

# DISCIPLINARY POLICY AND PROCEDURE

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<b>Current Author</b>	Kyri Kyriacou
<b>Author's Job Title</b>	Interim Head of Culture
<b>Department responsible for document</b>	Human Resources
<b>Approved by</b>	PRG
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<b>Owner</b>	Jo Humphries
<b>Owner's Job Title</b>	Director of People

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most up to date version - this will always be the version on the intranet.

<b>Related Policies and Procedures</b>	Grievance Procedure Mutual Respect (Respectful Resolution Pathway) Policy Code of Conduct Unregistered Clinical Staff Support Arrangements for Staff Involved in Potentially Traumatic/Stress Work Related Situations
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<b>Stakeholders</b>	All employees Recognised Trade Unions and Staff side Representatives Human Resources & Education Committee
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Version	Date	Author	Author's Job Title	Changes
V1	2011	Colin Fleet	HR Business Partner	First version of policy
V2	January 2017	Emma Saunders	HR Business Partner	Internal organisational changes – titles and committees Process clarification Pension update Addition of suspension checklist Amendment to suspension pay Amendment to notice periods
V3	March 2021	Kyri Kyriacou	Interim Head of Culture	To include the framework on the Respectful Resolution.

<p><b>Summary of the guidance</b></p> <p>This policy applies to all employees of the Trust including bank staff. This procedure deals with issues of 'conduct' including negligence, inappropriate attitude, breaching protocols and policies or not meeting behavioural expectations.</p>
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<p><b>Key words to assist the search engine</b></p> <p>Mutual Respect Code of Conduct Trust's Values &amp; Behaviours Framework Support Arrangements for Staff involved in potentially traumatic/stress work-related situations</p>
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## **1. Introduction**

- 1.1 The Queen Elizabeth Hospital King's Lynn NHS Trust is committed to creating and maintaining a positive working environment and harmonious employee relations.
- 1.2 This procedure deals with issues of "conduct" as distinct from "capability."
- 1.3 Efforts should be made wherever possible to deal with problems both speedily and informally or through discussion with emphasis on issuing support, advice and guidance. However, the need does exist to have in operation formal disciplinary procedures when informal actions are not considered appropriate and when, for example, discussion has failed.
- 1.4 This policy applies to all employees of the Trust including bank staff. In cases involving professional competence or personal conduct of medical staff, this policy should be read in conjunction with the document Maintaining High Professional Standards in the Modern NHS (MHPS), which includes taking advice from the National Clinical Assessment Service (NCAS) for cases relating to conduct and capability. In particular, the provisions of MHPS will take precedence for exclusion (suspension) and the process of investigation, hearings and appeals.

## **2. ROLES AND RESPONSIBILITIES**

### **2.1 Responsibilities of the Head of Department/Divisional Director**

The Head of Department/Divisional Director:

- Will deal with day to day minor conduct/performance issues informally through one to one discussions and counselling with their direct reports.
- Should ensure that any cases for concern within their department/division/directorate are addressed appropriately through the discipline procedure to maintain appropriate standards of conduct or performance within the organisation.
- May report to the appropriate statutory/professional body any serious act of misconduct following advice from the professional lead of that area of expertise.
- Will initiate the appropriate procedure for recovering any monies or Trust Property identified as improperly lost to the Trust following the outcome of a disciplinary case.

### **2.2 Responsibilities of the Manager**

Managers are responsible for:

- Ensuring that the Trust's protocols and standards of performance and conduct are conveyed and fully explained to their staff and copies of the policy provided as requested.
- Complying with the principles and procedures of the disciplinary process and ensuring that disciplinary decisions are of a consistent standard across the Trust.
- Ensuring their employees know whom they are accountable to and the extent to which they are authorised to act.
- Ensuring there is a nominated appropriate person authorised to take disciplinary decisions in their absence. Consideration needs to be given to the appropriate experience, expertise

and accountability of the nominated person.

- Ensuring there is an accurate written record kept throughout the disciplinary process.
- Ensuring that investigations are carried out quickly, objectively and fairly.
- Requesting and establishing an investigation panel or officer as required by the circumstances of the case.
- Assessing the report or results of any investigation and deciding whether any case should be considered under the disciplinary procedure or whether there is a case to be heard.
- Establishing a disciplinary hearing and the issuing of all letters to the employee and any witnesses requesting attendance at all meetings.
- Informing and seeking support from a senior member of the HR Business Partner team prior to any formal meetings and always prior to any dismissal of an employee.
- Any suspected fraud or corruption should be reported to the Trust's nominated Local Counter Fraud Specialist

### **2.3 Responsibilities of the Investigating Officer**

The Investigating Officer will be responsible for:

- Conducting a fair, impartial and timely investigation in order to determine whether there is a case to answer.
- Providing a report outlining the facts of the case and the evidence produced including copies of witness statements as appropriate (see Appendix III for format of report).
- Arranging and conducting interviews with any witnesses as appropriate. This will involve obtaining all the evidence as signed and dated factual statements from all those involved. The person being investigated may choose to make a statement or not once the case for formal disciplinary consideration is established. The Investigating Officer will inform the employee under investigation of their choice in this circumstance.
- Presenting a report to the line manager for consideration and presenting a case to the disciplinary panel if felt appropriate.

### **2.4 Responsibilities of the Employee**

The employee is responsible for:

- Reading and observing the protocols and procedures applicable to their particular employment.
- Attending any meetings as requested by the investigating officer and participating fully in the disciplinary process.
- Giving a full account of the circumstances of any case during the investigation and disciplinary hearing.
- Arranging representation if desired by a trade union representative, a friend not acting in a legal capacity or a colleague at any formal meetings.
- Notifying the employer of any change in circumstance. This is a contractual requirement i.e. contact details. However during a disciplinary process, good communication is essential and the employee has the responsibility to ensure that any changes that might affect this process should be notified e.g. any pre-booked arrangements or change of address, phone number?

### **2.5 Responsibilities of senior members of the Human Resources Department**

Senior members of the HR Department are responsible for:

- Ensuring consistent application of the disciplinary policy within The Trust

- Providing advice and guidance to the manager and clarification of this policy as required.
- Providing support and guidance to an investigating officer as part of a larger complex investigation.
- Providing advice and guidance at formal hearings wherever possible.
- Maintaining records of outcomes of formal disciplinary for the purposes of ensuring a consistent approach.
- Providing support to an appeals panel and to the presenting manager in an appeal hearing.
- HR employees should be aware of the protocol between HR and the LCFS

## **2.6 Responsibilities of the Trade Union Representatives**

The trade union representative is responsible for:

- Advising members on the policy and procedure as requested.
- Providing support to members at investigations, hearings and appeals if required to do so by their member. Being sympathetic, firm and fair minded, reassuring the member that the issue will be dealt with fairly and competently but not raising expectations or holding out false hopes.
- Receive any papers or written statements within the time limits specified if required to do so by their member.
- Address Disciplinary Hearings and to present and sum up the employee's case, respond on behalf of the employee to any views expressed at Hearings and confer with the employee during the hearing.
- Support, but does not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent management from explaining its case.

## **3. PRINCIPLES**

- 3.1 No disciplinary action will be taken against an employee until the case has been appropriately investigated to establish the facts. This may or may not require a formal investigation depending on the seriousness and complexity of the issue (see Section 4 above).
- 3.2 At every stage in the formal procedure the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.
- 3.3 At all stages of the formal disciplinary procedure, the employee may exercise the right to be accompanied by a "companion". This might be a representative of their trade union, professional or staff association, work colleague or person whose presence will not prejudice the hearing and/or who is not acting in a legal capacity.
- 3.4 No employee will be dismissed for a first breach of discipline except in a case of gross misconduct (see Appendix 1) when the penalty will be summary dismissal without notice or payment in lieu of notice.
- 3.5 The outcome of a disciplinary hearing may result in any of the sanctions outlined in section 18 of this policy.

#### **4. HEALTH AND SAFETY AT WORK**

4.1 The Trust has responsibilities under legislation to maintain a safe and healthy working environment. In addition, the Health and Safety at Work Act also places onus on employees (staff) to consistently demonstrate a duty of care whilst undertaking duties. In this context The Trust expects all managers and staff to:

- Ensure attendance at all mandatory training sessions respecting recommended frequency.
- Adhere conscientiously to safe working practices based upon training undertaken.
- Report to management any evidence of negligent practice. It is accepted that genuine and unintentional mistakes will occur from time to time. However, it should be noted that negligent or reckless actions, which put at risk either personal health or the health of others would be dealt with under this procedure.

#### **5. TRADE UNION REPRESENTATIVES**

5.1 In line with the ACAS Code of Practice no disciplinary action should be taken against a shop steward or other accredited employee representative until the circumstances of the case have been discussed with the respective full-time officer or senior union representative. The official or senior representative should be given access to the shop steward and the appropriate manager in order to discuss the case. The employee representative will have the opportunity to have the full time official present at all meetings and where this is not required by the employee they will be requested to consent to sign a Disclaimer giving the Trust written evidence to that effect.

#### **6. CRIMINAL OFFENCES AND POLICE ENQUIRIES**

##### **6.1 Inside employment**

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 policy, without awaiting the outcome of any police investigation or prosecution. Based on advice from a HR Business Partner, the appropriate manager may where necessary either:

- Immediately suspend the employee from duty and postpone disciplinary action until the outcome of police enquiries or legal proceedings is known. A distinction should be drawn between the police's need to prove beyond reasonable doubt as against The Trust's need to establish that a reasonable belief is held that an offence has been committed.

