

Policy Reference: 135

DISCIPLINARY POLICY

Version: 4.5 (Covid variation)

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1 Introduction

The Trust recognises the need for managers to manage their staff in a supportive, consistent and fair manner. This policy is designed to facilitate and encourage all employees to maintain acceptable standards of conduct, performance and attendance, whilst safeguarding the interests of the Trust, its patients, clients and staff.

The procedure is produced in line with the duties imposed by legislation and recognised good practice, as detailed by the Advisory, Conciliation and Arbitration Service (ACAS).

While following this policy it may become apparent that another policy is more applicable. Where this occurs seek immediate advice from the Human Resources Team. There are separate policies for:

1. Performance Capability
2. Attendance Capability
3. Staff Substance Misuse
4. Procedure for Handling Concerns and the Conduct, Performance and Health Medical and Dental Staff
5. Allegation of abuse by a Health Professional in relation to Children and Vulnerable adults
6. Fraud and Corruption Policy and Response Plan
7. Bullying and Harassment

In implementing this policy, managers must ensure that all staff are treated fairly and in line with the Equality Act.

NB: With effect from June, 2020 – and following discussions with recognised trades unions - some detailed aspects of this policy and associated management / administration processes arising from its implementation have been temporarily amended in the light of the impact of the Covid 19 pandemic across the UK. The continuing need for these changes will be kept under joint review.

2 Purpose

The purpose of this Policy is to ensure that managers, staff and trade unions are aware of their rights and obligations in matters relating to discipline and that disciplinary action is taken in a correct and fair manner.

This policy and procedure is designed to:

- Help and encourage all employees to achieve and maintain the required standards of conduct, attendance and job performance.
- Ensure that disciplinary matters are dealt with in a fair and consistent manner
- Ensure management, trade unions and employees are aware of their rights and obligations in respect of disciplinary and appeals machinery.
- Protect the efficiency and smooth running of the Trust.
- Provide support to staff that are subject to disciplinary procedures.
- Protect the efficiency and smooth running of the Trust.

3 Scope

This policy applies to all staff employed under a contract of employment with the Trust.

It is recognised that the various professional bodies, of which many health care staff are required to have membership, may also have professional standards of capability, conduct and competence. The Trust requires employees in those professions to adhere to these standards. Where the Trust has serious concerns about a staff member's fitness to practice, they should be referred to their professional body. This decision will be made by the appropriate Director within the Divisional Triumverate.

Where formal disciplinary warnings are issued for staff at Band 7 or above, the outcome may include withholding of incremental progression.

Employees of 'student' or 'trainee' status will, additionally, remain subject throughout their training to the requirements of the appropriate professional, statutory or other body responsible for the conduct of their training. An employee who fails to satisfy any of these requirements may be subject to disciplinary action in accordance with the Trust's procedure.

4 Principles

The Policy is based on the following principles:

- The attainment and maintenance of the standards of conduct and behaviour required by all staff.
- The right of the manager to exercise the authority delegated to them by the Trust to manage, organise and supervise the work of those for whom they are responsible and to take disciplinary action where appropriate and required.
- The right of all employees to be treated fairly and consistently in accordance with the principles of natural justice and the right of representation.
- It is important that disciplinary processes should be conducted without unnecessary delays. Where an employee is suspended from work, the period of suspension from work is as brief as possible.
- Where formal disciplinary action is necessary, care should be taken to ensure that the spirit as well as the letter of the Policy and associated procedures is observed, the prime objective being to correct and improve, rather than to punish.
- As part of this procedure, employees have the right to be accompanied by a workplace colleague or a Staff Side representative from a recognised Trades Union / Professional body during any formal level of this procedure. Staff Side representation will normally be provided by local Staff Side representatives but it is acknowledged that for some groups of staff or in some circumstances the individual may be represented by a full time professional officer
- All parties are expected to co-operate with the disciplinary policy. Every effort should be made to ensure that disciplinary meetings / hearings take place on the date agreed. Should it be necessary, in exceptional circumstances such as sickness absence of one of the parties, for the date to be postponed the meeting / hearing should be reconvened normally within ten working days of the date of the original meeting / hearing.

- It is expected that the time limits identified in the following stages of the procedure will be adhered to. However, extensions to the time limits may be agreed if unavoidable (e.g. in order to obtain additional information).
- The application of this policy will be undertaken in a manner that ensures total confidentiality of the issues and of the members of staff and management involved. No information relating to action being taken in this procedure will be divulged to other members of staff who are not involved. Breach of confidentiality in its own right will be subject to the disciplinary policy.
- The Trust will not act on information provided to it anonymously without carrying out a proper investigation (see Freedom to Speak up - Raising Concerns at Work Policy). In exceptional circumstances, it may be necessary to maintain the anonymity of persons making complaints against members of staff or informants or witnesses involved in disciplinary procedures. In such circumstances, a careful balance will be maintained between the desirability of maintaining the anonymity of a complainant, informant or witness (where the individual and / or the Trust has genuine reasons for wishing to do this) with a requirement to ensure a fair hearing of issues for employees subject to investigation or disciplinary action.
- If the employee concerned is a Trade Union or Health & Safety representative there is a requirement to inform the full time officer of the relevant union that the formal disciplinary procedure is to be implemented. This will normally be undertaken by the Human Resources and Organisational Development Department.

5 Procedural Points

Disciplinary Rules:

Some rules of behaviour are obvious and do not need putting in writing. For instance, violence in the work place **is** gross misconduct.

Others will be specific to a particular department / profession, for example, a requirement to wear uniform, or a requirement to comply with a Professional Code / Code of Conduct.

Any allegation suggesting that an individual:

- behaved in a way that has harmed or may have harmed a child
- behaved towards a child or children in a way that indicates they are unsuitable to work with children

This must be dealt with under safeguarding guidelines and as such the flow chart in Appendix 6 should be followed.

Safeguarding Issues relating to Vulnerable Adults must also be dealt with via the Safeguarding Adults Procedure & Guidance.

Any allegation that relates to fraud, bribery or potential fraud that become apparent as part of the investigation process must in the first instance be discussed with the Local Counter Fraud Specialist.

It is especially important that professional Codes of Conduct are clearly understood by those required to comply.

The use of blogging and social networking websites by employee's can expose the Trust to information risks, such as:

- Unauthorised disclosure of business information
- Potential confidentiality breach
- Liabilities from defamatory postings by employees
- Bringing the organisation into disrepute

All employees are personally responsible for the content they publish on blogs, wikis or any other form of social media. If the blog, posting or other online activities has the potential to bring the organisation into disrepute, personally identifies employees in an offensive way, or breaches confidentiality, then this could constitute gross misconduct and the employee may face disciplinary action as a result.

A number of interim arrangements have been put in place w.e.f June, 2020 which will impact on the way some aspects of this policy will operate in practice during the period of the Covid 19 pandemic. Please see Appendix 8.

6 Determining the Appropriate Procedure – Preliminary Review

When a potential disciplinary matter arises, the relevant supervisor or manager should first establish the facts promptly before recollections fade. It is important to keep a record for later reference. Having reviewed all the facts (classed as a preliminary review) the manager or supervisor should decide whether to drop the matter; arrange informal counselling; or arrange for the matter to be dealt with under the appropriate procedure (e.g. Discipline, Performance Capability, Alcohol and/or other Drug Misuse etc). The manager should seek advice from a HR Manager / Advisor.

If following a preliminary review the employee admits to the allegation, a FastTrack process can be considered if all parties are in agreement. Please refer to Section 13 of this policy for further details on the FastTrack process and criteria (including Covid 19 pandemic aspects).

7 Informal Counselling

The Disciplinary Policy aims to set out a framework whereby employees and workers will be held accountable for their actions and behaviours. It is designed to help and encourage employees to achieve and maintain standards of conduct but it also identifies clear procedures for addressing conduct matters.

On most occasions, it will not be appropriate for managers to use the disciplinary procedure on the first occasion of minor misconduct by an employee.

Counselling is not regarded as disciplinary action. It is usually an informal one to one discussion designed to offer advice and guidance and individuals should be informed of this. Counselling would follow instances of carelessness or minor misconduct.

So long as the informal interview or counselling session does not result in a formal warning or some other action, it would not generally be good practice for the individual or manager to be accompanied. Matters at this informal stage are best resolved directly by the member of staff and manager concerned.

Managers need to ensure that problems are discussed with the objective of encouraging and helping staff to improve. It is important that they understand what needs to be done and how conduct will be reviewed and over what period. Individuals should also be made aware of what action would be taken if they fail to improve their conduct.

Disciplinary action would only follow where such instances continued. A brief note of any counselling should be kept for reference purposes on the personal file and any agreed actions e.g. training. The file note must clearly be marked "Informal Counselling" and identify the date of the discussion, the names of parties to it, and actions agreed.

The manager must write to the individual concerned to confirm the content of the discussion.

Where informal counselling does not lead to improved conduct, the formal disciplinary procedure should be used.

