the contact details of the confidential staff support service.
- Advise the employee verbally of the conditions attached to their suspension.

- i. They must not contact any member of the Trust's staff (or agents or sub-contractors) except the line manager, investigating officer, Trade Union Representative and Human Resource Representative.
 - ii. They must not enter any premises of the Trust except for any other legitimate reason, e.g. to receive any medical treatment, as a patient visitor or for a meeting with their TU representative. In these situations the member of staff should inform the investigating officer in advance of the appointment.
 - iii. They must not contact any members of staff (other than their line manager, investigating officer or employee representative) to discuss the content or detail of the allegations as this may prejudice the investigation. Failure to follow this instruction may result in further disciplinary action.
 - iv. They must not access Trust documents or files using their remote access, the employee must not access the Trust's email system.
 - v. They will usually be asked to remove all Trust property including laptops.
 - vi. They must remain available to assist in the disciplinary investigation, attend investigation or disciplinary meetings, or deal with any work-related questions
 - vii. If they wish to request annual leave whilst they are suspended they should contact their Line Manager or the investigating officer, where contact with the Line Manager is not appropriate.
- Advise the employee if it is anticipated that the suspension period is likely to exceed six weeks.
 - Advise the employee that you will contact them regularly to provide them with a progress report.
 - Ensure that you have their correct home address and contact number.
 - Ensure that they are allowed to ask any questions.
 - Ask the employee to return their identity/access badge to you.
 - Arrange for the employee to be escorted from the premises and arrange for transport home if necessary.

After the Meeting

- Write to the employee to confirm the suspension using appendix B of this document.
- Complete a contract change e-Form available on the HR transactional page on the staff intranet changing the assignment status of the suspended employee to "suspended full pay" with the effective date of the suspension.

- Arrange to meet with the HR Business Partner to review the requirement for suspension (at the latest six weeks after the suspension meeting, or when the investigation is completed whichever is earlier).
- Make contact with the suspended employee on a regular basis to ensure that they are kept informed of progress with the investigation.

After the Investigation

Once the investigation is completed and depending upon the outcome:

- Advise the employee that the investigation is completed and that either
 - a. They can return to duty or
 - b. The suspension period will continue pending the disciplinary hearing

Returning from Suspension

Where the employee is to be returned from suspension. The Line Manager must:

- Contact the employee to make arrangements for their return
- Complete a contract change e-Form to change the assignment status of the suspended employee to “active assignment” with the date of return from suspension

11.2 Appendix B – Template Letter Suspending Employee from Duty

Dear

Suspension from Duty Pending Investigation

Following our meeting on (DATE) I confirm that you are suspended from duty pending an investigation into an allegation of (MISCONDUCT). The decision to suspend has been made because gross misconduct is suspected and/or there are concerns that any investigation could be compromised by your remaining on site and/or any repeat of the alleged misconduct could put any individual in danger. I should emphasise that suspension is not a disciplinary sanction.

During your suspension from duty you will receive your normal pay.

It is not anticipated that the suspension period will exceed six weeks. Should the investigation require longer than six weeks to complete, I will let you know.

OR

Due to the complexity of the investigation it is anticipated that the suspension period will exceed six weeks. I will however, review the need to continue suspension during the sixth week and I will inform you of my decision.

Whilst suspended from duty you should refrain from making contact with any member of the Trust's staff (or agents or sub-contractors). If you need to make contact with any employee you must speak to me in advance. You must not discuss the content or detail of the allegation with any other Trust employee as this may prejudice the investigation. Failure to follow this instruction may result in further allegations under the Disciplinary procedures.

You must not attempt to access computerised records held on the Trust's server or your PC, you must not access your Trust email account or any secure internet sites that you would access in connection with your work.

You may attend the Trust's premises to meet with the investigating officer, or your Trade Union representative. If you need to attend any of the Trust's premises for any other reason for example as a patient to receive medical treatment or as a visitor please inform me in advance of the appointment.