OR

- Initiate an investigation and proceed with disciplinary action if there is substantive evidence of a clear breach of The Trust protocols or procedures which in itself would justify disciplinary action and such action does not in the Trusts view prejudice the police enquiries or legal proceedings. Professional advice should be taken via the HR department.

Whilst the Trust will fully cooperate with criminal investigations, the internal procedures will remain separate to the criminal investigation and independent of it.

##### **6.2 Outside Employment**

Where an employee is 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 immediately. Failure to report or disclose this information will result in disciplinary action being taken up to and including dismissal.

### **6.3 Consequences**

A criminal offence outside of employment which may result in an arrest, caution, conviction or any other type of reprimand will not automatically be regarded as a reason for disciplinary action or dismissal. The main consideration will be whether the conviction has clear implications for the performance of the employee's duties or is such that it damages the reputation of the Trust, in which case disciplinary action, up to and including dismissal may be taken. If it is decided that the offence could affect performance of the individual or brings the Trust into disrepute, further action should be taken, as appropriate, in line with this policy.

6.4 The Police cannot be asked to conduct a disciplinary investigation on behalf of the Trust nor should they be asked to present at an internal investigatory or disciplinary hearing or interview. They may however be asked to provide a statement of fact concerning the employee's arrest or conviction.

6.5 In some cases the nature of the alleged offence may not justify disciplinary action, for example, off duty conduct which has no bearing on employment. If the employee is not available for work because he/she is in custody or on remand, or serving a period of imprisonment or detention a decision should be taken whether in the light of the needs of The Trust the employee's job can be kept open. In these circumstances the period of absence will be unpaid. If the employee is unable to carry out the full duties within a reasonable timescale, the contract may be deemed frustrated (or severed) according to the doctrine of frustration of contract, or some other substantial reason. Advice in such cases should always be taken from a Human Resources Business Partner. The employee will have the right to appeal by lodging the appeal in writing to the head of Workforce, within 3 weeks of confirmation of the decision.

### **6.6 Forfeiture or reduction of NHS Pension Scheme Benefits**

If an employee is a member of the NHS Pension Scheme, powers exist within the NHS Pensions Regulations for the Secretary of State to:

- Forfeit a scheme member's right to pension benefits or other amounts payable, completely, or in part, if they are convicted of certain offences;
- Recover from a Scheme member's pension benefits, losses to public funds as a result of a member's criminal, negligent or fraudulent act or omission.

For further information, please contact the Trusts Pensions Manager.

## **7. STATUTORY REPORTING**

7.1 The Trust may notify the specified statutory body, which is responsible for the professional discipline of particular staff groups in all cases of dismissal or resignation connected with adverse findings in civil proceedings or a criminal conviction. The Trust will also be at liberty to report any other factual information, which in its reasonable opinion it believes ought to be in the possession of the employee's professional body or statutory regulating organisation. Reporting will normally be the responsibility of the Director responsible for that particular staff group /professional discipline.

## **8. REMOVAL FROM THE WORKPLACE AND SUSPENSION FROM DUTY**

8.1 There are a number of circumstances when it may be appropriate to remove an employee from the

workplace in order to facilitate an investigation or for some other reason. In most cases the employee may be able to remain in the workplace, either in their existing role, on restricted duties, with increased supervision, or moved to another role temporarily. Any action must be made mindfully with regard to the employee's confidentiality, with only the necessary parties informed. Circumstances where removal from the workplace may be appropriate include the following:

- Immediately following an allegation of gross misconduct;
- Where the conduct of an employee places them at serious risk (e.g. aggression/drunkenness);
- Where the continued presence of the employee could put other employees or patients or the general public at risk;
- Where the employee's presence might reasonably be considered to hamper the investigation

8.2 All decisions to suspend should be reviewed every **4 weeks** by the Commissioning manager, who should then complete the Suspension/Review Checklist after every suspension review (See Appendix 3), giving a clear reason why the employee cannot be returned to the workplace.

The outcome of this review should be communicated to the employee and their representative via the pre-booked contact arrangements at the time of the suspension. Employees who are suspended should be offered support such as counselling services to reduce the feeling of isolation experienced during this time.

8.3 If suspension is deemed appropriate, the appropriate Director, authorised Deputy or delegated senior manager on duty will normally take this decision in consultation with Human Resources. A nurse should not be suspended without discussion with the Chief Nurse.

However circumstances may arise for example on night duty, at weekends or periods of leave when the authorised manager is not available. In these cases the senior 'On Call' manager should make the decision and report it to the authorised manager and Human Resources at the earliest opportunity.

8.4 Suspensions should normally take place at a personal interview unless the employee fails or refuses to attend in which case the suspension will be notified in writing. An employee may be accompanied by their representative at an interview where suspension is being considered but where this is not practicable, the employee's staff representative will be informed as soon as possible.

8.5 Suspension from duty is a neutral act, is not regarded as a disciplinary sanction and will normally be paid. Suspension pay will be based on an average earning over the previous three month period, taking into account any enhancements or bank shifts undertaken during that period.

## 8.6 Unpaid Suspension

- 8.6.1 A condition of payment during suspension is that the employee must be available during Monday to Friday 9am to 5pm to attend any meeting and/or hearing that may be convened as part of any investigation. It therefore follows that if an employee is not available and does not have authorised leave their pay will be stopped for the duration of unavailability.
- 8.6.2 The Trust reserves the rights to suspend without pay. In such cases the director of Finance will have to approve this. Although the list below is not exhaustive, it may include the following circumstances:
- Where an employee does not have the right to legally work in the UK
  - Or their professional registration has been suspended (revoked by a professional body)
- 8.6.3 Confidentiality  
Managers and staff should be mindful of the confidential nature of the suspension with only employees who are crucial to the investigation being informed, and any other body if applicable in accordance with legislation.
- 8.6.4 Entry to Trust Premises whilst Suspended  
During the period of suspension, the employee must not enter the workplace or other Trust premises without the permission of their manager, nor make contact with other staff or colleagues involved in the investigation. In addition the employee must not undertake any additional alternative employment (paid or unpaid) whilst suspended without the Trust's written consent.
- 8.6.5 Medical Treatment Whilst Suspended  
The requirements at 9.6 do not apply in instances where an employee, as a patient, is required to attend Trust premises in order that they may receive treatment.
- 8.6.6 Annual Leave during Suspension
- 8.6.7 A suspended member of staff may take annual leave during suspension provided they obtain permission and give adequate notice to their Line-Manager who will inform the Investigating Officer. Except in exceptional circumstances cancellation of a pre-planned investigation meeting or hearings for annual leave should be avoided. Whilst on annual leave the suspended member of staff will be relieved of attending any meetings required as part of the investigation or a hearing. The process will be continued on their return.
- 8.6.8 Employees who are suspended will not be able to carry over more than five days annual leave from one leave year to the next unless there are exceptional circumstances. In order to carry forward more than five days leave to the next year, the member of staff must apply in writing to the Head of Service.
- 8.6.9 Staff who are granted annual leave during a period of suspension will be entitled to full pay – therefore the line manager of a person suspended without pay should liaise with Payroll to ensure the appropriate steps are taken for the employees pay to be reinstated during this period of annual leave.
- 8.6.10 Sickness during Suspension
- 8.6.11 Should an employee become ill during their suspension they must inform their line manager and whilst on suspension, the employee must continue to comply with the Trusts Sickness and Policy and reporting procedures. This includes the provision of medical certificates as required.
- 8.6.12 The Line Manager may, if necessary, refer the employee to Occupational Health to seek advice as to whether the employee can continue with the investigatory meetings and or/hearings throughout the period of their sickness absence.

- 8.6.13 All suspensions will be confirmed in writing as soon as is practicable but within 3 working days of the decision being taken. The letter will give the reasons for the suspension and the possible date or timing of return. With the agreement of the employee a copy of the letter shall be sent to the appropriate staff representative.

Once investigations are complete the employee will receive in writing confirmation that they may either return to work or that a disciplinary hearing will be convened.

## **9. PRINCIPLES OF INVESTIGATIONS**

- 9.1 All incidences of suspected fraud must be referred to the Local Counter Fraud Specialist or the Director of Finance before any investigation takes place. Normally notification will be the responsibility of a senior member of the HR Business Partner team. The Local Counter Fraud Specialist will agree with the Director of Finance and the senior member of HR, the method of approach to the investigation of the allegation.
- 9.2 Where a manager receives information that necessitates enquiries being made amongst their staff but which does not clearly indicate that a disciplinary problem is inevitable; these enquiries constitute an informal investigation and as such are part of the normal communication between manager and employee and should not normally include union representation at this stage.
- 9.3 Where enquiries or an investigation point to the matter being one of capability (see section 1 Policy Statement for further details) rather than conduct, then the matter should be progressed under the Trust Capability Policy.
- 9.4 Where a manager suspects that an individual's physical or mental health may be a cause of the alleged misconduct, then the individual should be referred to Occupational Health for assessment. Following this assessment the manager should decide with support from HR whether to proceed with disciplinary action or to pursue other policies as appropriate e.g. for issues of substance misuse.
- 9.5 Where an informal investigation demonstrates grounds for believing that misconduct has occurred that is more serious than can be dealt with by means of counselling, a full and formal investigation of all the relevant facts must be undertaken. The Line manager with HR will identify a manager who has previously not been involved in the issue to conduct the investigation.
- 9.6 Those undertaking investigations should ensure they are fully conversant with the operation of the disciplinary procedures. During formal investigatory interviews, the employee will have the right to be accompanied by a "companion" e.g. their union representative, colleague or person not likely to prejudice the outcome or acting in a legal capacity. The manager leading the investigation must ensure employees are made aware of their rights of representation (see Appendix 4 – Template letter)
- 9.7 The aims of the investigation are as follows:
- Ascertain the facts
  - Assess the facts
  - Determine whether a prima facie case for disciplinary action exists
  - Recommend whether a disciplinary hearing should be convened
  - Make any other recommendations as appropriate such as change to systems, processes etc.
- 9.8 The manager leading the investigation shall ensure the facts and recommendations are properly documented and statements are signed by witnesses / interviewees as an accurate record. Copies of these statements shall be made available to interviewees (witnesses should only see their own witness

statement not those of other witnesses) and as part of the overall report, to the employee under investigation.