8 Disciplinary Investigation and Roles of the Case Manager & Investigator

In some circumstances of misconduct an investigation needs to take place as in many cases, the full facts of an alleged incident relating to unacceptable standards of conduct will not be immediately apparent. Indeed, it may not be clear whether the alleged incident is serious enough to warrant formal disciplinary action. In these cases, it would be necessary for the facts to be established through an investigation process.

If either the Case Investigator or Case Manager is unavailable to continue with the case for a substantial amount of time then the decision should be made to transfer the case to an alternative Case Investigator or Case Manager as applicable.

8.1 Case Manager

If the allegation is viewed as a potential misconduct a Case Manager will be appointed and either a senior manager or the Case Manager will inform the employee who is the subject of the investigation verbally (where possible) of the allegations they are facing. This will be confirmed in writing within 7 calendar days of the alleged adverse event wherever possible. This letter should explain the allegation(s) which should be specific. However, there may be exceptional circumstances where it is not advisable to inform the employee (e.g. where the allegations are particularly sensitive, unclear or in relation to some safeguarding issues). In such circumstances please discuss with a HR Manager.

In these situations the Case Manager will appoint a Case Investigator. Ideally, the Case Investigator should be familiar with the type of problem / area of work. The Case Investigator should not be directly or indirectly involved in the incident. It should also be noted that a Case Investigator cannot subsequently be a member of the disciplinary panel in the event a formal hearing is required.

The Case Manager will set the Terms of Reference, which will show exactly what the employee is alleged to have done. This should be in writing at commencement of the investigation and should be provided to the Case Investigator, employee and HR Manager supporting the investigation. The Case Manager will provide updates to the Terms of Reference to all parties if new evidence requires a change or addition to the allegations.

(There may be exceptional circumstances where it is not advisable to inform the employee, e.g. where the allegations are particularly sensitive, unclear or in relation to some safeguarding issues. In such circumstances please discuss with a HR Manager.

8.2 Case Investigator

The Case Investigator will be responsible for ascertaining the full facts of the case and for providing a report to the Case Manager. In cases where an incident involves, or was witnessed by, a number of employees, this is likely to involve obtaining statements from each individual employee, who may wish to discuss this matter with, or be accompanied by, their trade union representative.

The investigation report should also include details of previous disciplinary warnings or letters/file notes of previous relevant conduct issues.

8.3 Completed Investigation Report

The completed report should be passed to the Case Manager who will make a decision on whether the case should be heard at a disciplinary hearing and arrange for a disciplining manager to hear the case. At this stage, other options may include dropping the matter, handling it informally or handling it through other more appropriate Procedures. To support in this process then please refer to the Just Culture Guide (Appendix 2).

9 Managing the employee during the investigation

Alternative duties

Prior to or during an investigation it may be deemed necessary, for the protection of patients / clients and / or staff or the integrity of the investigation process, to remove the individual against whom an allegation(s) has been made, from his/her normal duties / base.

All cases potentially relating to safeguarding must be discussed with a member of the Safeguarding team and the Local Authority Safeguarding Officer (LADO) or Adult Local Authority Safeguarding Officer (ALADO) prior to a decision being made.

In these circumstances consideration should always be given to assigning the employee to alternative duties / role / base for part or all of the duration of the disciplinary investigation process or to the individual remaining in their existing role but under increased supervision and / or restricted practice. The manager should complete a risk assessment to identify the

risks of the employee remaining in the workplace and continuing with his/her current duties and how those risks can be eliminated, reduced or otherwise managed.

Where an individual is assigned / redeployed to alternative duties / base / role they should normally be advised of the reasons for this in a face-to-face meeting. Individuals have the right to be accompanied during this meeting by a Staff Side, Trade Union, professional body representative, or workplace colleague.

It should be made clear to the individual that this reassignment / redeployment is not a disciplinary measure and should not be taken to imply that any such disciplinary measure will follow on conclusion of the investigation process.

The individual should be advised of the availability of emotional support / counselling during the period of the investigation process from the Occupational Health Department.

This can be accessed via the Occupational Health Department directly, or alternatively, via your Manager. Occupational Health can be contacted on 0151 482 7635 or 0151 334 4000 ext. 5440. Email is: wuth.occupationalhealth@nhs.net.

Suspension from Duty

Suspension may be considered appropriate in certain circumstances. If it is, suspension will be on full pay. It will be regarded as a neutral act.

Only in those cases where redeployment to alternative duties / role / base are not appropriate and are not possible, or would not address identified patient / client safety risks / security issues, will it be deemed appropriate to suspend an employee from duty.

Suspension from duty is not a disciplinary measure and should not imply that such action will follow.

Suspension may be stressful for the individual. The individual should always be advised of the availability of the Occupational Health Department to provide emotional support / counselling during the period of suspension. Support will also be available from the Case Manager, HR Manager, Trade Union Representative, and the Freedom to Speak-Up Guardians.

Authority to suspend should be in line with appropriate level of authority (see levels of authority Appendix 5).

As suspension from duty will be on full pay, Managers should ensure that Payroll are made aware that the member of staff has been suspended from duty.

Where possible, an employee will be accompanied by a Trade Union Representative or a witness at a suspension meeting. When this is not possible, in circumstances where there is immediacy about it, the appropriate manager will have to suspend the individual without reference to other parties.

A manager should seek advice from an HR Manager/ Advisor prior to a suspension. Where this is not possible, for example out of hours, the manager must discuss the suspension with a HR Manager / HR Advisor on the next working day.

Suspension from the Trust with pay of an accredited representative will not normally take place until the circumstances of the case have been discussed with a Senior Trade Union representative or a full time official of the organisation concerned. Every effort will be made to contact the latter; however, suspension may take place should contact not be possible.

During a period of suspension employees should not attend any of the premises of Wirral hospital unless it is for medical purposes or planned visits to patients which where possible should be notified in advance to the Case Manager or HR Manager/ Advisor, unless in emergency situations. Staff should not contact anyone who is potentially a witness in the investigation at all, but could contact other staff members not likely to be directly involved in the investigation so long as matters relating to the investigation are not discussed.

Through-out the suspension, a review of the suspension status will take place by the Case Manager and the employee will be contacted every fortnight to advise whether the investigation is on-going and how long it is anticipated the suspension will last for. At any time during the investigation process a decision can be taken to reverse this suspension and support a return to duty.

NMC Revalidation

NMC Revalidation does not create a new way of raising a fitness to practise concern about a nurse or a midwife, and the confirmation stage of revalidation does not involve making a judgment as to whether a nurse or midwife is fit to practise.

If a nurse or midwife is subject to an NMC investigation, a condition(s) of practice order, a caution or a local disciplinary procedure they can still apply to renew their registration as long as they fulfil all the requirements for revalidation/renewal. However, they will remain subject to NMC fitness to practise processes and / or local disciplinary procedure and the outcome of those processes.

If a nurse or midwife is suspended from the register, they are not able to revalidate during their suspension. Following cessation of the suspension, if the registration is effective a nurse or midwife will need to comply with the revalidation requirements at the time that their registration is due to be renewed. If registration is not effective following the cessation of the suspension, the nurse or midwife will need to follow the readmission process. If a nurse or midwife has been struck off the register, they are not able to revalidate because they are no longer on the register. A nurse or midwife will need to apply for restoration to the register.

10 After completion of the investigation

When the Case Investigator has completed their investigation they will write a report, detailing the facts, evidence they have established and submit this to the Case Manager. In circumstances where the Case Manager decides not to proceed to a disciplinary hearing, the options available are (not exhaustive):

- There is no case to answer
- Informal guidance / management action plan
- A requirement for broader departmental actions
- Advice of recommendations
- Advice of training or capability Issues

If, after the investigation, it is determined that there is no case to answer the individual should be advised accordingly by the Case Manager, in writing, and arrangements should be made to meet with the individual to explain any outstanding areas of concern or to facilitate an early return to their role if they have been redeployed or suspended.

If it is determined that there is a disciplinary case to answer an appropriate Senior Manager will agree arrangements for further action (e.g. disciplinary hearing). If a hearing is arranged the findings of the investigation will be presented by the Case Manager, who may decide to invite the Case Investigator and any witnesses to attend the hearing at the appropriate stage of proceedings.

In cases of fraud and corruption the Trust is committed to a triple tracking approach, in that criminal, disciplinary and civil sanctions will be considered as each case dictates. At the outcome of each investigation the Director of Finance and Human Resources Manager will discuss whether a case should be addressed by the Trust Disciplinary policy.

11 Disciplinary Hearing

Notification of a Disciplinary Hearing

If, after investigation, it is considered necessary to hold a disciplinary hearing, the employee must be informed in writing of the allegation(s) see Appendix 7 or 8 as appropriate. Unless agreed otherwise by the employee or their representative a minimum of ten working days' notice of the hearing will be provided. Where possible the disciplinary hearing will be arranged within the member of staff's working shift.

Employee, Staff Side representative and management have the opportunity to call relevant witnesses.