You may wish to seek support from our Staff Counselling service who may be contacted on If you wish to access this service but experience problems in gaining an appointment please contact me.

(insert name) is an independent manager unconnected with the case who can provide advice and support during the suspension period. **(name of manager)** can be contacted on **(insert number)**

During the period of suspension, you must remain available to assist in the disciplinary investigation, attend investigation or disciplinary meetings, or deal with any work-related questions

If you wish to request annual leave whilst you are suspended please contact xx.

I have attached a copy of the Trust's Disciplinary Procedure for your information. If you have any questions at this stage please do not hesitate to contact me.

Yours

11.3 Appendix C – Letter Outlining Alleged Misconduct

Dear

I confirm that following (PROVIDE A BRIEF SUMMARY OF HOW THE ALLEGATION CAME ABOUT INCLUDING SPECIFICS SUCH AS DATE AND TIME) an investigation into (MISCONDUCT) has been instigated.

This investigation will be conducted by (INVESTIGATING OFFICER) who will be investigating (TERMS OF REFERENCE FOR THE INVESTIGATION).

It is not anticipated that the investigation period will exceed six weeks at this stage. However, should this change I will let you know.

OR

Due to the complexity of the investigation it is anticipated that the investigation will require more than six weeks to complete. However, after four weeks I will contact you to advise of progress and the expected completion date.

You may be required to attend an investigatory interview as part of this process. The investigating officer will contact you directly to arrange a date and time for this. I should emphasise that the investigatory interview is not a disciplinary meeting and as such you have no legal right to representation. We do, however, appreciate that you may wish to be accompanied by your Trade Union Representative and allow for this in our procedure. Please note that your Trade Union Representative will not be allowed to answer any questions on your behalf. If your Trade Union Representative is not available to attend on the scheduled date for the investigatory interview; you may attend with a work colleague as an alternative. To avoid undue delays to the investigation we reserve the right to request that you attend your investigatory interview unaccompanied.

You should be aware that the investigation may conclude that (the alleged misconduct) has occurred which may result in a disciplinary hearing. (Where gross misconduct is alleged this may result in a disciplinary sanction up to and including dismissal).

I appreciate that you may find this process difficult and would encourage that you seek the support of our confidential workplace counselling service.

Yours

11.4 Appendix D – Guidance on Conducting an Investigation

The Investigating Officer's Role

The Investigating Officer (IO) is independent of the issues to be investigated and will not have been implicated in any of the actions to be investigated.

The IO will gather information by reviewing documents or conducting interviews with witnesses before carrying out an analysis of all available evidence.

It is not the IO's role to only gather evidence that upholds the allegations of misconduct, but to review all available information before drawing conclusions.

The IO will write up a report of their investigation including the conclusions drawn.

If the matter proceeds to formal hearing the IO may be required to present or support the management case, responding to questions from the panel, the employee or their representative.

Terms of Reference

The IO should work within the terms of reference for the investigation. As a minimum, terms of reference should set out:

- The alleged misconduct
- The issues to be investigated
- The time period to be investigated

Should the IO in the course of the investigation find there are other issues that alter the terms of reference; the employee under investigation must be informed and be given the opportunity to respond to any additional issues.

A suggested template for terms of reference is appended to this document appendix Di.

Planning the Investigation

The IO should review all documentation that has been already collated, this might include written statements from witnesses, formal reports, or incident reports.

The IO should review policy documents or guidance that may be relevant to the issue to be investigated.

The IO should review any information pertaining to the employee under investigation that might be relevant (e.g. training records, occupational health reports).

The IO should then decide what interviews need to be carried out. It is normal to conduct an interview with the complainant (if there is one), witnesses and then the employee under investigation.

Having carried out this analysis, and working with the Human Resources Department the IO should plan out the investigation to provide an estimate of the time required to carry out the investigation and draft their report. Where it is anticipated that this will take longer than 4 weeks, the employee must be informed at the earliest possible opportunity.

If there is slippage in the anticipated timescale, the employee must be informed without delay.