No disciplinary action shall be taken against an employee until the case has been fully investigated as detailed above. Where the outcome of the investigation is the convening of a disciplinary hearing, the employee should be formally notified as detailed below under the Disciplinary Procedure.

Investigations should be carried out within a 60 calendar day time limit, or as is reasonably possible. In all cases, the timescales of each individual case should be kept under regular review by the Manager who authorised the investigation.

## **10. RIGHTS OF REPRESENTATION**

- 10.1 The Trust adheres to the Employment Relations Act 1999, follows the principles laid out in the ACAS Code of Practice on Disciplinary and Grievance procedures and is mindful of case law developments. It therefore allows employees statutory rights to be accompanied at meetings where a disciplinary meeting could result in a formal warning at Stages 1, 2, 3 or 4 in this Policy.
- 10.2 Also, an employee may be accompanied at Investigatory Meetings or where the Trust is taking some other disciplinary action; or, confirming a warning or some other disciplinary action including Appeal Hearings.
- 10.3 The chosen ‘companion’ may be a Trade Union Representative, a fellow worker or another person or whose presence would ‘not prejudice’ the meeting / hearing.
- 10.4 The request to be accompanied must be ‘reasonable’ and it would not normally be reasonable for an employee to ask to be represented at informal meetings or where counselling is being undertaken by the Manager
- 10.5 It would not normally be appropriate for the employee to be represented by someone whose availability is limited and/or who would unduly hold up the process; particularly where someone suitable and willing is available either on site or local to the Trust.
- 10.6 The statutory right to be accompanied does not extend to legal representation. However, an employee should be allowed to be accompanied by a lawyer at a disciplinary hearing in circumstances where Article 6 of the European Convention on Human Rights is engaged; which gives individuals the right to a fair and public hearing.

Article 6 would likely be engaged where the employee is facing charges that are of such severity or gravity that, in the event they are proven, he or she will effectively be barred from employment in the NHS. Also, for example, in circumstances where a consequence of the hearing could be the addition of his (or her) name to the register of individuals deemed unsuitable to work with children. In cases of less severity Article 6 might not be engaged. Managers should always discuss requests for legal representation with HR before agreeing to the request.

## **11. WITNESSES**

- 11.1 Arrangements for attendance of witnesses are the responsibility of those requiring them to attend. Prior notification of witnesses to be called must be given to their managers. Witnesses called to attend a hearing or investigatory interview must be allowed time off with pay and managers will co-operate in ensuring that members of staff called as witnesses are released from their duties at the required time. In general terms, only those employees that have provided a statement as part of the investigation will be called as a witness.
- 11.2 Where witnesses are not required to give evidence but their signed statements form part of the case (of either side), the statements may be given weight by the panel. However where the written statement is in dispute, witnesses should be called where possible and if not possible, the hearing should be adjourned until the witness is available to be called. Only those employees that have been asked to provide a statement, as part of the investigation process, will be expected to be called as witnesses.
- 11.3 In certain circumstances it may be appropriate to hear the evidence of witnesses who are not employed by the Trust.

## **12. RECORD KEEPING**

- 12.1 It will not be the practice to maintain an audio transcript of any hearing falling within the scope of this policy. Instead it is expected that full notes of any meeting in which dismissal is a potential outcome should be taken by a Note taker. Where this is not practical the outcome letter will be sufficiently full and comprehensive such as to represent an official recording of the hearing. The outline framework for this letter is included in the section 'after the hearing'.
- 12.2 A copy of the Disciplinary Outcome letter and the official documents presented to the Disciplinary Hearing will be kept in a relevant filing system for the duration for which the disciplinary warning is live and/or the time limits to which the employee has rights at law  
e.g. in the case where the employee is dismissed after internal appeal all paperwork will be retained in case of the employee making an application for unfair dismissal to an Employment Tribunal.

## **13. LEVELS OF AUTHORITY**

- 13.1 The authority for taking formal disciplinary action is vested in managers (Band 7 and above) and Directors of the Trust. This is detailed in Appendix 2.

## 14. GRIEVANCES

- 14.1 Where an employee raises a grievance during a disciplinary process the disciplinary process may (or may not) be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently. In this event it is a matter for the Trust to decide how this is most fairly executed.
- 14.2 Depending on the nature of the grievance, consideration should be given to bringing in another manager to deal with either the disciplinary or the grievance issue. Guidance should be sought from the senior member of the HR Department.

## 15. THE PROCESS TO BE FOLLOWED

### 15.1 RESPECTFUL RESOLUTION “Our Values into Action”

The Respectful Resolution Framework is the umbrella term for a suite of resources titled: ‘Our Values into Action’. The guide is part of a suite of resources, a pathway, for staff to help create a safe culture and address issues of behaviours that are inappropriate. Whether as an individual experiencing inappropriate behaviour, a witness, the manager, or as an accused these guides contain practical tools to help staff decide the best route forward and start to take appropriate action. We want all staff to find the information or help they need, so you can build a great culture and resolve issues quickly and respectfully.

Where a disciplinary is related to matter covered within the Mutual Respect (RRP) Policy Staff are encouraged to progress these through the Respectful Resolution Framework as appropriate. This framework places emphasis on informal resolution though it is recognised that a more formal process may be required in certain circumstances. More information can be found in the Mutual Respect (RRP) Policy.

The full suite of resources listed here are available on the intranet. If you can’t find what you need, talk with HR, your manager or union representative.

Resource	Summary of content
Overview of the Respectful Resolution approach	Clear and straightforward processes, developed by colleagues
Quick guides to resolving issues of behaviour	Explore your options if you are experiencing poor behaviour, a witness, manager, or an allegation has been made against you.
Step 1. Creating a safe culture in your team	Practical discussions and tools to build your values-led team culture
Step 2. Reflect	Guides to help you think about what happened, and what to do
Step 3. Direct feedback	Safely giving and receiving feedback as respectful colleagues
Step 4. Supported resolution	Facilitated approach to reviewing, resolving and moving forward
Step 5. Formal process	Formal approach to resolving complaints about behaviour

The Respectful Resolution Framework places the emphasis on informal resolution. However, it is recognised that a more formal process may be required in certain circumstances.

## **FAST TRACK DISCIPLINARY PROCESS**

The 'Fast Track' disciplinary process aims to allow for cases to be addressed effectively and in a timely manner such as to remove unnecessary procedural steps, negate the need for a lengthy investigation, minimize the anxiety of the employee(s) and potential witnesses and reduce potential periods of paid suspension. It is envisaged that 'Fast Tracking' opportunities will be infrequent and only considered in the clearest of cases.

Subject to the circumstances outlined below, it is the intention not to commission the traditional investigatory report, although a thorough examination of the known facts will be undertaken by the appropriate line manager prior to a formal hearing, following which the range of sanctions within the Trust Disciplinary Policy may be applied.

'Fast Tracking' may be considered suitable in the following (non-exhaustive list of) circumstances:-

- Incidents that are regarded potentially as 'misconduct' but not those which appear to be 'gross misconduct' and which may result in dismissal and...
- The employee(s) in question has/have admitted the allegations in full and at the earliest opportunity or...
- If the employee(s) does/do not initially admit to the allegation but there is factual evidence which the employee cannot refute, i.e. there is indisputable prima facie evidence such as irrefutable CCTV evidence.

If the manager should feel that 'Fast Tracking' is appropriate, they must, in the first instance, discuss this with the relevant HR Business Partner. The information available will then be reviewed, in partnership, by the Manager, the HR Business Partner, the employee(s) and their representative(s). Only if all parties agree, will 'Fast Tracking' apply.

If the decision has been made to 'Fast Track', then the following process should be followed:

- The manager will ensure that there is a written statement from the individual who reported the incident and also from the employee involved, together with any supporting information gathered.
- The Chair of the Disciplinary Panel will write to the employee involved asking them to attend the 'Fast Track' Disciplinary Hearing, and will provide a copy of all information gathered. The employee will be given the right to be accompanied if they so wish.
- The Chair will be supported by an HR Business Partner, not previously involved in the case and a professional adviser where appropriate. The employee and their representative will also be present. No witnesses will be called from either side.
- The manager involved in agreeing that 'Fast Tracking' will apply cannot assume the role of Disciplinary Panel Chair as this may suggest a 'pre-judging' of any resultant sanction.

### **Fast Track Hearing Procedure**

- Introductions are made.
- The Chair outlines the nature of the allegation(s) and advises that it (they) may result in disciplinary action.
- The Chair confirms with the individual that he/she admits to the allegations previously stated or confirms the evidence available.
- The Chair confirms that the individual has agreed to apply the 'Fast Track' process.
- The employee or Staff Side Representative will have the right to put forward any comments or statements relating to the incident (including any mitigation).