It is advisable for the Case Manager and HR Manager/ Advisor to liaise directly with the Staff Side representative to set a date for the hearing to ensure a mutually convenient time and date is arranged, and will avoid the timescale being lengthier than necessary.

The letter of request to attend a disciplinary hearing may be delivered by hand to the individual or their representative, or it may be posted to the home address. On occasions it may be appropriate to use the recorded delivery service.

A disciplinary hearing may not be postponed without a valid reason, and normally not more than once.

Where the Trust has to postpone the meeting / hearing date as a result of the unavailability of the Staff Side / professional body representative, the representative should provide an

alternative date which must be reasonable and normally fall within a period of ten working days beginning with the first working day after the date of the original date proposed by the Trust.

A hearing cannot be postponed once the Trust has made all reasonable steps to find a mutually agreed time and date between the disciplining manager, employee and where applicable TU representative. If one has not been agreed the Trust has the right to proceed irrespective. The staff member would have the right in these circumstances to make a written submission to the panel if they so wished.

The make-up of the panel / those in attendance will be carefully considered and will ensure that the Chair has the appropriate delegated authority (Appendix 5). A professional representative will be present if required. A HR Manager/ Advisor will serve as adviser to the panel if appropriate.

At the hearing the disciplining manager / Chairperson shall ensure the employee understands the matters to be considered, that they have an adequate opportunity to defend their position and that the hearing is conducted fairly in all other respects. The disciplining manager / Chairperson must ensure that the hearing is conducted with compassion and respect to all attendees.

The disciplining manager / Chairperson of the panel may adjourn a hearing to enable them to pursue any necessary further enquiries. The disciplining manager / Chairperson of the panel should adjourn in order that the panel consults before reaching a final decision.

When considering imposing disciplinary sanctions it is essential in order to ensure fairness, avoid discrimination and minimise recrimination that the disciplining manager of the hearing is satisfied there is a genuine belief of guilt, that belief is supported by facts and evidence gathered during as full and fair investigation as was reasonable in the circumstances and that the investigation was full and fair, whether the investigation or any part of the process is so flawed as to render the panel decision unfair. The panel must also consider any mitigating circumstances put forward within the investigation report or by the employee or representative. The panel should consider the facts and evidence set before them and determine, on the balance of probabilities, whether the policy and process has been fairly followed and applied.

At the conclusion of the hearing the disciplining manager / Chair of the panel will communicate what action, if any, is to be taken, advise both parties of the decision, the reasons for arriving at it and the availability of the right of appeal. If a decision cannot be made on the day for whatever reason the disciplining manager / Chairperson must inform all parties of the next steps, communication method and timeframe with all parties.

Written confirmation of the decision will be forwarded to the employee immediately, or as soon as is reasonably possible, setting out clearly the decisions made and reason for the decision. Such written confirmation will also detail the right of appeal against the decision which must be made within 10 working days of the date of the letter. Appendix 3 provides further details of the Procedure followed at a disciplinary hearing.

NB: Please see Appendix 8 for a summary of the different process administration arrangements being adopted on a temporary basis w.e.f June 2020 during the period of the Covid 19 pandemic.

12 Formal Disciplinary warnings

It is necessary to distinguish between different levels of seriousness of conduct. The severity of warning will reflect the seriousness of the offence, the employee's current disciplinary record and any mitigating circumstances. Formal warnings may be cumulative but are not automatically cumulative and do not have to be followed through in sequence. For example, it is at the discretion of the disciplining manager / Chairperson of the Panel to issue a final warning at a first disciplinary hearing should the nature of the offence justify this. However, except in cases of **gross misconduct**, no individual should be dismissed without having received a final warning.

12.1 First Written Warning

This is the first formal stage of the formal disciplinary procedure. A first written warning may be given following a breach of discipline or where a breach of discipline is repeated after informal counselling. A first written warning will normally remain live for a period of 6 months. If a further act of misconduct of a similar nature occurs while the warning is live, then further disciplinary action may result following which a second or final written warning or dismissal (depending upon the seriousness) may follow. After the expiry of the 6 month period, the warning will be disregarded for cumulative disciplinary purposes but will be retained on file.

12.2 Second Written Warning

A second written warning may be given where there has been a breach of discipline or where they fail to improve following the first warning. A second written warning will normally remain live for a period of 12 months. If a further act of misconduct of a similar nature occurs while the warning is live, then further disciplinary action may result following which a final written warning or dismissal (depending upon the seriousness) may follow. After the expiry of the 12 month period, the warning will be disregarded for cumulative disciplinary purposes but will be retained on file.

12.3 Final Written Warning

A final written warning may be given when behaviour which was the subject of a first written warning is repeated, or where overall attitude to work, exemplified by persistent unrelated incidents of unacceptable behaviour, requires more serious disciplinary action.

A final warning shall include an explanation that further offence(s) will result in serious action, possibly including dismissal.

A final written warning will normally remain live for a period of 12 months. If a further act of misconduct of a similar nature occurs while the warning is live, then further disciplinary action may result following which a final written warning or dismissal (depending upon the seriousness) may follow. After the expiry of the 12 month period, the warning will be disregarded for cumulative disciplinary purposes but will be retained on file.

12.4 Single Stage Final Warning

In instances of gross misconduct / poor performance sufficiently serious not to be tolerated a second time but where there are extreme mitigating circumstances, a “single stage final warning” may be given. For examples of gross misconduct see Appendix 1. Such a warning shall include an explanation that further offence(s) will result in serious action, possibly including dismissal.

A single stage final written warning will normally remain live for a period of 12 months. If a further act of misconduct of a similar nature occurs while the warning is live, then further disciplinary action may result following which a final written warning or dismissal (depending upon the seriousness) may follow. After the expiry of the 12 month period, the warning will be disregarded for cumulative disciplinary purposes but will be retained on file.

12.5 Dismissal

Summary dismissal is warranted as a first disciplinary action only when the offence relates to gross misconduct. In such cases dismissal is without statutory notice or pay in lieu of notice.

Dismissal may also be the only alternative if following the issue of a final written warning there is still no improvement in conduct or if a further offence is committed. In such circumstances the employee may be dismissed after a full investigation of the circumstances and taking into account all current disciplinary warnings which have been issued. Dismissal in these circumstances will be with statutory notice or pay in lieu of notice.

12.6 Downgrading and/or Transfer

These actions shall be considered as alternatives to dismissal (to be mutually agreed) and would consequently be accompanied by a final / single stage final warning. If an individual opts for downgrading with single stage final warning as an alternative to dismissal there will be no right of appeal.

12.7 Formal disciplinary warnings issued to all staff

The outcome may include withholding of incremental progression.

13 Fast Track Disciplinary Process

In cases of alleged misconduct where neither dismissal nor a single stage final written warning is expected to be an outcome - and where the individual does not contest the allegations - the case may be dealt with via a fast-track route. This can be requested or suggested by the individual, the commissioning or line manager or anyone involved in the case. Fast tracking cases allows for speedy resolution, avoiding the need for a lengthy investigation. Cases can only be fast-tracked with the relevant member of staff's agreement that they do not wish to proceed with a full investigation and disciplinary hearing. An individual should not be pressured into agreeing to a fast track process.

Individuals must not suffer any detriment if they choose to proceed with their right to a full disciplinary hearing.

The purpose of the fast track route is to decide upon appropriate action speedily and in a way which is less disruptive than the traditional route.

If the fast-track process is agreed, a full formal investigation will not be carried out and the formal disciplinary hearing will be replaced with a 'fast-track hearing' unless counselling (informal discussion) is agreed to. If counselling (informal action) is decided upon it will be conducted in the usual manner (see 2.3 above).

If, during the fast track process, it becomes apparent that something more serious than was first thought has taken place then it may be appropriate to revert to the full formal disciplinary and investigation process.

NB: W.e.f June, 2020, as part of Covid 19 pandemic interim arrangements, 'fast track' provision will be extended to include 'single stage' final written warning cases. All other related provisions (e.g. employee right of appeal) remain unchanged.

13.1 Deciding upon whether the fast-track process is appropriate

Where the fast track route is suggested, the line manager or senior manager of the department concerned must consult with the relevant HR Manager who will advise on the appropriate action. Fast tracking may be appropriate where:

- Sufficient facts about the case are known
- there is an agreement by all parties that the fast tracking route is appropriate
- the individual alleged to have committed the misconduct accepts their culpability and has given assurances that there will be no repeat of the misconduct

13.2 Fast track disciplinary hearing

Where it is decided that the fast track process will be adopted, it may be decided to progress the case to a fast track disciplinary hearing. The hearing will proceed as follows:

- a) The case will be heard by one presiding officer. This will normally be the line manager or a more senior manager from the department.
- b) An HR representative will attend to support the presiding officer.
- c) Since there has been no formal investigation, there is no need for a Case Investigator to attend.
- d) As with any formal disciplinary hearing, the individual has the right to be accompanied by a trade union representative or a work place colleague.
- e) If appropriate, a short summary report of the incident can be prepared
- f) No witnesses will be called
- g) The hearing will be conducted informally
- h) At the outset of the hearing, the presiding officer should check the individual's understanding of, and agreement to, the fast tracked process.
- i) The individual will be given the opportunity to present any mitigating circumstances to the presiding officer who will consider this together with the evidence
- j) Brief hand written notes of the hearing will be taken.