Invitation to Attend Interview

Invitations to attend an investigatory interview should be sent by the IO. Witnesses are not entitled to be represented at the interview. The employee under investigation, whilst not entitled under law to representation at the investigatory interview, is afforded the opportunity to be represented at the investigatory interview by a Trade Union Representative. The representative of the employee is not allowed to answer questions on behalf of the employee under investigation. (The IO should refer to the Disciplinary Policy for information on how to proceed when representation is not available and seek advice from the Human Resource Department).

Arrangements for interviewing witnesses may need to be adjusted to meet the needs of people with disability or other specific requirements.

Investigatory Interview

1. It is advisable to have a note taker present at the interview.
2. The IO should have prepared a set of questions.
3. The IO should open the interview by clarifying the purpose and the matter under investigation (referring to terms of reference).
4. For interviews involving the employee under investigation
5. If accompanied, check that the employee has been informed that they may be represented during the interview. If accompanied, check with the employee that they understand that their representative cannot answer on their behalf.
6. Remind all parties present that the matters under investigation are confidential and must not be discussed outside of the interview room.
7. Advise the person to be interviewed that notes will be taken and that they will be provided with a copy to review, amend and confirm as a record of the interview. These notes will normally represent a summary of discussions, rather than a verbatim record. It is important that it is understood that the notes may be used as evidence in any subsequent disciplinary hearing.
8. An IO wishing to record an interview must seek the employee's consent to the recording before the meeting begins, and must respect their rights if they refuse. Any recording will constitute personal information for the purposes of the Data Protection Act 1998.

9. The questions should focus on the matters to be investigated and be relevant to the person being interviewed.
10. Allow the employee under investigation an opportunity to respond to the allegation(s).
11. The IO should provide enough information to allow the person being interviewed to make a response. Witnesses only need to be told the nature of the complaint to the extent necessary to interview them. The employee under investigation needs to be told specifically what they have been accused of.
12. In some cases, witnesses may request anonymity. The IO cannot and should not guarantee this.
13. The IO should avoid using leading questions in the interview.
14. Where an interviewee introduces further information that was not within the terms of reference for the report the IO may follow this up in the interview, before returning to their original line of questioning.
15. The IO may receive a counter complaint from the employee under investigation; in these circumstances the IO should consider extending the terms of reference to incorporate the counter complaint.
16. The interview should be written up by the note taker and a copy sent to the interviewee for review. Failure to respond or return a signed version of the notes within the IO's specified timescale will be interpreted as 'no further comment' to be added.
17. Adjustments to a statement that are felt to be unreasonable by the IO will be acknowledged and kept on file. The IO is not obliged to accept any suggested changes that do not, in their view and that of any note taker and/or HR representative, reflect accurately what was said at the meeting.
18. Ensure that the note taker records the date, time, location, and the names of all attendees and their role.
19. At the end of the record include the following for interviewee to sign:

I confirm that this is an accurate summary of the evidence given in this interview.

Signed:

Date.....

Submitting the Report

The report should recommend whether or not there is sufficient evidence to proceed to a Disciplinary Hearing for each of the allegations.

11.5 Appendix D (i) – Investigation Terms of Reference Template

Investigation into allegation(s) of misconduct

1. **Allegation(s) raised against (EMPLOYEE(S))**
2. **Misconduct – (SPECIFY ALLEGED MISCONDUCT)**
3. **Background** [Brief summary of basis of alleged misconduct]

4. **Terms of Reference**

- a) To investigate the circumstances leading to the alleged misconduct against the above named employee.

i. List specific incidents or circumstances that the investigation should focus on:

- b) To consider and report on whether the alleged misconduct at 2. above has taken place.
- c) To consider and report on any factors that may have contributed to the background of this allegation, including but not limited to issues of individual health, or education and training.
- d) To consider and report on whether there is any learning for any individual employee; or organisational learning for the Trust including whether any change in policy or practice would help to prevent a recurrence of the event, incident or conduct investigated.
- e) To make recommendations based on the investigation findings on further action under the Disciplinary procedure,
- f) To make recommendations based on the investigation findings on other remedial or management action.