- The hearing panel may wish to question the employee.
- The Hearing Panel will adjourn briefly to discuss the outcome of the Disciplinary Hearing.
- The Chair will then communicate the decision of the Hearing to the employee, advising them of their right of appeal. The record of any warning will be kept on the employee's personal file.
- If, during the hearing, new information is disclosed, or 'comes to light', which changes the potential gravity of the employees conduct and thus requires either a full investigation or may lead to dismissal, the 'Fast Track' process will cease to apply and the hearing will stop. The Chair will explain why the hearing has stopped and that a full investigation will now be carried out. The Chair will discuss with the divisional HR Business Partner whether the employee should be suspended. The disciplinary process will then be applied in accordance with the 'non-Fast Tracking' stages of the Trust Disciplinary Policy.

## **16. INFORMAL COUNSELLING BY MANAGER**

- 16.1 Counselling does not form part of the formal disciplinary procedure. It is used as an initial step to resolve issues of unacceptable conduct i.e. where the employee is failing to meet the required standards; the immediate line manager or supervisor will counsel the employee on an informal basis which will take the form of a one to one meeting. There is no right to representation at this stage.

The purpose of counselling is to explore and establish:

- Areas of concern
- Standards required
- Contributory factors or additional problems facing the employee
- Support and training to achieve the required standards
- A time bound process for review and resolution

- 16.2 An agreed account of any counselling including an indication of the above and the final outcomes should be provided to the employee and the manager should retain a copy until the matter has been resolved.
- 16.3 The employee should be informed that continued failure to meet the standards of conduct or performance might result in formal action being taken under the disciplinary procedure. All of the documentation at the counselling stage may form part of the disciplinary investigation at a later stage.

## **17. ARRANGING AND CONDUCTING FORMAL DISCIPLINARY HEARINGS**

### **17.1 Before the hearing**

The notification of the date of the hearing, the Management statement of case and all relevant documentation including copies of the investigation report, statements and supplementary evidence being referred to, will be provided to the employee with the 14 days before the hearing date to enable the employee to formulate a response. Staff Side Representatives will give 7 days' notice of witnesses they wish to call and to exchange and additional paperwork.

Hearings may be arranged with less than 14 days' notice with the agreement of all parties. Time scales can be altered if both parties agree (i.e. shortened or extended). A hearing date may be changed once by either party. An employee's failure to attend a disciplinary hearing will result in the hearing taking place in their absence. The Trust will make every reasonable effort to contact the employee to notify the date and time of the hearing.

No other documents or statements should be used or referred to at the hearing if they have not been presented to the employee or management beforehand unless agreed by management, the employee and their staff side representative at the hearing. In such circumstances management, the employee

and their representative will be given appropriate time to consider any additional documents. Where the employee is not at work or suspended from duty the letter should be sent by recorded delivery.

The employee will be informed who will be hearing the case and who is /are presenting the case and any witnesses that will be called by management.

The letter will state that the hearing may result in disciplinary action and advice will be included regarding the right to be accompanied by a “companion” a trade union official, colleague or person whose presence would not prejudice the hearing and not acting in a legal capacity and the right to call witnesses. The employee will have to ensure their witnesses attend and should advise the panel of this in advance.

The letter will also contain a statement that at the meeting the employee will have the right to fully state their case. It may also be useful to state that should a disciplinary penalty be given at the disciplinary meeting the employee will have the right to appeal in line with the appeals procedure.

When a disciplinary hearing is to be initiated, the line manager will liaise with their Divisional Director over the panel members. The panel members should be Band 7 or above where allowable within the departmental structure and should not previously have been involved in the case or investigation. Where it is deemed inappropriate for a line manager to consider a disciplinary hearing, the Trust will determine an appropriate senior manager to hear the disciplinary. This decision should be taken in conjunction with Human Resources.

### **17.2 At the hearing**

The composition of a panel at the disciplinary hearing is outlined at Appendix 2 and will always include a senior member of the HR Department who will advise the panel on points of process or relevant employment law, but will not advise on the outcome of the hearing.

Hearings should be conducted and structured as per the guidance in Appendix 8.

The employee will be encouraged to give his/her account/version of the incident with support. The representative can speak i.e. present the case for the employee if desired but not answer questions on behalf of the employee

The employee can be questioned by either the panel members or the manager presenting the management case during the hearing.

At the disciplinary hearing the IO presenting the management case and the employee and representative, will withdraw at the end of the hearing so leaving the manager hearing the case to deliberate independently on the outcome, along with the HR representative who will advise on process and procedural points as necessary.

Witnesses called by either the presenting manager and the employees can be questioned and cross-examined by all concerned at the hearing.

### **17.3 After the hearing**

A letter confirming or advising the employee of the disciplinary decision will be sent within 5 working days or 7 calendar days of the hearing. It will include the following:

- Who was present and in what capacity.
- A clear statement of the allegations.
- Paragraphs covering the main points of the hearing and findings for and against the employee.

- The sanction imposed and the reason for this.
- Details of any action/improvement required by the employee within a specified timescale.
- A statement that failure to improve could result in further action (including dismissal where appropriate).
- Details of the right of appeal when appropriate and how to exercise that right.
- Any other points of action to be taken on behalf of the Trust.

## **18. STAGES OF THE FORMAL DISCIPLINARY PROCEDURE**

- 18.1 Where any employee refuses to co-operate with The Trust disciplinary investigations and proceedings, this should not deter The Trust from taking action. The employee should be advised in writing that unless reasonable co-operation is afforded then a disciplinary decision will be taken on the basis of information available and could result in dismissal.
- 18.2 The following outlines the stages of the formal procedure and depending on the gravity of any offence would allow managers to go straight to specific stages of the procedure. Each stage also outlines the right of appeal and the process to follow appropriate to that stage.

### **First Stage – Formal Verbal Warning**

- 18.3 A formal verbal warning may be given to an employee after a formal investigation and disciplinary hearing and where, line manager counselling may have failed to achieve the required improvements. The warning should be given formally in writing within 5 working days or 7 calendar days a comprehensive and detailed outcome letter should be kept on the personal file. Such warnings remain operative for a minimum period of 6 months after which subject to satisfactory conduct, it will be considered spent for the purposes of further disciplinary action.
- 18.4 These are normally issued for first minor offences (see Appendix I) when discussion has not had the desired effect, e.g. for poor timekeeping, minor breaches of Trust policy or malpractices of limited consequence. Care should be taken to ensure that the issue is one of conduct and not capability - issues of capability should be dealt with under the capability policy.
- 18.5 The warning letter will also confirm the right of appeal identifying which manager to whom to address the Appeal. The individual should appeal in writing on an appeal notification form (see Appendix 10) to the next line manager within 2 weeks of receipt of the letter confirming the warning.
- 18.6 Appeals will normally be arranged within 4 working weeks subject to the availability of all parties. Both parties may agree a shorter or longer period of time.
- 18.7 A senior member of the HR Department will accompany the manager at any hearing.

### **Second Stage - Written warning**

- 18.8 A second stage written warning may be given to an employee where after a formal disciplinary hearing, conduct has failed to improve after a verbal warning or where the conduct is of a more serious nature, or where a series of line manager counselling's have failed to achieve the required result.
- 18.9 The warning should be given formally in writing by the manager who issued the warning within 5 working

days or 7 calendar days and this should be kept on the personal file. Such warnings remain operative for a minimum period of 12 months after which subject to satisfactory conduct, it will be considered spent for the purposes of further disciplinary action.

- 18.10 The warning will confirm what the issues are, what improvements are required and within what time frame, the duration of the warning and the likelihood of further action under Stage 3 if there is no improvement within the defined period.
- 18.11 The warning letter will also confirm the right of appeal identifying which manager to whom to address the Appeal. The individual should appeal in writing on an appeal notification form (see Appendix 10) to the next line manager within 2 weeks of receipt of the letter confirming the warning. Appeals will normally be arranged within 4 working weeks subject to the availability of all parties. Both parties may agree a shorter or longer period of time.
- 18.12 A senior member of the HR Department will accompany the manager at any hearing.

### **Third stage - Final written warning**

- 18.13 A final written warning may be issued for very serious offences or after a repetition of minor and/or serious offences, where conduct has failed to improve.
- 18.14 It may also be issued as an alternative to dismissal in a case of gross misconduct where there are mitigating circumstances such as length of service and a previous unblemished record have been taken into account.
- 18.15 The final written warning will detail the complaint, what improvements are required and within what time frame, the duration of the warning and the likelihood of dismissal as at Stage 4 if there is no improvement within the defined period. The final written warning letter will remain on the personal file for a minimum period of 12 months but no more than 24 months.
- 18.16 The warning letter will also confirm the right of appeal identifying which manager to whom to address the Appeal. The individual should appeal in writing on an appeal notification form (see Appendix 10) to the next line manager within 2 weeks of receipt of the letter confirming the warning. Appeals will normally be arranged within 4 working weeks subject to the availability of all parties. Both parties may agree a shorter or longer period of time.