If it is decided that a sanction will apply, or that an existing sanction will be extended, this will be confirmed in the usual way. If it is decided that there will be no sanction, this will also be confirmed in the usual way along with whatever caveats apply.

13.3 Requesting a fast-track hearing once a formal investigation has commenced

If a full investigation has already commenced the employee under investigation may still elect at a later stage to request a fast track hearing. In this situation the investigation will be suspended pending a management decision.

13.4 Appeal

An individual opting for a fast tracked disciplinary process will be entitled to appeal against a sanction in the usual way.

14 Criminal and Potentially Criminal Offences

A police investigation should not be regarded as an alternative to an internal disciplinary investigation. The Trust may not need to wait for the outcome of investigation / prosecution before taking fair and reasonable action.

Disciplinary action including dismissal will not be automatic in proven criminal cases. The main facts to be taken into account in deciding whether or not the alleged criminal offence renders the employee unsuitable to continue in the Trust's employment are as follows:

- The relevance of the offence to the job for which the individual is employed and whether or not it impinges upon the contract of employment.
- Seniority of the employee. The expected standards would be greater the more senior the member of staff.
- Breach of the trust and responsibility vested in the employee in relation to the job for which the individual is employed.
- Unacceptability of the employee to work with colleagues.
- Potential risk to patients, public, other employees, or to the employee themselves.
- Effect on the reputation of the Trust.

The above list is not exhaustive and each case should be considered on its own merits.

Where the misconduct is the subject of a police investigation or legal process, the Trust has the discretion to proceed with its own investigation and disciplinary action in accordance with this procedure, without awaiting the outcome of any police investigation or prosecution. Advice must be sought from an HR Manager before proceeding. 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, it is the employee's responsibility to inform their manager of the circumstances. Failure to report or disclose this information will result in further disciplinary action being taken up to and including dismissal.

15 Appeal

Notification of an Appeal Hearing

If, after a disciplinary sanction a staff member wishes to appeal against the decision, it is considered necessary to hold an appeal hearing. The appeal must have been made within 10 working days of the date of the disciplinary letter to the Director of Workforce and must clearly outline the reasons for appeal.

The letter of request to attend the appeal hearing, together with proforma for completion, may be delivered by hand to the individual or their representative, or it may be posted to the home address. On occasion it may be appropriate to use the recorded delivery service.

Under normal circumstances an appeal hearing shall not be postponed more than once by either side.

Where the Trust has to postpone the hearing date an alternative date should be mutually agreed with all parties at the earliest opportunity. A hearing cannot be postponed for an undue period once the Trust has made all reasonable steps to find a mutually agreed date and time between the disciplining officer, employee, and where applicable the TU representative. If one has not been agreed the Trust has the right to proceed irrespective. The staff member would have the right in these circumstances to make a written submission to the panel if they so wished.

Management Statement of Case / Appellant Statement of Case / Witnesses

The disciplining manager will provide a full statement of case outlining the reasons for taking disciplinary action and the material evidence that was used in reaching the decision; this will be referred to as the management statement of case. This must be sent to the HR Manager/ Advisor acting as secretary to the panel 10 working days before the Appeal.

The appellant will provide the full details of their statement of case outlining the specific reasons for their appeal. This must be sent to the HR Manager/ Advisor acting as secretary to the panel at least 10 working days before the hearing date.

These statements of cases will be forwarded to the appeal panel. No further information will be accepted by either party after these dates. No information may be submitted on the day of the appeal hearing unless mutually agreed by all parties.

Witnesses are not automatically invited to the appeal hearing unless previously agreed. Should either party wish for witnesses to be invited they will need to make clear on the proforma provided, the reasons for the request and any such request will not be unreasonably declined.

The Appeal Hearing

The make-up of the panel will be carefully considered and will ensure that the Chair has the appropriate levels of authority (Appendix 5). A Professional and / or Independent Representative will be present if required. An HR Representative will serve as adviser to the panel. For medical and dental staff please refer to the appropriate procedure for medical and dental staff.

The purpose of the appeal is to carry out an independent review as to the

'reasonableness' of the manager's decision. In considering reasonableness, the Appeal Panel will want to satisfy themselves on the following points:-

1. Was the manager's decision to take disciplinary action reasonable, based on the evidence and circumstances?
2. Is the treatment of the employee consistent with the Trust's general approach to similar cases?
3. Has the matter been handled fairly and appropriately and is it consistent with the Trust's Disciplinary Procedure?
4. Has the manager been biased or prejudiced in anyway when reaching the decision?
5. Is the decision to take action still reasonable and appropriate taking account of all the evidence submitted?

The appeal should not become another disciplinary hearing, but focuses on reviewing the decision that was taken and re-hears the relevant evidence to test this decision.

There are four decisions which the appeal panel can come to:

1. Not to uphold the appeal; that is to dismiss the appeal.
2. Not to uphold the appeal, but ask managers to review the potential for suitable alternative employment for the applicant. This would apply in cases of dismissal where the Appeal Panel decided the individual could return, but not to the original post.
3. Uphold the appeal. Decide that the disciplinary action was inappropriate or too severe and not in the band of reasonable action and, therefore, replace the original decision with a lesser warning. In cases of dismissal, this would mean reinstating the appellant to their original post, together with a warning if appropriate.
4. Decide that the disciplinary action was too lenient and not in the band of reasonable action and, therefore, replace the original decision with a greater warning. However please note: an appeal panel cannot give a dismissal outcome were the original hearing did not give one.

Appendix 4 – provides details of the procedure that will be followed at a disciplinary appeal hearing.

Appendix 8 sets out the revised hearing arrangements which will apply during Covid 19 related restrictions.

16 Grievances Raised During an Investigation

In the event that an employee raises a grievance during the course of a related disciplinary case, the manager may consider suspending the disciplinary procedure for a short period

while the grievance is dealt with. Depending on the nature of the grievance the manager may need to consider bringing in another manager to deal with the disciplinary process.

17 Definitions

Misconduct

Misconduct is the term used for a breach of the organisation's rules that does not in the first instance lead to dismissal (although if further misconduct takes place, it could do so). Misconduct can include such things as persistent lateness and unauthorised absence.

Gross Misconduct

Gross misconduct is generally regarded as misconduct serious enough to destroy the contract between employer and employee and make further working, trust and confidence impossible and therefore may result in summary dismissal without any preceding warnings unless there are extenuating circumstances.

Summary Dismissal

Summary dismissal is the immediate dismissal of an employee without payment for the appropriate statutory or contractual period of notice.

Appendix 1 sets out a list of examples of Misconduct / Gross Misconduct. Please note that these lists are not exhaustive.

18 Duties/Responsibilities

18.1 Chief Executive

The Chief Executive is ultimately accountable to the Board for the Trust's compliance with statute and regulation.

18.2 Responsibility of the HR & OD Department

The HR and OD Department will oversee the introduction, operation and monitoring of this policy to ensure the fair and consistent application throughout the Trust.

The Human Resources Department will ensure the provision of training, guidance and support to line managers on the operation of this policy.

The Human Resources Department will ensure that queries in relation to this policy at a local level will be answered and ensure the policy is applied fairly and consistently throughout the Trust.

The Human Resources Department will encourage the adoption of a consistent approach to discipline in accordance with accepted standards of good personnel practice and employment legislation.

18.3 Responsibility of Line Managers

Line Managers are responsible for ensuring that this policy is applied fairly and consistently within their own area.

Line Managers will ensure that employees are aware of and understand the code of conduct, standards and behaviour required by the Trust and professional organisations/bodies.

Line Managers will ensure that warnings are removed from personal files after the appropriate length of time.

Line Managers will inform the HR Manager/ Advisor of all breaches in respect to this Policy.

18.4 Responsibility of Staff

Staff will comply with all aspects of this Policy.

18.5 Case Manager

To consider the information regarding the incident provided by the line manager – and to decide the next steps with HR support, such as is further information required.

If required, commission an investigation of the allegation/s.

Appoint a Case Investigator.

Consider whether suspension is necessary to safeguard the investigation.

Determining the terms of reference for the investigation including all allegations made, this may include updating the terms of reference and allegations if new evidence requires a change, informing the staff member in writing of the revised allegations.

Review suspensions and whether they need to continue based on the investigations progress.

Regularly review the progress of the investigation ensuring timescales are adhered to.

Decide if there is a case to answer or not upon completion of investigation and arrange for a disciplinary manager to hear the case.

18.6 Case Investigator

To investigate and establish the facts in the case by holding fact finding interviews and gathering statements and data as appropriate.

