

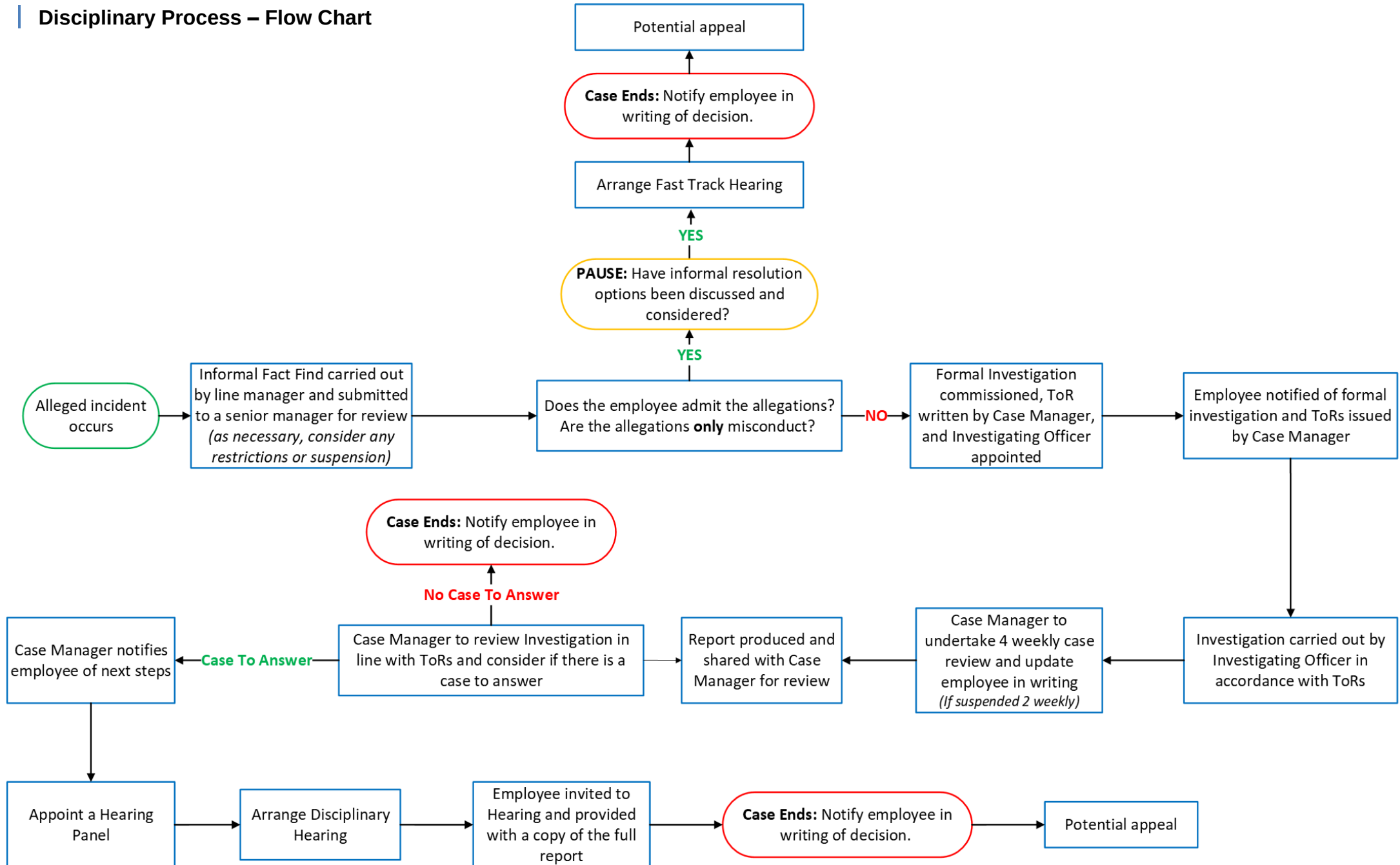
Policy Reference: 135

DISCIPLINARY POLICY (Incorporating Early Resolution)