### **Fourth Stage – Dismissal or Alternative Formal Disciplinary Measure**

- 18.17 An employee may be considered for dismissal if conduct continues to be unsatisfactory and the employee fails to reach a satisfactory standard whilst the final written warning is in force; where the employee is found to be guilty of gross misconduct and there are insufficient or no mitigating circumstances to be considered.
- 18.18 A senior member of the HR Department will accompany the manager at any hearing. On completion of the hearing the employee will be told of the decision to dismiss immediately or if this is not possible, within 24 hours.
- 18.19 The dismissal letter will detail the complaint, the process undergone and the reasoning for the decision of the panel. It will also confirm the right of appeal and will be documented and despatched within 5 working days or 7 calendar days.
- 18.20 Appeals must be lodged in writing on an appeal notification form (see Appendix 10) to the 'Head of Workforce' within 2 weeks of receipt of letter confirming the decision to dismiss. Appeals will normally be arranged within 4 working weeks subject to the availability of all parties. Both parties may agree a

shorter or longer period of time

- 18.21 The appeal panel for dismissal will normally consist of one non-executive director of The Trust who will be chair of the panel; an executive director and an appropriate senior manager. Where a non-executive director is unavailable, then an appropriate senior manager will be appointed who has not been previously been involved in the process. The Director of Human Resources or a nominated deputy will attend the appeal and act as professional HR advisor to the panel.
- 18.22 The decision of the panel will be binding and employees should exhaust all rights of appeal under this policy before proceeding to any statutory right of complaint against unfair dismissal (i.e. to an employment tribunal).
- 18.23 Separate arrangements will be made where the dismissal of an executive director is a subject of appeal. In these circumstances, please contact a senior member of the HR department

## **19. USE OF DISCIPLINARY SANCTIONS**

- 19.1 The full range of disciplinary action outlined in this procedure may not be applicable in every case and will entirely depend upon the circumstances and seriousness of the case.  
Accordingly, the procedure may be implemented at any stage if the employee's alleged misconduct or performance warrants such action.
- 19.2 The Trust may initiate re-training where appropriate as a possible remedy. This could be in addition to or instead of a warning within this Policy. Retraining might be deemed appropriate, for example, where an employee has made drug errors; where there has been an error in the procedure set out in the collection of blood products; or, where there has been Information Governance (IG) related misconduct.
- 19.3 An accumulation warning issued via the disciplinary process may result in dismissal. However, 'management advice' or 'Formal Notices' issued under the Capability Policy or Sickness Policy would not normally be cumulative in nature in conjunction with disciplinary warnings/sanctions.
- 19.4 An employee committing gross misconduct (see Appendix 1) should expect to be summarily dismissed, without notice, following due process including a thorough investigation.
- 19.5 Otherwise, where notice is issued upon dismissal and normally paid in lieu of the individual remaining at work in accordance with the employee's employment contract and current statutory legislation i.e. number of weeks based on completed years of service up to a maximum of 12 weeks.
- 19.6 In certain circumstances alternatives to dismissal may be considered such as downgrading without protection, redeployment or transfer out of department. Advice from Human Resources should be sought prior to taking any of these actions since steps such as these have contractual implications. All of these actions will be invoked as a penalty alternative to dismissal and should be seen in this context. Alternative actions such as these should always be linked to a final written warning.

## **20 SIGNIFICANT PERFORMANCE WEAKNESSES**

Where either a written or final written warning has been issued to a member of staff as an outcome from the disciplinary process - operative for a minimum of 12 and a maximum of 24 months - consideration should be given to treating the conduct under the heading of 'significant performance weakness' (as

defined under Agenda for change Section 6.26 and Section 6.27 see below) and therefore treating this a valid and justified reason for suppression of increment points for the duration of the warning period.

Liaison with the relevant HR Business partner involved in the disciplinary process will identify when the next increment would be due.

### **Definition of 'significant performance weaknesses'**

Section 6.26 of the Agenda for Change Terms and Conditions Handbook states that 'Where significant weaknesses in performance in the current post have been identified and discussed and documented with the staff member concerned and not resolved despite opportunities for appropriate training/development and support, exceptionally pay progression may be deferred at any pay point until the problems are resolved'.

Section 6.27 of the Agenda for Change Terms and Conditions Handbook defines 'significant weaknesses' as 'those which prevent a staff member from continuing to apply consistently, across a recognised normal workload, the knowledge and skills specified under the KSF foundation post outline for the foundation gateway or, for staff above the second gateway the full range of knowledge and skills specified under the full KSF outline, without continued supervision and support inappropriate to the post.'

**Registered staff** - For staff registered with a recognised body it is automatically assumed that the KSF outline operates in conjunction with the relevant code of conduct governing NHS staff registered with the relevant recognised NHS body, with particular reference to 'fitness to practice' conditions and required competencies. Therefore staff are expected to take personal responsibility for being aware of the 'fitness to practice' and competence conditions of their registration and a claimed lack of knowledge of those conditions would not be seen as a fitting the safeguard criteria below.

**Safeguards** - In determining whether pay suppression is appropriate the following safeguards apply:-

- No national or local quotas will apply. (It is important to note that the use of increment suppression in this way is intended to support the principle of creating a high performance culture and should not be seen as an opportunity to artificially withhold increments without due reason. Due reason will have been identified via the disciplinary process and appropriateness of that action will need to be signed off by the relevant HR Business partner and Staff side Chair when completing the P3.)
- All staff must have equal opportunity to demonstrate the required standard of knowledge and skills to progress through the gateways and pay points. Therefore to be in a position to suppress an increment due to 'significant performance weakness' the member of staff will have needed to have participated in annual appraisal (or 6 month review if worked at the Trust less than 12 months) using the relevant KSF outline so that expectations can be demonstrated to have been made clear e.g. conduct in relation to local policies and procedures
- The KSF outline for the relevant post needs to have been kept up to date to reflect current standards and requirements

**Process for deferral** - Normally a P3 would be signed by both manager and member of staff. However as the terms and conditions apply to all staff covered by Agenda for Change, in this instance the P3 may be countersigned by the HR Business partner and Staff Side Chair to confirm the correct disciplinary process has been applied in accordance with this Disciplinary policy. The P3 will then be forwarded to Payroll to request suppression of the next increment for the duration of the written/final written warning.

A P3 will need to be completed and forwarded to Payroll once the sanction has expired in order to re-instate progression through the increment points.

**Right of appeal.** - The decision to suppress a member of staff's increment increase following a disciplinary

process can be subject to appeal by the member of staff via the disciplinary appeal process.

Therefore, as well as the warning letter confirming the right of appeal to the manager next in line to the manager who issued the warning it will make clear if suppression of increments is to apply, and that this decision can also be appealed as part of that process within 2 weeks of receipt of the warning letter. As with the usual disciplinary appeal process, appeals will normally be arranged within 4 working weeks subject to the availability of all parties.

If an appeal against suppression of increment is successful Payroll would need to be notified in order to action the increment and if suppression had already taken effect then pay would be back dated to the original date of the increment increase. If the appeal is unsuccessful then the suppression will stand until the sanction expires.

## **21 REFERRAL TO CHILDREN'S SAFEGUARDING OPERATIONS UNIT (CSOU) FOR INCLUSION ON PROTECTION OF CHILDREN LIST (POCA) OR LIST 99**

Under 'Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children' Appendix 5 (April 2006, HM Government) the Trust has a statutory duty to refer where an individual is dismissed for misconduct which harmed a child or placed a child at risk of harm; or resigns, retires, is made redundant or is transferred to a position which is not a child care position in such circumstances. Where a manager is concerned that a suspension or dismissal fits this criterion s/he should discuss it with his or her HR link manager. The HR manager will arrange a discussion with the Head of Midwifery and Nursing for Women and Children to consider the concerns, who will then contact the Local Authority Designated Officer (LADO) for their advice. Each situation will be decided on a case by case basis, based on that advice. In the event that it is agreed that the situation warrants referral to the CSOU the manager will complete the referral form in conjunction with the HR link manager. A copy will be kept on the personal file until the person reaches the age of 65 (normal retirement age) or 10 years if that is longer.

## **22. PREVIOUS EMPLOYMENT HISTORY AND SPENT DISCIPLINARY WARNINGS**

In accordance with ACAS guidance, an employee's overall employment record should be considered in the light of potential disciplinary action. This would include trends involving previous allegations for similar offences that were investigated at the time they occurred. Although no formal action may have been taken it does not rule out that an offence may or may not have been committed. A trend or previous allegation of the same offence does, in the interest of maintaining a duty of care to clients intensify management's fair and reasonable concerns, especially in cases where care could be compromised as a result of not taking previous allegations into account.

Where a previous warning has expired the employee will not be warned about that offence a second time. Also in respect of 22.1 above, the expired warning is not automatically referred to or taken into account during any part of subsequent disciplinary issues except where there is a justifiable need to refer to it.

## **23. REVIEW OF POLICY**

This policy will be reviewed as appropriate following approval of the policy within The Queen Elizabeth Hospital King's Lynn NHS Foundation Trust. It will also be monitored for effectiveness and Equality

Impact Assessment.

## **24. COUNTER FRAUD AND CORRUPTION:**

The Fraud Act 2006 states that a person is guilty of fraud if he/she is in breach of the sections listed below:

- Fraud by false representation
- Fraud by failing to disclose information, and
- Fraud by abuse of position. The Trust has an accredited Local Counter Fraud Specialist (LCFS) who is responsible for investigating all suspected cases of fraud. If you wish to contact the Trust's LCFS, Andy Reeve, please contact by phone on 07528 970222 or email [andy.reeve@bakertilly.co.uk](mailto:andy.reeve@bakertilly.co.uk)

An alternative to this is to contact the NHS Fraud and Corruption Reporting Line on 08000 28 40 60.