To produce an investigation report for the Case Manager that will outline the facts of the case.

To interview all relevant people including those who are leavers, agency staff etc.

The Case Investigator should make the Case Manager aware of anything additional that arises during the investigation, enabling the Case Manager to review and decide whether an amendment to the terms of reference and allegations are required.

Updating the staff member on where the investigation is up to, including any delays and the reasons for the delays.

Must keep the Case Manager updated of anything that would mean a suspension could be lifted or amended duties altered.

18.7 Responsibility of Trade Union Representatives

Trade Union Representatives (where appropriate) will support staff who may be subject to the Disciplinary Policy.

18.8 Responsibility of Freedom to Speak Up (FTSU) Guardians

FTSU Guardians (where appropriate) will support staff that may be subject to the Disciplinary Policy.

18.9 Committee Roles

The Workforce and Communication Group (W&CG) is responsible for the approval and performance management of this policy.

Appendix 1 – Examples of Disciplinary Conduct

Gross Misconduct

Some examples of offences which might constitute Gross Misconduct are below and will normally result in summary dismissal unless there are exceptional mitigating circumstances:-

1. Theft, fraud, or deliberate falsification of records.
2. Physical violence or causing harm (or potentially causing harm) to a patient, visitor or colleague
3. Deliberately making false statements which have important consequences for the Trust
4. Serious bullying, harassment, discrimination or infringement of human rights.
5. Deliberate serious damage to Trust property.
6. Serious insubordination.
7. Serious misuse of an organisation's property or name.
8. Actions (including outside of the working hours) which may bring the reputation of the Trust into disrepute including inappropriate use of social networking sites
9. Serious incapability whilst on duty brought on by alcohol or illegal drugs (see Substance Misuse Policy)
10. Serious negligence which causes or might cause unacceptable loss, damage or injury.
11. Serious infringement of health and safety rules including the careless disposal of sharps, aerosols and clinical waste.
12. Serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998).
13. Unauthorised Computer Use or access including deliberately accessing internet sites containing pornographic, offensive or obscene material.
14. Distributing pornographic, offensive or obscene material.
15. Breach of trust/confidence.
16. Breach of confidentiality or unauthorised/inappropriate access to records, via paper based or electronic systems.
17. Failure to disclose criminal convictions.
18. Failure to comply with suspension conditions.
19. Serious breach of the Trust's Internet and email Policies
20. Actions which violate the dignity or wellbeing of a patient, visitor or colleague
21. Actions whilst absent from work due to sickness which are incompatible with the reasons given for being unable to attend work
22. Working for another employer whilst off sick
23. Sustained failure to maintain contact with Trust during absence from work
24. Sustained unauthorised absence from work
25. Deliberately disobeying a reasonable instruction
26. Undertaking work for a business or another employer during Trust time
27. Deliberately leaving the place of work without prior permission
28. Sexual assault and / or sexual harassment
29. Conducting a private business or trade during working hours

This list is intended to give examples and is not exhaustive.

Misconduct

Some examples of offences which might warrant warnings leading to downgrading or dismissal are:-

1. Poor or sloppy workmanship.
2. Unauthorised absenteeism.
3. Persistent lateness (or leaving early)
4. Unauthorised absence from workplace
5. Failure to act reasonably and professionally towards a patient, visitor or colleague
6. Creating a minor disturbance
7. Making false statements
8. Lack of effort.
9. Failure to follow reasonable instructions
10. Spending excessive amount of time on personal business ie personal phone calls, personal internet usage, social interactions etc
11. Smoking or vaping on Trust premises

Again this list is intended to give examples and is not exhaustive.

A just culture guide

Supporting consistent, constructive and fair evaluation of the actions of staff involved in patient safety incidents

This guide supports a conversation between managers about whether a staff member involved in a patient safety incident requires specific individual support or intervention to work safely. Action singling out an individual is rarely appropriate – most patient safety issues have deeper causes and require wider action.

The actions of staff involved in an incident should **not** automatically be examined using this just culture guide, but it can be useful if the investigation of an incident begins to suggest a concern about an individual action. The guide highlights important principles that need to be considered before formal management action is directed at an individual staff member.

An important part of a just culture is being able to explain the approach that will be taken if an incident occurs. A just culture guide can be used by all parties to explain how they will respond to incidents, as a reference point for organisational HR and incident reporting policies, and as a communication tool to help staff, patients and families understand how the appropriate response to a member of staff involved in an incident can and should differ according to the circumstances in which an error was made. As well as protecting staff from unfair targeting, using the guide helps protect patients by removing the tendency to treat wider patient safety issues as individual issues.

Please note:

- A just culture guide is not a replacement for an investigation of a patient safety incident. Only a full investigation can identify the underlying causes that need to be acted on to reduce the risk of future incidents.
- A just culture guide can be used at any point of an investigation, but the guide may need to be revisited as more information becomes available.
- A just culture guide does not replace HR advice and should be used in conjunction with organisational policy.
- The guide can only be used to take one action (or failure to act) through the guide at a time. If multiple actions are involved in an incident they must be considered separately.

Start here - Q1. deliberate harm test

1a. Was there any intention to cause harm?



Yes

Recommendation: Follow organisational guidance for appropriate management action. This could involve: contact relevant regulatory bodies, suspension of staff, and referral to police and disciplinary processes. Wider investigation is still needed to understand how and why patients were not protected from the actions of the individual.

END HERE

No go to next question - Q2. health test

2a. Are there indications of substance abuse?



Yes

Recommendation: Follow organisational substance abuse at work guidance. Wider investigation is still needed to understand if substance abuse could have been recognised and addressed earlier.

END HERE

2b. Are there indications of physical ill health?



Yes

Recommendation: Follow organisational guidance for health issues affecting work, which is likely to include occupational health referral. Wider investigation is still needed to understand if health issues could have been recognised and addressed earlier.

END HERE

2c. Are there indications of mental ill health?

if No to all go to next question - Q3. foresight test

3a. Are there agreed protocols/accepted practice in place that apply to the action/omission in question?

3b. Were the protocols/accepted practice workable and in routine use?

3c. Did the individual knowingly depart from these protocols?



If No to any

Recommendation: Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.

END HERE

if Yes to all go to next question - Q4. substitution test

4a. Are there indications that other individuals from the same peer group, with comparable experience and qualifications, would behave in the same way in similar circumstances?

4b. Was the individual missed out when relevant training was provided to their peer group?

4c. Did more senior members of the team fail to provide supervision that normally should be provided?



If Yes to any

Recommendation: Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.

END HERE

if No to all go to next question - Q5. mitigating circumstances

5a. Were there any significant mitigating circumstances?



Yes

Recommendation: Action directed at the individual may not be appropriate; follow organisational guidance, which is likely to include senior HR advice on what degree of mitigation applies. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients.

END HERE

if No

Recommendation: Follow organisational guidance for appropriate management action. This could involve individual training, performance management, competency assessments, changes to role or increased supervision, and may require relevant regulatory bodies to be contacted, staff suspension and disciplinary processes. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients.

END HERE

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Based on the work of Professor James Reason and the National Patient Safety Agency's Incident Decision Tree

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Appendix 3 – Procedure at Disciplinary Hearing

The procedure at disciplinary hearings in the Trust will follow the sequence described below. The Chairperson of the Panel shall:

- Introduce all present and confirm the credentials of the employee's representative
- Explain that the purpose of the hearing is to determine if the allegations are substantiated and if any disciplinary action should be taken as a consequence.
- Make clear that a full and fair consideration of all issues pertinent to the case will be given.
- Mention that dignity and respect must be observed by all parties.
- Acknowledge that a disciplinary hearing can be difficult for the staff member and mention that a brief adjournment can be taken if needed.
- Confirm that the Panel may call for an adjournment at any time during the proceedings if they determine that further enquiries are necessary before they can reach a decision.

Procedure

1. Management Presentation of Case

- a) The Case Manager will normally state the nature of the allegations against the employee and may call witnesses if appropriate.
- b) The employee or representative may question the investigating manager and any witnesses.
- c) The panel members may question the investigating manager and any witnesses
- d) The Case Manager may re-examine his/her witnesses

2. Employee Presentation of Case

- a) The employee or representative will present her/his case and may call witnesses.
- b) The Case Manager/Disciplining Manager may question the employee, her/his representative and witnesses.
- c) The Panel members may question the employee, her/his representative and witnesses.
- d) The employee or representative may re-examine her/his witnesses.

3. Summing Up

- a) The Case Manager shall have the opportunity to sum up the case.
- b) The employee or her/his representative shall have the opportunity to sum up the case. The employee or representative has the right to sum up last.

Note: In their summing up neither party may introduce any new material.

4. Adjournment

- a) There will be an adjournment to allow a decision to be considered.

5. Reconvene and conclusion

Following conclusion of its deliberations the Panel shall reconvene and the Chair will formally communicate the Panel's decision. The Chair will confirm the decision in writing to the staff member within 7 days of the hearing, and inform the individual that s/he has the

right to Appeal. Any appeal should be made to the Director of Workforce within 10 working days of this letter clearly outlining the reasons for the Appeal.