Version: 5.1

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Approval Date:	12 th March 2025	Approval Group:	Partnership Steering Group
Ratification Date:	26 th March 2025	Ratification Group:	Workforce Steering Board
Published Date:	9 th September 2025	Review Date:	26 th March 2028
Target Audience:	All staff employed under a contract of employment with Wirral University Teaching Hospital (The Trust)		
Links to other Policies, Strategies, Procedures etc.	Trust Policy 361 – Attendance Management Policy Trust Policy 210 – Staff Substance Misuse Policy Trust Policy 120 – Bullying and Harassment Policy Trust Policy 385 – Fairness at Work (Grievance Procedure) Trust Policy 115 – Anti-Fraud, Bribery and Corruption Policy and Response Plan Trust Policy 157 – Supporting Performance Improvement Policy Trust Policy 118 – Health and Safety Policy Trust Policy 174 – Freedom to Speak Up at Work Policy Trust Policy 003 – Safeguarding Adults Procedure and Guidance Trust Policy 057 – Safeguarding Children Policy and Procedure Trust Policy 298 – Procedure for Handling Concerns about the Conduct, Performance and Health of Medical and Dental Staff (MHPS)		

Disciplinary Process – Flow Chart



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1 Introduction & Purpose

There is an expectation that all employees maintain acceptable standards of conduct, performance, whilst safeguarding the interests of the Trust, its patients, patients and staff.

The purpose of this policy is to provide a clear and consistent framework for addressing concerns related to staff conduct and behaviour in the workplace. This policy aims to ensure that all employees are treated fairly and equitably, fostering a culture of accountability and professionalism while upholding the high standards expected in healthcare. It outlines the procedures to be followed when addressing alleged misconduct, whilst promoting transparency and consistency in decision-making.

The policy also serves to support both managers and employees in resolving issues constructively, ensuring compliance with employment law and the Trust values, ultimately safeguarding patient care and maintaining public trust, seeking to find alternative ways in addressing issues if formal disciplinary procedures is not necessary.

This policy and procedure are produced in line with the duties imposed by legislation and recognised good practice, as detailed by the Advisory, Conciliation and Arbitration Service (ACAS), along with just and learning culture principles (set out in appendix 1).

When considering using this policy Managers are asked to first consider if another policy may be more appropriate given the nature of the concern - seek immediate advice from the Human Resources Team.

2 Definitions

This section describes the meaning of any key points used within the policy.

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

3 Duties & Responsibilities

Chief Executive	The Chief Executive is ultimately accountable to the Board for the Trust's compliance with statute and regulation.
Workforce Directorate (HR Services Team)	HR Services will encourage the adoption of a consistent approach to discipline in accordance with accepted standards of good personnel practice, employment legislation and with just and learning culture principles in mind. HR Services will ensure the provision of training, guidance, and support to line managers on the operation of this policy. HR Services 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.
Responsibility of the Line Manager	Line Managers are responsible for ensuring that this policy is applied fairly and consistently within their own area. Considering alternatives ways in which the issue can be dealt with in order to not initiate formal processes that may not be necessary. Line Managers will ensure that employees are aware of and understand the standards and behaviour required by the Trust and professional bodies. Line Managers are required to seek advice from the HR Team in regard to the application of the policy.
Responsibility of Staff	To comply with all aspects of this Policy.
Case Manager	To consider findings from the fact find process and confirm next steps. If an investigation is required then develop terms of reference and make sure the investigation is completed in accordance with this policy, and the terms of reference. Ensure the case is reviewed and appropriate support is in place for staff impacted by the unexpected event or incident. Ensure relevant parties are kept updated with regards to the progress of the investigation, advise on any delays and update the terms of reference with any revised timescales for completion of the investigation. Determine next steps following review of the finding of the investigation.
Case Investigator	To carry out the investigation in accordance with this policy and the terms of reference provided by the Case Manager. Escalate any concerns to the Case Manager. Ensure the Case Manager is kept updated with regards to any delays to the investigation or anything that would mean a suspension could be lifted or amended duties altered. Provide an investigation report to the Case Manager detailing the findings from the investigation process.
Responsibility of TU Representatives	Trade Union Representatives (where appropriate) will support respective members who may be subject to the disciplinary process. As collectively agreed support any staff member in the event of a suspension meeting being necessary.