## **25 EQUALITY IMPACT ASSESSMENT**

- 25.1 This policy has been assessed using an equality impact assessment initial template and is deemed to meet current equality requirements. The completed Stage 1 screening template is attached as Appendix XI.

## **26 REFERENCES**

This policy was developed in line with best practice and up to date research with reference to the sources of information listed below:

- Agenda for Change NHS Terms and Conditions of Service
- ACAS Code of Practice – Disciplinary and Grievance Procedures (April 2009)
- Employment Rights Act 1996
- The Fraud Act 2006
- Employment Relations Act 1999 and 2004

## **27 ASSOCIATED POLICIES**

This policy should be read in conjunction with the following policies and documents:

- The Queen Elizabeth Hospital NHS Foundation Trust Capability Policy
- The Queen Elizabeth Hospital NHS Foundation Trust Grievance Policy
- The Queen Elizabeth Hospital NHS Foundation Trust Managing Attendance Policy
- The Queen Elizabeth Hospital NHS Foundation Trust Mutual Respect (Respectful Resolution Pathway) Policy

## MISCONDUCT AND GROSS MISCONDUCT - EXAMPLES

The following is a list of examples of misconduct - which may result in informal action or formal disciplinary action depending upon the circumstances - and gross misconduct - which could result in summary dismissal. This list is not exhaustive but is provided to give guidance.

### Misconduct

- Unauthorised absence
- Poor attendance (not resulting from underlying medical condition), timekeeping
- Abuse or misuse of study leave provisions
- Breach of contract, terms and conditions of employment
- Breach of confidentiality – disclosure or misuse of privileged information including either personal information about a patient or an employee. Serious instances of this could be gross misconduct.
- Participating without authority in other employment, trade or business or profession outside the Trust, which is prejudicial to the Trust.
- Abuse or misuse of any of the facilities or property of the Trust.
- Failure to carry out reasonable instructions given by management effectively and in a timely manner.
- Unacceptable conduct contrary to the NHS/Trust guidelines, policies or standards as communicated from time to time.
- Any conduct or performance likely to bring the Trust into disrepute.
- Any breach of the Trust's standing orders and financial standing orders.
- Failure to adequately perform duties of the role when there is full capability (see capability policy).
- Inappropriate use, misuse or abuse of the Trust's IT systems.
- Any breach of directorate, department or HR policy, protocols or procedures.
- posting or blogging on social networking sites such as 'Face book' and 'Twitter' anything that brings the Trust's reputation into disrepute, what an employee thinks about a manager's decisions, or something that defames another staff member's character
- Poor practice re use of smartcard/electronic system access rights.
- This list is not exhaustive

### Gross Misconduct.

- Failure (where necessary) to hold statutory registration
- Physical violence and assault
- Theft or Embezzlement or Fraud including any breach of Trust Standing Financial Instructions
- Racial or sexual abuse, harassment, bullying or mistreatment of staff or patients Discrimination, harassment or bullying of staff or patients on grounds of any of the protected characteristics (see the Equality and Diversity Policy)
- Serious breach of confidentiality (this applies to all breaches of confidentiality involving

the release of patient and staff information without consent or proper cause)

- Abuse of position or release of information including either personal information about a patient or employee, which could harm the business interests and image of The Trust. This also includes information gleaned from any source including IT systems and resulting from abuse of privileged position. Gross insubordination deliberate malicious damage to Trust property.
- Gross carelessness or negligence, including any action or inaction, which threatens the health or safety of a patient, employee or member of the public. Deliberate and serious breach of health and safety (rules and procedures) protocols
- Being under the influence of and / or incapacity through alcohol whilst at work or on Trust premises or acting in an official capacity.
- Being under the influence of, taking, possessing or selling illegal drugs, or any drugs (except over-the-counter remedies) which have not been prescribed to you on medical grounds, whilst at work or on Trust premises or acting in an official capacity.
- Smartcard/electronic system access rights misuse/abuse
- Failure to obey clear reasonable instructions as issued by managers
- Deliberate falsification of any records, including deliberate abuse of the flexible working hour's system.
- Serious breach of security.
- Serious breach of conduct rules or any of the Trust's Employment Policies
- Negligence which causes serious financial loss, damage to property or injury to people.
- The intentional viewing or downloading of pornographic or other derogatory, defamatory, obscene or inappropriate material from internet or e-mail systems.
- Deliberately making a false or malicious disclosure or complaint
- Knowingly giving false information or deliberately omitting relevant information on a job application form or curriculum vitae or any other document or report.
- Conviction for a criminal offence which is related to your employment.
- Accepting or soliciting gifts or hospitality as an inducement to show favour.
- Deliberate misuse of procurement and corporate credit cards.
- Serious breach of procurement policies.
- Serious action that may bringing the Trust into disrepute.

**This list is not exhaustive and other offences, if they are considered to be serious enough, may be regarded as gross misconduct.**

# Allegation/Complaint Report Form

Name of individual(s) making complaint
Contact details (address / telephone number) on individual(s) making complaint
Union representative (name and contact details)
Nature of complaint or allegation
Date complaint or allegation received
Policies which are applicable i.e. Mutual Respect Policy, Disciplinary Policy

Action taken to date by complainant

Potential witnesses (give name and job title of each person)

Additional information included

Agreed course of Action

- Informal resolution
- Mediation
- Formal
- Other i.e. training/coaching

TABLE INDICATING LEVELS OF AUTHORITY TO TAKE ACTION

	<b>Action Taken by</b>
<b>Counselling</b>	Line manager/team leader/supervisor
<b>Suspension</b>	Senior On Call manager for out of hours decisions Divisional Manager /Head of Department Senior Manager (Band 7 and above)
<b>Initiate Investigation</b>	Senior Manager (Band 7 and above where)
	Divisional Manager /Head Of Department
<b>Reporting to Professional /Statutory Bodies</b>	Chief Nurse or Clinical Lead for the professional Discipline of the employee.
<b>Disciplinary Meetings Stages 1.2 and 3 (&amp; suppression of Increment)</b>	Line Manager provided Band 7 where available/appropriate or above plus Senior member of HR Department. Additional professional leads or senior specialists may be Co-opted to the panel as necessary.
<b>Disciplinary Meetings Stage 4</b>	Line Manager provided Band 7 or above plus Senior Member of HR Department. Additional professional leads or senior specialists may be co-opted to the panel, as appropriate.
<b>Appeals</b>	Professional Leads/Senior Specialists/Heads of Department/Divisional Directors/Associate Chief Nurse/Associate Director/Director

## RECORD OF SUSPENSION / REVIEW CHECKLIST

Employee Name		
Employee Job Title, Band & Location		
Date of Allegation		
Manager authorising suspension & date		
HRBP consulted – name & signature required		
Date of suspension		
Date suspension to be reviewed & by whom		
<b>Consideration</b>	<b>Y/N</b>	<b>Comments</b> <b>Continue on a separate sheet as necessary</b>
Does the employee present a threat, danger or risk to themselves or others?		
Is there a risk that the employee might interfere with or compromise an investigation by remaining at work?		
Is there a concern that further serious misconduct or offences might occur?		
Would this allegation be regarded as gross misconduct?		
Have criminal charges/professional regulatory body complaint been brought against the employee?		
Is their job also considered to be a 'vocation'?		
Have all alternatives to suspension been considered?  If so, what?  For what reasons have these been discounted?		
Will the suspension be paid or unpaid? If unpaid, please provide a clear explanation of the reasons why?		

**1st Suspension Review (4 weeks after the suspension date)**

Designated person for support/contact	
Date suspension reviewed and by Whom? Is suspension to continue?	
What information was considered when deciding on suspension review outcome?	
Date employee informed of suspension review decision (if returning)	

**2<sup>ND</sup> Suspension Review (4 weeks after 1<sup>st</sup> Suspension Review)**

Date suspension reviewed and by whom	
Is suspension to continue?	
What information was considered when deciding on suspension review outcome?	
Date employee informed of suspension review decision (if returning)	

**3<sup>rd</sup> Suspension Review (4 weeks after 2<sup>nd</sup> Suspension Review)**

Date suspension reviewed and by whom	
Is suspension to continue?	
What information was considered when deciding on suspension review outcome?	
Date employee informed of suspension review decision (if returning)	

**4<sup>th</sup> Suspension Review (4 weeks after 3<sup>rd</sup> Suspension Review)**

Date suspension reviewed and by whom	
Is suspension to continue?	
What information was considered when deciding on suspension review outcome?	
Date employee informed of suspension review decision (if returning)	

Progress/Notes to date

.....

.....

..... CM to review every 4 weeks

Managers Signature ..... HRBP Signature .....

Date .....

## FORMAT OF THE REPORT OF THE INVESTIGATION INTO THE ALLEGATIONS

### 1. BACKGROUND

- State the allegation/complaint clearly as detailed in the written brief or the amended written brief

- 

### 2. INVESTIGATION REMIT

- Refer to relevant policies – it is important to state which policies apply and include the appropriate policies within the report
- Set out the areas to be investigated as detailed in the brief or the amended written brief

### 3. METHOD OF INVESTIGATION - this is simply the methods that the Investigating Officer used to carry out the investigation and could include:

- Investigation timetable
- Telephone call log
- Documentation reviewed
- Photographs taken
- List of interviewees and chronological order of interviews
- How interviewees were contacted
- Reasons for undue delays during progress of investigation
- Any changes to the brief
- Statements taken e.g. witnesses, complainant
- Verbal discussions
- Observations

### 4. FINDINGS

- The report must provide information in a brief and factual way, on all the areas to be investigated, supported by references to statements, evidence and documentation, which should be in date order and referenced to appendices.
- Findings should be identified as corroborated or not
- References should be made to any breaches of the Trust's policies and procedures. Copies of the relevant sections of the policies should be attached as numbered appendices.