Appendix 4 – Guidance Notes for Appeal Hearing and Procedure

These guidance notes are designed to briefly set out the main points which will be considered by the Appeal Panel.

Purpose of the Disciplinary Appeal

The Trust's Disciplinary Procedure is based on accepted good employee relations practice (namely the ACAS Code of Practice), current employment law and the principles of natural justice.

The purpose of the Appeal is to carry out an independent review as to the 'reasonableness' of the manager's decision. In considering reasonableness, the Appeal Panel will want to satisfy themselves on the following points:-

1. Was the manager's decision to take disciplinary action reasonable, based on the evidence relating to the case?
2. Was the disciplinary action decided upon reasonable, given the circumstances of the case?
3. Is the treatment of the employee consistent with the Trust's general approach to similar cases?
4. Has the matter been handled fairly and appropriately and is it consistent with the Trust's Disciplinary policy?
5. Has the manager been biased or prejudiced in anyway when reaching the decision?

It is important that the appeal does not become another disciplinary hearing, but focuses on reviewing the decision that was taken and re-hears the relevant evidence to test this decision.

Each party will be given the opportunity to submit a statement of case. In advance of the Hearing the Panel will have received both statements of cases. It is important that the Panel considers each point raised by staff side in defence of its case.

Chair of the Appeal Panel

The Chair is responsible for ensuring the appeal is conducted in a fair and proper manner. The Chair will take responsibility for controlling the appeal and ensuring the procedure is followed.

The Chair will strike a balance between allowing both sides to state their cases and not allowing the hearing to lose its way.

Role of the Secretary

The Secretary of the Appeal Panel will be an experienced member of the Human Resources Team

The role, in addition to ensuring that administratively the appeal runs smoothly, is to advise the Appeal Panel on procedural issues and to be available for the Appeal Panel to draw on his experience of disciplinary matters and possible precedents.

The Secretary will be present throughout the whole appeal and will take notes on the case being heard, although the taking of the notes will be delegated to another individual as appropriate.

Procedure of an Appeal

The procedure for the appeal is outlined below. Although minor variations may be allowed under the control of the Chair, as long as they do not jeopardise the process, or disadvantage one party, normally the procedure should be carefully followed.

The individual or their nominated representative will present their case first. They will be present throughout the hearing and be subject to questioning at any time by the Appeal Panel.

The Management side statement of case will be presented by the decision making manager with support from the appropriate Human Resources representative. The Management Side will be present throughout the hearing and be subject to questioning at any time by the Appeal Panel.

Evidence

The strict rules of evidence which are employed by Courts of Law do not apply for internal appeal hearings. However, the Appeal Panel will need to consider carefully the merits and weight which should be given to the evidence presented by both sides, in support of their cases.

The Appeal Panel should bear in mind:

1. Documentary evidence.
2. First-hand evidence particularly from witnesses is more influential than hearsay.
3. That hearsay evidence can be allowed at the discretion of the Chair, although generally the further away from the source, the less weight can be attached to it.
4. New evidence, which has come to light following the manager's decision, may be taken into account when deciding the outcome of the appeal; however, in considering new evidence regarding dismissals, the Appeal Panel must not substitute a different reason for dismissal, from that originally employed by the manager.

5. If the Appeal Panel is not satisfied with the investigation or any other material aspect of what has gone before, it is for the Appeal Panel to remit the matter for further investigation and/or a new disciplinary hearing.

Decision

The burden of proof is again different from that used in the Courts of Law. The Trust as an employer is expected to justify their decision was correct on the "balance of probabilities" rather than "beyond all reasonable doubt".

There are four decisions which the Appeal Panel can come to:

1. Not to uphold the appeal; that is to dismiss the appeal.
2. Not to uphold the appeal, but ask managers to review the potential for suitable alternative employment for the applicant. This would apply in cases of dismissal where the Appeal Panel decided the individual could return, but not to the original post.
3. Uphold the appeal. (In cases of dismissal, this would mean reinstating the appellant to their original post).
4. Decide that the disciplinary action was too severe and not in the band of reasonable action and, therefore, replace the original decision with a lesser warning. In cases of dismissal, this would mean reinstating the appellant to their original post, together with an appropriate warning if appropriate.

Summary of the Main Points for Consideration

1. To act in good faith and not be unduly influenced by what has gone before, or be committed to upholding the previous decision.
2. To hear both sides of the case and to weigh up the pros and cons as objectively as possible.
3. To appreciate that the role of the Appeal Panel is to test whether given all the circumstances, the decision was reasonable.
4. To consider all matters raised which are relevant to the decision, whether or not they were known to the manager at the time of taking the decision.
5. To ensure that all the points raised by the employee in their statement of case are addressed.
6. Be satisfied that a thorough investigation has taken place and all reasonable efforts have been made to gather the relevant evidence.
7. To be aware that the Chair of the Appeal Panel may in the future, be called upon to defend the decision reached, at an Employment Tribunal.

Procedure for the Appeal

1. The individual or his/her representative shall put his/her case in the presence of the management representative and may call witnesses.

- The management representative shall have the opportunity to ask questions of the individual, his/her representative and his/her witnesses.
 - The members of the Appeal Panel shall have the opportunity to ask questions of the individual, his/her representative and his/her witnesses.
 - The individual or his/her representative shall have the opportunity to re-examine his/her witnesses on any matter referred to in their examination by members of the Appeal Panel or the management representative.
2. The management representative shall state the management case, and may call witnesses, in the presence of the individual and their representative.
 - ☐ The individual or his/her representative shall have the opportunity to ask questions of the management representative and witnesses.
 - ☐ The members of the Appeal Panel shall have the opportunity to ask questions of the management representative and witnesses.
 - ☐ The management representative shall have the opportunity to re-examine his/her witnesses on any matter referred to in their examination by members of the Appeal Panel, the individual or his/her representative.
 3. The individual or his/her representative shall have the opportunity to sum up their case if they so wish;
 4. The management representative shall have the opportunity to sum up their case if they so wish;
- NB: The appellant or his/her representative shall have the right to speak last. In their summing up neither party may introduce any new information.
5. The management representative, the individual and his/her representative shall withdraw, subject to being recalled if those hearing the appeal wish to clarify any particular points.
 6. The chair of the Appeal Panel will announce the Panel's decision to the parties personally, if possible. The individual shall in any event be notified of the decision in writing within five working days.

Appendix 5 – Levels of Authority in Disciplinary Matters

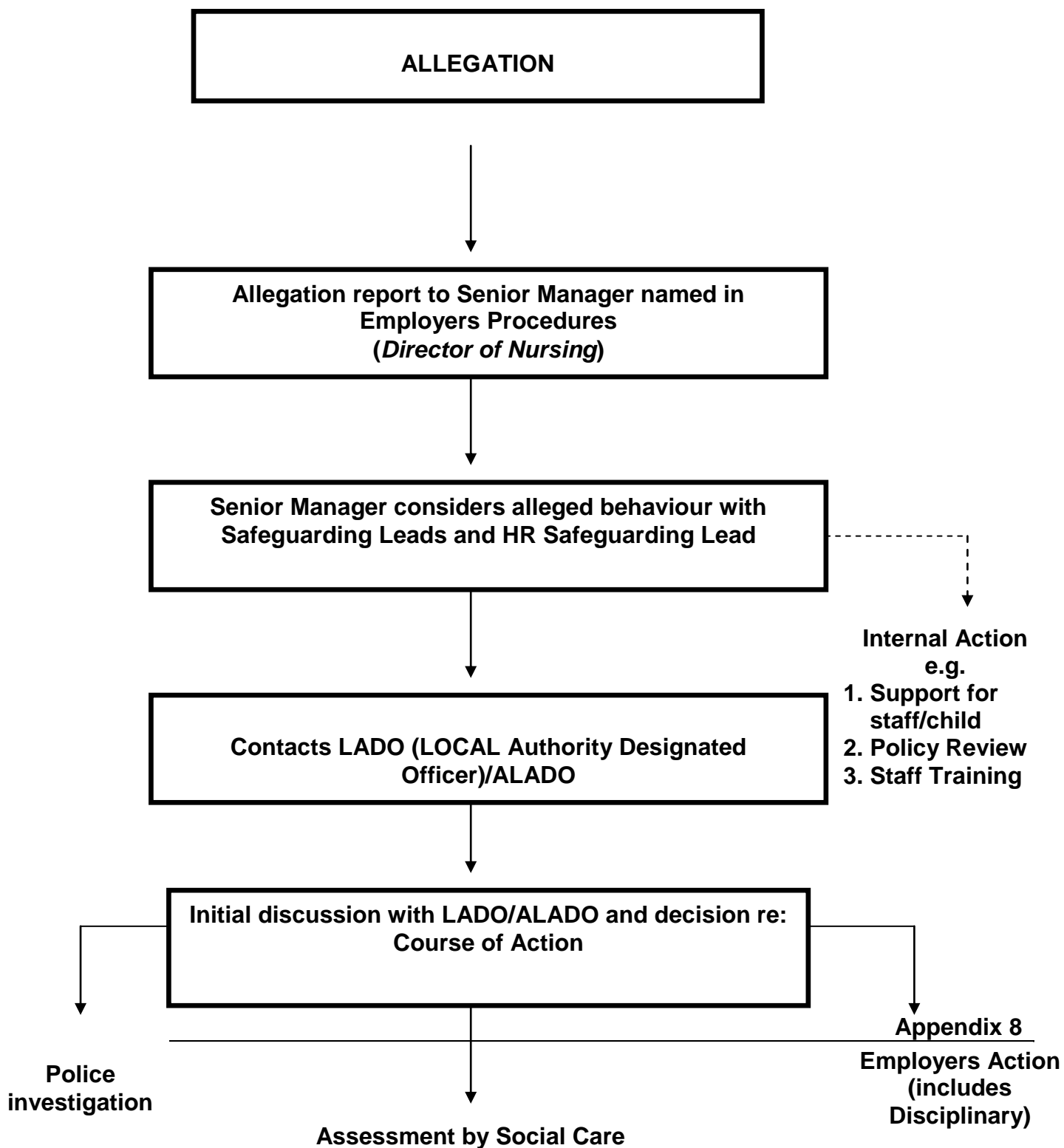
LEVELS OF AUTHORITY IN DISCIPLINARY MATTERS