11.6 Appendix E – Template Investigation Report

Title
<i>(E.g. Investigation by *** into allegations of *** made by *** against *** under the Disciplinary Policy.)</i>
Terms of Reference
<i>Submit the terms of reference including the original and any revisions including the dates that these were agreed.</i>
Contents
<i>Provide a list of contents along with the page numbers for reference.</i>
Investigatory Process
<i>Summarise the process used for the investigation including:</i> <ul style="list-style-type: none">• <i>approaches to the investigation</i>• <i>how the Investigating Officer gathered evidence</i>• <i>who was interviewed as part of the investigation and why</i>• <i>details of the interviews that took place</i>• <i>the timescale of the investigation</i>• <i>any approaches made to Occupational Health and the advice received</i>• <i>any other documentation or evidence that was reviewed (e.g. CCTV footage)</i>
Summary & Timeline of Events
<i>Provide an executive summary of the report and a timeline of key events</i>
Background Information
<i>This section should include:</i> <ul style="list-style-type: none">• <i>the nature and background to the allegations</i>• <i>how, to whom and when they were made</i>• <i>any other significant factors regarding the individuals involved which may be relevant</i>
Findings
<i>This will be the largest section of the report and should include:</i> <ul style="list-style-type: none">• <i>the IO's factual account of what has occurred (as revealed by the investigation)</i>• <i>how the evidence was evaluated</i>• <i>details of factors which the investigator believes contributed to the situation</i>• <i>if there was conflicting evidence, why a particular version of events was preferred</i>• <i>any mitigating factors in relation to allegations which have been upheld</i> <p><i>(Each of the allegations raised in any complaint should be addressed, referring to specific evidence and how this supports or disputes the allegation.)</i></p>
Conclusions

For each of the allegations the IO should state whether the allegations are either substantiated or not upheld, based on information gained during the investigation.

If, following the investigation, the findings are inconclusive, this should also be clear.

If fault is to be attributed, it should be outlined here.

If a process or procedure was not followed or an individual behaved inappropriately, this is where to outline exactly what went wrong and what should have happened instead.

Recommendations

This section should outline what actions the investigator believes should take place as an outcome of the investigation. These may be:

- *that no action is necessary*
- *that the matter should proceed to a disciplinary hearing*
- *that some form of remedial action is necessary*
- *that other management action may be appropriate*

Numbered Appendices

11.7 Appendix F - Scheme of Delegation

<u>Sanction</u>	<u>Authorised Manager</u>	<u>Appeal Hearing Heard By</u>
1 st Written Warning	Line/Department Manager or above. <i>(HR Representation required)</i>	Next tier Management
Final Written Warning	Matron or Head of Department, General Manager or their nominated deputy, Professional Head, Executive Directors and Senior Managers who are directly accountable to an Executive Director. <i>(HR Representation required)</i>	Next tier Management
Dismissal	General Manager or their nominated deputy, Professional Head, Executive Directors, and senior managers who are directly accountable to an Executive Director. <i>(HR Representation required)</i>	Executive Director
Dismissal in relation to: Executive Directors Other than the Chief Executive.	Chief Executive (or 3 Non-Executive Directors including the Vice Chair – who will chair the panel)	3 Non-Executive Directors (one of whom will be the Chair of the Trust - who will chair the panel)
Dismissal in relation to: Chief Executive	Refer to Corporate Governance Manual & Trust Constitution	Refer to Corporate Governance Manual & Trust Constitution
Personal Misconduct in relation to Medical Staff	Refer to Trust Policy on Maintaining High Professional Standards	Refer to Trust Policy on Maintaining High Professional Standards

11.8 Appendix G – Disciplinary Hearing Protocol

All formal disciplinary meetings or hearings must follow the following format. The manager conducting the meeting is responsible for the following actions and process.