### 5. CONCLUSIONS

It is important to make conclusions based on the facts that have been identified. The conclusions are the Investigating Officer's opinion only and any action following the investigation will be determined by the Commissioning Manager and HR. This conclusion/opinion could include:

- No case to answer
- Partial case to answer
- Case to answer
- Grievance upheld
- Grievance partly upheld
- Grievance not upheld

Investigating Officers may have formed opinions about courses of action for management to consider, e.g. as to future practice, or evidenced breach of policy. However, in doing so the Investigation Officer must always understand that they are not decision makers and that any

decisions will be left to the Commissioning Manager to make and justify.

## 6. SUMMARY

The Investigation Officer should always be aware of the need to be able to demonstrate that each stage of the investigation has been conducted fairly and thoroughly and be able to justify the fairness of any findings arrived at in the summary.

The summary should include a brief resume about what was investigated, that a thorough investigation has taken place (referencing the methodology), the main facts generated and the overall conclusion reached.

## 7. APPENDICES

Appendices should be attached to the report. They should contain supporting information including any contemporaneous notes, statements, records, notes of meetings, relevant Policies and documentary evidence.

The report must be signed and dated, as should all statements or investigation notes of interviews.

**Advising of an investigation**

Date

Dear .....

You will be aware that an allegation regarding ..... have been made against you by ..... and I have been appointed to investigate the allegations. The investigation will take place in accordance with the Trust's Disciplinary/Mutual Respect/Dignity at Work Policy and I would like to reassure you that I am acting impartially and gathering the facts and evidence around the alleged offence which will be collated and submitted as a report of findings.

[I will be working with [name] my co-investigator or (name) who will be the note-taker at interviews. *(Only include this if 2 investigators are used)*]

I would like to meet with you as soon as possible so that we can give you the opportunity to reply fully to the allegation/s. We need to agree a suitable date, time and place to meet. I will ring you on (date and time) to make the arrangements.

You have the right to be accompanied at the meeting by a 'companion'; a trade union representative or work colleague of your choice. If you choose to do this, you will need to check their availability for any meetings taking place.

You will be given the opportunity to state your case fully. If there are people you believe have information that would be beneficial to your case you may want to contact them to ask if they will either provide evidence and/or appear as a witness for you. Please let me know their names as soon as possible (and confidentially) so that I can arrange to see them as part of the investigation process. Please inform them that as soon as they agree to be a witness, they are bound by rules of confidentiality and should not discuss the case or their information with anyone other than yourself and the Investigating Officer. A general principle is that I will only need to see those people who can assist the investigation, with factual information.

You may also have documents (e.g. letters, emails, notes of meetings) which I will need to see. Please send me copies of any documents you consider to be relevant before we meet so that I can become familiar with them.

I will make a record of the meeting and I may ask a note taker to be present to assist with this. In either case you will be given a record of the meeting or a statement and asked to sign that it is a true and accurate record of what was said at the meeting. The purpose is to minimise any disagreement about the accuracy of the written record or statement of the investigative interview. All witnesses will be asked to sign a written record or statement of their individual meeting to say that it is a true and accurate record of what was said.

From above, at the end of the investigation I will prepare the report, setting out my findings and conclusions on whether there is a case to answer or not. I will make recommendations accordingly and this may include recommending formal disciplinary action.

It is essential that you do not discuss this complaint with anyone other than your union representative or accompanying work colleague and the witnesses that you intend to call.

I will be happy to answer any queries you may have about the procedure and you can contact me on telephone number .....

Yours faithfully,  
Investigating Officer

**Invitation to Investigatory Meeting**

Date

Dear.....,

Further to my letter dated [date] and our telephone conversation/s on [date/s] I write to confirm that an investigatory meeting has been arranged on [time/date/place]. This meeting will be held in accordance with the Trust's Disciplinary/Mutual Respect/Dignity at Work policy.

You have the right to be accompanied by a "companion"; a Trade Union representative, colleague or person whose presence would not prejudice the meeting.

The purpose of the meeting is to provide you with the opportunity to respond to the following issues:

┆ [Give exact details i.e. date specific incidents etc.]

Your response to the above issues will help to determine the appropriate action to be taken, one outcome of which could be the convening of a disciplinary hearing.

[In addition, I confirm that you will remain suspended on full contractual pay excluded from duty and this will be reviewed at our meeting on xxxxxxx].

Please contact [name and contact details] to confirm your attendance and if you are to be accompanied. If you have any queries or concerns, please do not hesitate to contact myself or Human Resources.

Yours sincerely

Manager

## Invitation to Disciplinary Hearing

Date

Dear.....,

I am writing with reference to the investigatory meeting on (date) and the subsequent meeting held on [date] with [manager] and [name] from Human Resources. As you are aware, discussions took place around the allegation/s. You were advised at the latter meeting that a decision had been made to move to the formal stage of the disciplinary procedure. I confirm that a disciplinary hearing has now been arranged in accordance with the Trust's Disciplinary policy, a copy of which is enclosed for your information.

The purpose of the disciplinary hearing is to hear the findings of the investigation and go through the facts and evidence that has been gathered regarding the allegation of [misconduct / gross misconduct] that you

- [Insert allegation/s and breached disciplinary rule]

The hearing will be held in the [place], [date] at [time]. I will be chairing the meeting and will be supported by [name and title] from Human Resources. [Name] (IO/Manager) will present the management case. A copy of the investigation report and any appendices is attached.

You are entitled to be accompanied by a "companion"; a Trade Union representative, colleague or person whose presence would not prejudice the hearing.

At the hearing you will be provided full opportunity to state your case and answer the allegations made before I make a decision whether disciplinary action is justified.

If the evidence against you of [misconduct / gross misconduct], is found on the balance of probability to be correct, then you may be subject to a range of sanctions as detailed in the Disciplinary Policy.

Please confirm your attendance and provide details of your companion representative where appropriate. You should be aware that the Trust will reasonably re-arrange hearings once at your convenience. Thereafter if you fail to attend on the second given date, the hearing will take place in your absence.

I appreciate that this course of action may be leading to some anxiety on your behalf and I would remind you that Occupational Health are available to provide support and counselling if required.

Should a disciplinary sanction be imposed following the meeting, then you have the right to appeal against that sanction, details of which can be found in the Trust's Disciplinary Policy.

Yours sincerely

Manager  
Title

cc: Trade Union Representative, HR

**Letter Confirming Outcome of Disciplinary Hearing/Appeal Hearing**

Date

Dear.....,

Following the disciplinary hearing dated [xxxx] during which you were accompanied by [xxxx] (or, I noted that you were unaccompanied but you stated that you were happy to continue without representation). The disciplinary panel consisted of me and [name and Job title] from HR. The management case was presented by [name] (IO/Manager).

The meeting was convened under the Trust's Disciplinary policy to consider the following allegation/s of [misconduct / gross misconduct]:

- ┆ Details of allegations – exact times, specific incidents etc.

After careful consideration of the evidence presented the panel concluded that (state which of the allegations were upheld and give rationale behind decision or, state no case to answer and any further action to be taken by management). The panel deemed a [formal verbal/first written/final written warning] to appropriate redress of this issue. The warning will remain on your file for [xxxx] months after which time it will be removed from your file and destroyed.

Should there be any further formal disciplinary action taken against you within the next [xxxx] months, you should be aware that this warning will be taken into consideration and further action may be taken if appropriate.

You have the right to appeal this outcome. Any appeal should be in writing and addressed to [enter name and Job Title of next line manager] within 14 days of being formally informed of the sanction using the Proforma for Appeals form found in the Disciplinary Policy at Appendix IX.

I appreciate the disciplinary process and outcome may have been a source of distress for you but would hope that you will feel able to move on from this incident and put it behind you. If you feel the need for further support then please contact Occupational Health.

**PROTOCOLS FOR HEARINGS AND APPEALS (DISCIPLINARY PROCEDURE)**

## INTRODUCTION

1. Confirm meeting is disciplinary hearing/appeal hearing
2. Introduction by the chairperson of all persons present.
3. An explanation of the purpose of the hearing and how the hearing will proceed.
4. Confirmation of attendance of witnesses
5. Other information as required.

## B. RULES OF ENGAGEMENT

Behavioural standards expected of all parties present:

- a. Respect for all parties
- b. Listen to all parties
- c. All comments and points of clarification to be addressed through the panel chair

## C. PRESENTATION OF MANAGEMENT CASE

1. Management case/summary of investigative report findings
2. Witnesses
  - a. IO/Management questions.
  - b. Employee/staff side questions
  - c. Panel questions
  - d. IO/Mgt questions on issues raised

## D. PRESENTATION OF EMPLOYEES CASE

1. Employee case
2. Witnesses (where different to mgt witnesses)
  - a. Employee/staff side questions
  - b. IO/Management questions
  - c. Panel questions
  - d. Employee/staff side questions on issues raised.

## E. SUMMING UP

1. IO/Management sum up their case
2. Employee/staff side sum up their case
3. Panel may ask for final clarification of points

## F. ADJOURNMENT FOR CONSIDERATION

1. Recall of employee/staff side when ready

## G. DECISION OF PANEL

1. Decision and sanctions stated.
2. Rationale given.
3. Appeal procedure explained
4. Confirmed in writing

**DISCIPLINARY APPEAL NOTIFICATION FORM**

Only complete and return the form if you wish to appeal against the disciplinary outcome.