| Employee | Disciplinary Hearing | Appeal Stage | Consult |
|---|-------------------------------------|--|---|
| Executive Directors | Chief Executive | Trust Chairman | Director / Deputy Director of Workforce |
| Associate Medical Directors / Clinical Director | Medical Director | Chief Executive | Director / Deputy Director of Workforce |
| Medical & Dental Staff (all grades) | Clinical Lead | Medical Director | Director / Deputy Director of Workforce |
| Staff directly responsible to Executive Directors | The appropriate: Executive Director | Chief Executive | Director / Deputy Director of Workforce |
| All other staff | Appropriate Line Manager | Appropriate line manager who is senior to the decision maker at the hearing stage (for dismissals must be at least Assistant or Deputy Director level) | Divisional Human Resources Manager |

*The 'Chair' of the Panel would usually be the manager with the authority to dismiss the employee if dismissal is a likely outcome. This responsibility can be handed to a designated deputy who is formally acting in the role or another manager at the same/equivalent level.

Appendix 6 – Safeguarding Guidelines

SAFEGUARDING GUIDELINES



Appendix 7 – Disciplinary Templates

Letters, reports and Terms of Reference templates are available on WUTH Intranet site via:

- HR Services / Template letters / Disciplinary

Appendix 8 – Interim changes to arrangements during the Covid 19 pandemic period

The table below takes account of the social distancing measures the government has advised to reduce social interaction between people in order to reduce the transmission of coronavirus (COVID-19), whilst giving assurance that the Trust remains committed to the continuation of support to managers and staff, in accordance with Trust policies and procedures on employment relations.

The scope of the process includes planned measures for immediate action to protect all staff whilst anticipating that our capacity to progress employee relations casework may be severely limited due to the current pandemic.

Future changes in Government and Trust advice about restrictions may require this document to be amended as appropriate. In addition, its impact will be fully reviewed at the end of August, 2020. Any proposed amendments will be subject to consultation with staff side.

| Area of Work | Usual attendees at face to face meetings | New Process (from 11 th June, 2020) |
|---|---|---|
| Informal/fact finding meetings | <ul style="list-style-type: none"> • Manager (usually line manager) • Employee | <p>If staff are on site and working in same ward / department, the meeting can take place face to face observing the 2 metre rule.</p> <p>If not, face to face interview to be replaced by either of the following:</p> |
| Routine HR/management issue | <ul style="list-style-type: none"> • Staff side & HR (where agreed as necessary) | <ul style="list-style-type: none"> • Statement written by employee; or • Telephone or video conference interview. <p>If face to face is the optimum choice meetings must take place in a large meeting room such as Board room, training rooms etc.</p> |
| Investigation meetings including witness meetings, suspension and grievance meetings. | <ul style="list-style-type: none"> • Case investigator / Manager • Employee • HR Manager • Staff Side | <p>If staff are on site or working in same ward/department, the meeting can take place face to face observing the 2 metre rule. If required, HR and Staff side could also join by telephone or video conferencing.</p> <p>If not appropriate, then face to face meetings to be replaced by telephone / video conferencing such as Microsoft teams. HR Manager will be present in all formal meetings as per usual process. Staff side</p> |

| | | |
|---------------------------------------|--|---|
| | | will be present at formal meetings as requested by the employee. |
| Disciplinary Hearing / Appeal Hearing | <ul style="list-style-type: none"> • Case Manager / Hearing Manager of original panel / Grievance Manager • Employee • HR Manager • Staff Side • Witnesses – if applicable • Panel made up of: <ul style="list-style-type: none"> ○ Chair ○ HR Manager / Business Partner ○ Professional Rep (if required) | <p>The Trust and Staff Side have indicated that hearings in person are the preferred option. However, this will not be possible in some cases.</p> <p>Where the parties are agreed that it is beneficial for the hearing to be in person this will be decided on a case by case basis and will be fully risk-assessed. If agreed, it will take place in a controlled environment where social distancing can be fully complied with. Large rooms such as the Trust Board Room, certain training rooms and other large meeting rooms should be used. The risk assessment will be based on a Trust work-based risk assessment tool and will be agreed between the relevant HR manager and staff side representative.</p> <p>If this is not possible, the face to face hearings could be replaced by telephone/video conferencing such as Microsoft Teams.</p> <p>The panel would be reduced to the Chair and the HR Manager only; all (other) professional advice will be sought within adjournments or via telephone/video conferencing.</p> <p>If, due to a lack of facilities on the employee's part (meaning that the hearing cannot take place via telephone/video conferencing), the hearing could take place as a desktop review if all parties are in agreement. The employee would submit a statement of case in writing, detailing any defence or mitigating circumstances for consideration by the panel. The outcome of the panel would be confirmed in writing. The same can apply to appeal hearings if all parties are agreeable.</p> |
| Area of Work | Usual attendees at face to face meetings | New Process (from June 2020) |

| Organisational Change | <ul style="list-style-type: none"> • Management representative • Employees affected • HR Manager • Staff Side | <p>Significant organisational change may be postponed during the pandemic unless considered essential i.e. TUPE or connected to the need to make new and significant changes to take account of new ways of working during the pandemic.</p> <p>In these circumstances HR will work with Staff side to discuss a suitable process which could vary from case to case.</p> <p>Social distancing principles will apply.</p> |
|--|---|--|
| Area of Work | Usual attendees at face to face meetings | New Process (from June 2020) |
| Attendance Support Meetings - LT sickness Reviews | <ul style="list-style-type: none"> • Manager (usually line manager) • Employee • HR Manager • Staff side | <p>These are currently suspended and HR Managers are making welfare calls to :</p> <ul style="list-style-type: none"> • Discuss current wellbeing and updates on progress/recovery • Any further support required • A likely return to work date <p>The HR team has designed a template/script for these calls.</p> <p>Attendance support meetings will recommence as soon as the HR Services Team is able to make new arrangements for the Central Absence Line Process to be staffed.</p> |
| - LT sickness Management Hearing | <ul style="list-style-type: none"> • Hearing Manager • Employee • HR Manager • Staff side | <p>The same general guidance principles on hearings (as above) will apply. However, This will be dependent upon the circumstances of each case and the wishes of the employee.</p> <p>If agreed by both parties, face to face meetings can be replaced by telephone/video conferencing.</p> |
| - ST Sickness Attendance | <ul style="list-style-type: none"> • Manager (usually line manager) | <p>If staff are at work and working in same ward/department, this informal meeting can take place face to face observing the 2 metre rule. If not,</p> |

| | | |
|---|--|--|
| meeting - Informal | <ul style="list-style-type: none"> Employee | <p>face to face interview to be replaced by telephone or video conference interview</p> <p>If face to face is deemed essential and cannot take place as above, meetings must take place in a large meeting room such as Board room, training rooms etc.</p> |
| - ST sickness Attendance meeting – Formal | <ul style="list-style-type: none"> Manager (usually line manager) Employee HR Manager Staff side | <p>These meetings are currently suspended. When these are reinstated then the following will apply:</p> <p>If staff are at work and working in same ward/department, the meeting can take place face to face between manager and employee, with HR and Staff side joining the meeting by telephone/video conferencing where appropriate and agreeable with the employee.</p> |

Equality Analysis

| | |
|-------------------------------------|---------------------|
| Title | Disciplinary Policy |
| Agenda Item/Policy Reference | Policy 135 |
| Completed by | Finola O'Donnell |
| Date Completed | 27 March 2017 |

| Description |
|---|
| The purpose of this Policy is to ensure that managers, staff and trade unions are aware of their rights and obligations in matters relating to discipline and that disciplinary action is taken in a correct and fair manner. |

| Who will be affected |
|--|
| This policy applies to all staff employed under the contract of employment with the Trust. |

The Equality Analysis template should be completed in the following circumstances:

- **All new policies**
- **All policies subject to renewal**
- **Business cases submitted for approval to Hospital Management Board impacting on service users or staff**
- **Papers submitted to Hospital Management Board detailing service redesign/reviews impacting on service users or staff**
- **Papers submitted to Board of Directors for approval that have any impact on service users or staff**

Please note the results of this Equality Analysis will be published on the Trust website in accordance with the Equality Act 2010 duties for public sector organisations

Section 1 should be completed to analyse whether any aspect of your paper/policy has any impact (positive, negative or neutral) on groups from any of the protected characteristics listed below.