1. Introduction and Opening the Meeting

- Ask those present to introduce themselves and their role in the meeting.
- Explain the purpose of the meeting – to consider whether disciplinary action should be taken in accordance with the Trust Disciplinary procedure.
- Explain how the meeting will be conducted and that a properly conducted meeting is a two way process.

2. Management Statement of Case

- The management case will be presented
- Both the manager hearing the case and the employee (or their accompanying person) will be given the opportunity to ask questions of the investigating officer
- Management witnesses may be called, or witnesses' written and signed statements read out. Both parties are entitled to ask questions of any witnesses, if present.

3. Employee Response and Statement of Case

- The employee is given the opportunity to respond to the allegation(s) within the management case, set out their case and answer any questions that may have been asked.
- Employee witnesses may be called, or witnesses' written and signed statements read out. Both parties are entitled to ask questions of any witnesses, if present.

4. Summing Up

- The management representative will sum up their case. The management representative may not introduce any new material or evidence.
- The employee/representative will sum up their case. The employee/representative may not introduce any new material or evidence.

5. Adjournment

- It is good practice to adjourn before a final decision takes place. This allows time for reflection and proper consideration of the issue.

6. The Decision

- The employee is asked to return to the meeting. The decision is confirmed to the employee and they are informed of their right to appeal. The decision will be confirmed in writing within seven working days of the meeting.

11.9 Appendix H – Appeals Process

Appeals must be submitted in writing to the Director of Workforce & Marketing no later than ten working days after the date of the original decision. Appeals must clearly outline the specific grounds of the appeal.

Managers should acknowledge receipt of an appeal within two working days, either by letter or e-mail.

The Appeal Hearing should be set up within four weeks (subject to the availability of senior managers and staff side representatives). The hearing will be chaired by an appropriate Senior Manager (usually the immediate manager of the manager who made the original decision – see the Trust's scheme of delegation which appears as appendix F) supported by a senior member of the Human Resources team.

Both parties should submit a written statement of case to the Human Resources Department no later than ten working days before the appeal hearing date. This should include an indication of any witnesses they intend to call in support of their case. Once both documents have been received, they will be copied to all parties at least five working days before the hearing.

All formal appeal meetings or hearings must follow the following format. The manager conducting the meeting is responsible for the following actions and process.

1. Introduction and Opening the Meeting

- The chair of the panel will facilitate introductions and then outline the purpose of the meeting and the process to be followed.

2. Appellant's Statement of Case

- The appellant will present their grounds for appeal.
- Both the appeal panel and the manager presenting the management case (and their HR support) will be given the opportunity to ask questions of the appellant.
- Appellant's witnesses may be called. Both parties are entitled to ask questions of any witnesses, if present.

3. Management Response and Statement of Case

- The manager presenting the management case is given the opportunity to respond to the appeal.
- Both the appeal panel and the appellant (and their representative) will be given the opportunity to ask questions of the management case.

- Management witnesses may be called. Both parties are entitled to ask questions of any witnesses, if present.

4. Summing Up

- The appellant will sum up their appeal (no new material or evidence may be introduced at this time).
- The manager presenting the management case will sum up their response to the appeal (no new material or evidence may be introduced at this time).

5. Adjournment

- The meeting will be adjourned to allow time for deliberation and proper consideration of all the evidence presented. If the panel need to recall any party to ask for clarification, all parties shall be recalled to witness this.

6. The Decision

- All parties are asked to return to the meeting, and the decision is read out. If the panel feel unable to make a decision on the day, the Chair of the panel must convey their decision to all parties within 48 hours (unless otherwise agreed. The decision is then confirmed in writing within five working days of the meeting.

11.10 Appendix I – Disciplinary Standards of Conduct

DISCIPLINARY MATTERS

Standards of conduct are necessary for ensuring a safe and efficient workplace for all employees and workers within the Trust, and for maintaining good employment relations. Set out below are offences which are:

Misconduct – i.e. if they happen, may result in disciplinary action including dismissal (if repeated).