This form should be completed and submitted within 2 weeks of the date of receipt of the letter confirming the sanction.

NAME:

JOB TITLE:

DEPARTMENT:

WORK TELEPHONE NUMBER:

TRADE UNION/STAFF REPRESENTATIVE:

DATE OF HEARING:

SANCTION ISSUED VERBAL/FIRST/FINAL/DISMISSAL MANAGER/S AT HEARING

**BASIS OF THE APPEAL**

Procedural irregularities

Sanction too severe in circumstances

other

Please give brief details of the basis for your appeal. All applicants must complete this section.

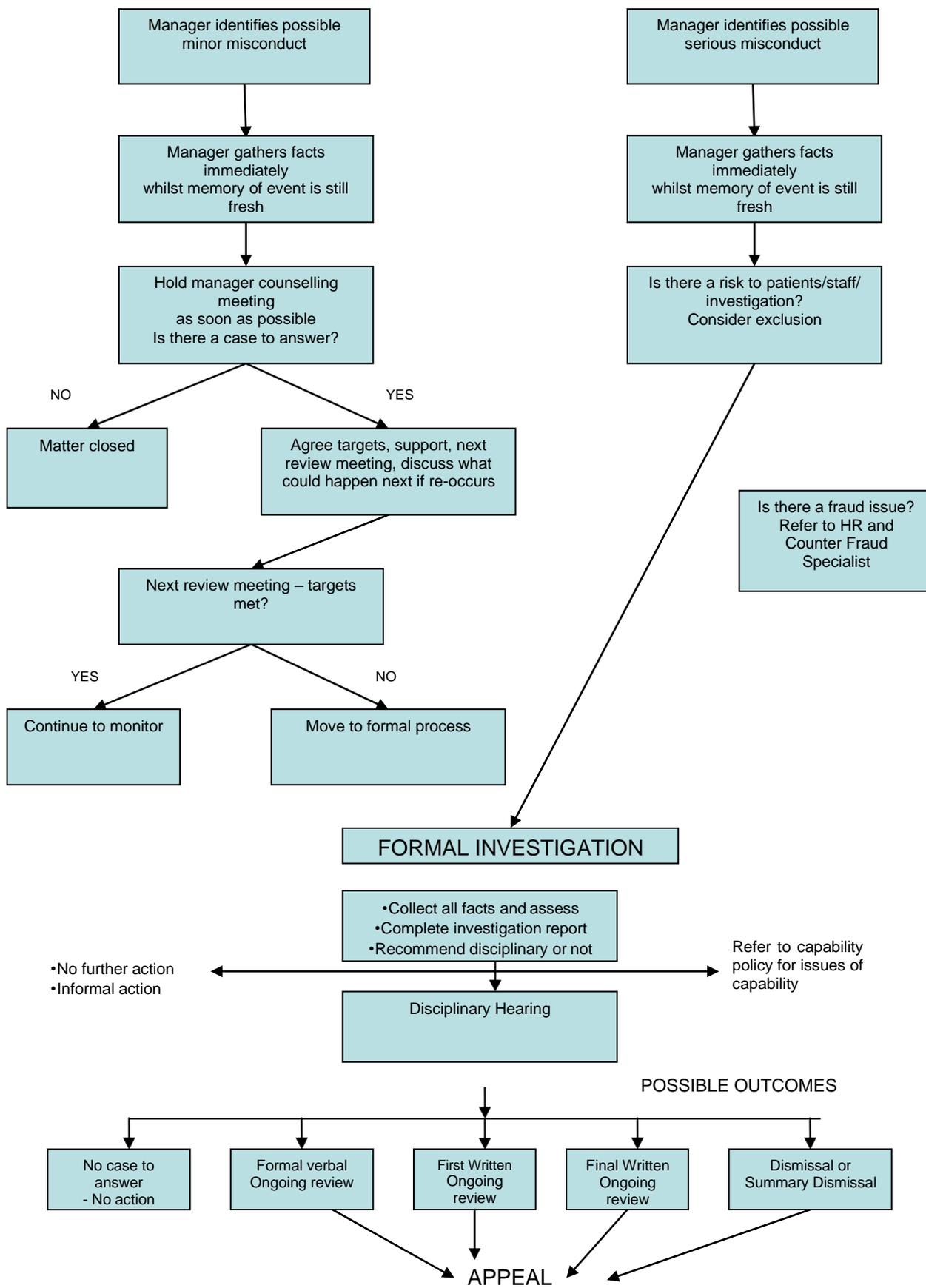
NAME (BLOCK CAPITALS) \_\_\_\_\_

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_ For verbal and first written warnings this form should be sent to the line manager of the manager who issued the warning. For final written warnings and dismissal the form should be sent to the Director of Human Resources for the Trust.

**MANAGERS GOOD PRACTICE GUIDE – on intranet**

- Always deal with disciplinary matters as promptly as possible since time can cloud memory. In addition, prompt action helps alleviate the build-up of stress for the employee facing the allegations.
- Hold meetings and hearings away from the employee's immediate work location to ensure privacy, sensitivity and confidentiality.
- Ensure that the meeting / hearing are free from any interruptions – reallocate bleeps, place a sign on the door, ensure that any phones are redirected and mobile phones switched off.
- Be prepared to adjourn the hearing in the event of emotional distress or the production of any issues/evidence that has not been fully investigated.
- Be totally fair and objective and follow due process without prejudging the complaint.
- Be thorough in allowing all involved in the hearing to contribute fully. If new evidence comes to light that requires further investigation, adjourn and reconvene the hearing (if necessary to secure a just outcome).
- Consider the employee's disciplinary record if appropriate and general employment record, position and length of service prior to making a decision.
- In the interests of consistency, check penalties imposed in similar cases in the past. A senior member of the HR Department will provide advice.
- Always ensure that correspondence produced is in strict accordance with this procedure.
- Seek advice from the HR department with regard to all disciplinary matters
- Confidentiality must be fully respected when dealing with all disciplinary matters. This includes the maintenance of disciplinary records
- This procedure should be strictly followed. However, it is accepted that there can be good reasons for either going straight to a specific stage of the procedure, i.e. the gravity of an offence can result in the bypassing of stages.
- Current warnings can be reiterated and the timescale re-applied where a further minor offence is committed within the time duration of the current warning. This should be very much the exception as reiterations can indicate a lack of serious concern. However, if dismissal ultimately occurs then it is also important to demonstrate that the employee has been given every opportunity to improve.

**DISCIPLINARY FLOWCHART**



**STAGE 1 – SCREENING**

**APPENDIX 14**

<b>Name &amp; Job Title of Assessor:</b>	<b>Date of screening:</b>
<b>Policy or Function to be assessed: Disciplinary Policy and Procedure</b>	

		Yes/No	Comments
<b>1.</b>	<b>Does the policy, function, service or project affect one group more or less favourably than another on the basis of:</b>		
	Race & Ethnic background	No	The terms of this policy apply to all staff within the Trust.
	Gender including transgender	No	
	Disability	No	
	Religion or belief	No	
	Sexual orientation	No	The policy actively covers all the groups referred to in this EIA Tool.
	Age	No	The above are general comments and do not refer specifically to the factor aligned
<b>2.</b>	<b>Does the public have a perception/concern regarding the potential for discrimination?</b>	No	There is no known reason for the public to have any concerns re this policy

If the answer to any of the questions above is yes, please complete a full Stage 2 Equality Impact Assessment.

**Signature of Assessor:**

Date

**Signature of Line Manager:**

Date:

## DISCIPLINARY POLICY – KEY CHANGES

1. Section 1.10 Paragraph has been amended to clarify MHPS involvement for medical staff
2. Section 7 Criminal Offences and Police Enquiries – This section has been re-written to clarify the process and give more detail.
3. Section 7.6 has been included in line with NHS Business Services Authority and NHS Pensions guidance in relation to the forfeiture or reduction of NHS Pension Scheme Benefits
4. Section 9 – Suspension. This section has been re-written to provide more detail and clearer guidance. A checklist has also been developed which managers have to complete when considering suspension. A 4 week review period has also been added. The new checklist for managers to complete is at Appendix 3 of the policy.
5. Section 9 – References to suspension pay have also been amended. The policy now states that suspension pay will be the average of the previous 3 months pay. There is also a section on cases where unpaid suspension may be considered.
6. Section 9.1 – amended to give the employee 14 days' notice of a hearing and the appropriate paperwork. Also 7 days for staff side to notify of witnesses they will call and the provision of any documents
7. Section 19.1 – amended to clarify that the HR member on the panel is there to advise on process and procedural issues, not to be involved in the outcome decision.
8. Section 25 - Fraud. The Trust Local Counter Fraud Specialist (LCFS) details have been updated
9. The policy has been reformatted with all sections numbered appropriately and has also been updated with current job roles.
10. Appendix 6 – 9 Template letters and Guidelines checked and in line with Investigation Guidance
11. Section 9.8 - 60-day time limit included for undertaking investigations with regular reviews, if extension is required
12. Section 11 – Witnesses – paragraph extended to provide further guidance – only those employees that have provided a statement, as part of an investigation will be called as witnesses
13. Section 27 – Associated Policies – removal of the Trust's Single Equality Scheme from associated policy list
14. Appendix 2 – title of document amended to Allegation/Complaint Report Form
15. Appendix 6 – 9 Template letters and Guidelines checked and in line with Investigation Guidance