Section 1 – Initial analysis

| Equality Group | Any potential impact? Positive, negative or neutral | Evidence (For any positive or negative impact please provide a short commentary on how you have reached this conclusion) |
|--|--|---|
| Disability (Consider any impact on attitudinal, physical and social barriers) | Neutral | |
| Age (Consider and barriers across age ranges. This can include safeguarding consent, care of the elderly and child welfare) | Neutral | |
| Race (Consider any barriers impacting on ethnic groups including language) | Neutral | |
| Religion or belief (Consider any barriers effecting people of different religions, belief or no belief) | Neutral | |
| Sexual Orientation (Consider any barriers affecting heterosexual people as well as Lesbian, Gay or Bisexual) | Neutral | |
| Pregnancy & Maternity (Consider any impact on working arrangements, part time or flexible working) | Neutral | |
| Gender (Consider any barriers relating to men and women e.g.: same sex accommodation) | Neutral | |
| Carers (Consider any impact on part time working, shift patterns and general caring responsibilities) | Neutral | |
| Gender Reassignment (Consider any any impact on transgender or transsexual people. This can include issues relating to privacy of data) | Neutral | |

If you have identified any **positive** or **neutral** impact then no further action is required, you should submit this document with your paper/policy in accordance with the governance structure.

You should also send a copy of this document to wih-tr.equalityWUTH@nhs.net

If you have identified any **negative** impact you should consider whether you can make any changes immediately to minimise any risk. This should be clearly documented on your paper cover sheet/policy document detailing what the negative impact is and what has changes have been made.

If you have identified any **negative** impact that has a high risk of adversely affecting any groups defined as having a protected characteristic then please continue to section 2.

Section 2 – Full analysis

If you have identified that there are potentially detrimental effects on certain protected groups, you need to consult with staff, representative bodies, local interest groups and customers that belong to these groups to analyse the effect of this impact and how it can be negated or minimised. There may also be published information available which will help with your analysis.

| |
|--|
| Is what you are proposing subject to the requirements of the Code of Practice on Consultation |
| Y/N |
| Who and how have you engaged to gather evidence to complete your full analysis? (List) |
| |
| What are the main outcomes of your engagement activity? |
| |
| What is your overall analysis based on your engagement activity? |
| |

Section 3 – Action Plan

You should detail any actions arising from your full analysis in the following table; all actions should be added to the Risk Register for monitoring.

| Action required | Lead name | Target date for completion | How will you measure outcomes |
|-----------------|-----------|----------------------------|-------------------------------|
| | | | |
| | | | |
| | | | |
| | | | |

Following completion of the full analysis you should submit this document with your paper/policy in accordance with the governance structure.

You should also send a copy of this document to wih.tr.equalityWUTH@nhs.net

Consultation, Communication and Implementation

| Consultation Required | Authorised By | Date Authorised | Comments |
|--|--|-----------------|--|
| Equality Analysis | Finola O'Donnell | 27.3.17 | This document is embedded within the Policy template |
| Policy Author Checklist | Carol Birchall | 31.1.19 | Checked for workforce / development, medicines, finance or wider corporate implications. |
| Other Stakeholders / Groups Consulted as Part of Current Version Development | Policy, Terms & Conditions 12 th February 2019 Partnership Steering Group 12 th March 2019 Policy, Terms & Conditions 7 th May 2019 | | |
| Trust Staff Consultation via Intranet | Staff side | | |

| | | | |
|--|-----|------------------------------------|------------------|
| Date notice posted in the News Bulletin. | N/A | Date notice posted on the intranet | 23 November 2020 |
|--|-----|------------------------------------|------------------|

| Describe the Implementation Plan for the Policy / Procedure (Considerations include; launch event, awareness sessions, communication / training via DMTs and other management structures, etc) | By Whom will this be Delivered? |
|--|--|
| HR Managers to present the policy and procedure at Divisional meetings and members of these Teams are responsible for updating their staff in their Division/Department. All new staff made aware of this policy and procedure at induction. | HR and Organisational Development Department |

Version History

| Date | Ver | Author Name and Designation | Summary of Main Changes |
|------------------|-----|-----------------------------|---|
| December 2012 | 1 | Lawrence Osgood | New Policy |
| May 2013 | 1.1 | Lawrence Osgood | Minor amendments to reflect changes to the Trust's governance structure. |
| 01 February 2015 | 1.2 | Lawrence Osgood | Scope and Section 14 – clarity re withholding incremental progression for Band 7 and above if formal warning issued |
| October 2015 | 2 | Vicky Poole/Carol Birchall | Full Review & More clarity provided in letters Safeguarding updated to include vulnerable Adults Process for low level warnings clarified Info on Involvement of Police Included Updates of titles/links to other Policies etc. |
| Jan 2016 | 2.1 | Finola O'Donnell | Inclusion of NMC revalidation in section 9. |
| Feb 2016 | 2.2 | Finola O'Donnell | Amendment to appeal letter to within 10 working days of date of letter |
| March 2017 | 3 | Adriana Roscoe | Full Review. Main changes - Page 8 – removal of timescale of 7 working days for written confirmation to be issued; amend to “written confirmation of the decision will be forwarded to the employee normally immediately, or normally as soon as possible....” Page 9 - change verbal to first written, first to second written. Page 10 – Remove “removal of warnings”. Page 11 – Include Fast Track Disciplinary Process. |
| June 2017 | 3.1 | Finola O'Donnell | Establish link to templates |
| Oct 2017 | 3.2 | Mike Larsen | Update hyperlink Include reference to Freedom To Speak Up Guardians |
| Oct 2018 | 3.3 | Finola O'Donnell / | Suspension – to include ability to contact colleagues who are not likely |

| | | | |
|---------------|-----|------------------|--|
| | | Lawrence Osgood | to be witnesses nor to discuss case; Include reference to templates on intranet. Correcting the numbering of the list of examples of gross misconduct. Addition of sexual assault and / or sexual harassment as an example of gross misconduct |
| Jan 2019 | 4 | Carol Birchall | Renaming of initiator of investigation (i.e. Case Manager) and investigating officer now referred to as Case Investigator, including clarification of their roles. Introduction of Terms of Reference to be produced by the Case Manager. Further minor amendments. |
| May 2019 | 4.1 | Carol Birchall | Clarification at Section 11 of the right to call witnesses to disciplinary hearings, to reflect procedure at Appendix 3. |
| February 2020 | 4.2 | Rebecca Moore | Correction to the procedure to be followed at an appeal hearing to reflect that the individual lodging the appeal will present their case first to outline the rationale for the appeal. |
| July 2020 | 4.3 | Rebecca Moore | Addition of a sentence in Appendix 4 to clarify that the appellant or his/her representative shall have the right to speak last. |
| July 2020 | 4.4 | Roger Nielsen | Inclusion of temporary 'interim arrangements' changes to reflect special circumstances of Covid 19 pandemic |
| April 2021 | 4.5 | Jill O'Callaghan | Amendment to section 11, timescale for the issue of notice of hearing changed from 5 working days to 10, |
| July 2021 | 4.6 | Garry Sweeny | Amendments to the following sections in order to further embed Just Culture Principles: <ul style="list-style-type: none"> • Section 2 • Section 4 • Section 7 • Section 9 • Section 10 • Section 11 • Section 18 |

Monitoring Compliance with the Policy

| Describe Key Performance Indicators (KPIs) | Target | How will the KPI be Monitored? | Which Committee will Monitor this KPI? | Frequency of Review | Lead |
|---|--------|---|--|---|-----------------------|
| Number of upheld grievances in relation to this policy. | Zero | A review of the number of upheld grievances | HR & OD Senior Management Team | Annually or earlier if discrepancies are raised | Director of Workforce |
| | | | | | |
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| | | | | | |

Performance Management of the Policy

| Who is Responsible for Producing Action Plans if KPIs are Not Met? | Which Committee Will Monitor These Action Plans? | Frequency of Review (To be agreed by Committee) |
|--|--|--|
| HR Services | HR and Organisational Development Senior Management Team | Annually |