Gross misconduct – i.e. if committed even only once could result in dismissal unless there are mitigating circumstances

MISCONDUCT

General misconduct includes but is not limited to:-

- a) Failure to carry out reasonable and lawful instructions or other acts of insubordination (which are not sufficiently severe to constitute gross misconduct - see below).
- b) Causing damage through carelessness to NHS or staff property.
- c) Failure to comply with safety, hygiene and security rules.
- d) Failure to work in a co-operative manner with colleagues
- e) Failure to complete timesheets, records or other documents as required.
- f) Unauthorised absence.
- g) Smoking in Trust grounds, premises or Trust vehicles.
- h) Using abusive or offensive language or other offensive behaviour.
- i) Failure to observe Trust policies, procedures and protocols, professional Codes of Conduct or the Trust's Values and Behaviours
- j) Persistent lateness or poor time keeping
- k) Inappropriate or unprofessional communication, either verbal or written

In addition, each department has certain standards of conduct relating to the work being carried out and managers are responsible for ensuring that staff are aware of the standards expected of them. A failure to observe these standards may be regarded as misconduct.

GROSS MISCONDUCT

The following offences are among those regarded as serious enough to warrant summary dismissal (i.e. dismissal without notice), without any prior warnings, as constituting gross misconduct (the list is not exhaustive).

- a) **Theft** - any instances of theft or attempted theft from the Trust or from patients, visitors or staff. This includes unauthorised personal use of NHS property or facilities.
- b) **Fraud** - This includes any deliberate falsification of records or documents, such as the misrepresentation of entitlement to expenses or allowances or the falsification of time-sheets. This may also include falsely claiming sick pay or engaging in outside employment during the hours when contracted to work for the Trust.

- c) **Bribery & Corruption** - The deliberate acceptance or offer of gifts, loans, money, goods, favours or excessive hospitality which may influence the improper action of a person. The corrupt person may not benefit directly from their deeds but may be using their position to give an advantage to another person.
- d) **Assault** - any assault (verbal e.g. use of abusive or offensive language, physical or threatened) upon a member of the public or employee.
- e) **Negligence** - any action or failure to act which could result in serious loss, damage or injury to staff, visitors or patients. This includes failure to pass examinations/study modules essential for the fulfilment of the job as a result of misconduct/wilful neglect e.g. non attendance
- f) **Reckless Behaviour** - an act of recklessness or incompetence sufficiently severe to break down trust and confidence in the employee's ability to undertake their job.
- g) **Malicious Damage** - to health service property or equipment, or the property of members of the public or staff.
- h) **Misuse of Equipment** – including serious misuse of telephones, computer databases, e-mails and the internet (e.g. viewing inappropriate or offensive websites and or other misuse as outlined in the Trust's Internet policy).
- i) **Bringing the Trust into Disrepute** - grossly unprofessional or unbecoming behaviour or other serious action likely to bring the Trust into disrepute; this includes making statements on social networking sites regarding the Trust, its staff, patients, visitors or contractors or making statements that bring the individual's profession into disrepute.
- j) **Being Unfit for Duty** - through the effects of drink, non-prescribed drugs or other substances, or by being asleep on duty. (Involvement of Occupational Health is likely in this scenario to rule out any ill health issues).
- k) **Wilful Failure or Flagrant Refusal to Carry Out Reasonable Instructions or Rules** – or other major acts of insubordination.
- l) **Breaches of Trust Policies, Procedures and Protocols, Professional Codes of Conduct or the Trust's Values and Behaviours** - serious malpractice in any of the above.
- m) **Illegal or Criminal Activity in the Workplace** – including selling and/or distribution of illegal goods, such as cigarettes, DVD's, CD's.
- n) **Bullying, Harassment or Discrimination** - including harassment and bullying of staff, contractors, volunteers or other non-directly employed members of the Trust workforce, patients, patients' families and visitors; this includes bullying or harassment conducted through electronic means such as e-mail, social media sites etc.
- o) **Breaches of Confidentiality** - disclosure or misuse of confidential information or data about the Trust, Trust Contractors, patients, visitors or members of staff, volunteers or staff from Contractor organisations (except for any protected disclosure brought under the Trust's Whistleblowing Policy).
- p) **Being Convicted** - of actions (even if outside of work) which in the opinion of the Trust renders the employee unsuitable to continue their duties or unlikely to retain the confidence of other stakeholders.
- q) **Contravention of Corporate Compliance** - this includes failing to follow Trust's Financial Procedures and Instructions, or failing to act impartially or to declare an interest in a contract or business in which the Trust is engaged or considering.
- r) **Wilfully omitting information from clinical records or entering false or misleading information into a clinical record.**

- s) **Distributing or Displaying Offensive Material in the Workplace** – this includes the passing on to others any offensive material via electronic or other forms of communication, it also includes the displaying of offensive material in the workplace.

11.11 Appendix J - Application to initiate Fast Track Disciplinary Process

This form should be completed and returned to the Human Resources Department, LWH.

Name of Employee	
Job Title	
Department	
Name of Trade Union or Workplace Representative	
Outline of Allegation(s) in question: (Completed by HR)	
Comments on mitigating factors or other issues the employee wishes to be taken into account: (Completed by employee)	

Maximum sanction willing to be accepted by the employee (Please tick box)	
Written Warning: <i>This will be given for a serious breach of discipline and confirmed in writing. The warning will be placed on an individual's file for 12 months.</i>	
Final Warning: <i>This will be given where there has been a repeat of instances leading to a written warning. The final warning will be confirmed in writing and placed on an individual's file for 12 months.</i>	
Please sign the following statement:	
<p><i>I the employee understand that by completing and signing this form that I admit to the misconducted detailed within.</i></p> <p><i>I confirm that I am happy to accept the sanction I have indicated and understand that a record of my misconduct will be held on my file for the specified period.</i></p> <p><i>I understand that further misconduct of a similar nature during the lifetime of a warning may be taken into consideration when considering any further disciplinary matters.</i></p> <p><i>I understand that I have no right of appeal against this level of sanction once agreed.</i></p> <p><i>Employee Name:.....</i></p> <p><i>TU/Work place representative:.....</i></p> <p><i>Date:.....</i></p>	

12 Initial Equality Impact Assessment Screening Tool

Name of policy: Disciplinary Policy & Procedure	Details of policy: describes the processes by which disciplinary matters are dealt with in the Trust.	
Does the policy affect (please tick)		
	Patients	<input checked="" type="checkbox"/>
	Staff	<input checked="" type="checkbox"/>
	Both	<input checked="" type="checkbox"/>
Does the policy affect one group more or less favourable than another on the basis of:	Yes/No	Justification/evidence and data source
Age	no	This policy applies to all staff equally, regardless of whether or not they possess a protected characteristic. The policy highlights to managers/staff that consideration should be given to religious observations when arranging meetings/hearings/interviews, and endeavour to avoid arranging meetings at times which may conflict with an employee's religious observations or late in the day during periods of fasting.
Disability: including learning disability, physical, sensory or mental impairment.	no	
Gender reassignment	no	
Marriage or civil partnership	no	
Pregnancy or maternity	no	
Race	no	
Religion or belief	yes	
Sex	no	
Sexual orientation	no	
Human Rights – are there any issues which might affect a person's human rights?		Justification/evidence and data source
Right to life	no	This policy sets out the processes by which disciplinary issues are dealt with, thus ensuring that those staff concerned are protected from degrading or humiliating treatment. It also includes the right to appeal, which supports Article 6 'the right to a fair trial'.
Right to freedom from degrading or humiliating treatment	yes	
Right to privacy or family life	no	
Any other of the human rights?	yes	
EIA carried out by: Simon Davies, HR Manager	Date Aug 20	Contact details of person carrying out assessment. ext. 4389
Quality assured by: PGP Meeting	Oct 20	