Responsibility of Freedom to Speak Up Guardians (FTSU)	FTSU Guardians are available to provide advice and guidance to staff and signpost to appropriate support.
Committee Roles	The Workforce Steering Board is responsible for the approval and performance management of this policy.
Mentor	A named person appointed to provide a member of staff with pastoral care and personal support.

4 Scope

This policy applies to all staff employed under a contract of employment at Wirral University Teaching Hospital (WUTH). This extends to those staff working shifts via NHSP at the Trust, who are also substantively employed with the Trust.

Individuals of 'student' or 'trainee' status will remain subject throughout their training to the requirements of the training provider, and where appropriate it may be necessary for the Trust to refer any matters or concerns to the provider.

5 Action when a concern arises

Concerns about a staff member can be identified and resolved through various informal methods focused on learning outcomes and supportive actions, allowing for quick intervention before issues escalate, without the need for formal investigations or disciplinary procedures. This may initially require further information being gathered through a fact find process. For further information on the fact find process please refer to Section 6 of this policy.

The line manager should promptly inform the staff member of any concerns and ongoing fact-finding efforts. During this discussion, appropriate support options should be offered, including assigning someone not directly involved in the concerns to provide welfare support. This individual must not influence the fact-finding process. Additionally, an agreement should be reached on the amount of information shared with the welfare support at this stage.

6 Informal Fact Find

When an unexpected event or concern arises, an appropriate manager, usually the line manager, will undertake a fact find, this is not intended to be a 'mini-investigation' but a brief and informal process seeking to understand the initial facts by gathering any information readily available and/or take verbal accounts from relevant parties involved and/or witnesses to the matter.

The fact find should be completed by using the informal fact find template available for downloading via the intranet and ideally shouldn't take more than 72 hours.

Once further facts have been gathered the Manager will be able to determine whether:

a) there is no substance to the allegations and therefore no further action is necessary;

b) the case is one which can be dealt informally with learning outcomes via Informal Early Resolution.

c) the staff member accepts responsibility for their actions and if appropriate, agreement can be reached to follow the Trust's formal Fast Track Disciplinary procedure. Please refer to section 10 of this policy.

d) the case is potentially a 'serious' concern where a formal investigation process needs to be followed. It is expected that the majority of cases will fall into a) and b) but there should be no hesitation to follow the formal route if required. Please see section 9.

7 Informal Early Resolution

Early resolution is a process for resolving issues quickly, it requires consideration of any learning outcomes and to determine the best approach to resolving matters informally. This is usually resolved through informal routes and likely because the fact find has determined concerns that are warranted misconduct as opposed to gross misconduct. Usually in these circumstances it is not necessary to invoke a formal investigation.

There are a number of options for consideration, some of which are provided below. However, this list is not exhaustive and other options can be discussed with your HR Manager. Some suggested routes to early resolution to achieve learning outcomes are:

- Reflections – to be carried out by the individual involved and presented to the appropriate Manager
- Informal counselling
- Facilitated discussions
- Mediation (with appropriately trained person)
- Coaching
- Mentoring
- Re-training

These options should normally be confirmed and wherever possible arranged within 5 working days of the fact find process concluding, unless there are exceptional circumstances as to why this timescale can't be achieved.

If the issue isn't satisfactorily resolved at this point, then the Trust reserves the right to initiate a formal process under the Trust's Disciplinary procedure. However, a fact-find would still need to have taken place.

8 Fast Track

The fast track procedure is designed to address cases of misconduct efficiently where an individual accepts the allegations. It allows for a swift resolution without the need for a formal investigation or full disciplinary hearing, provided the individual accepts the allegations and reflects on their actions. The fast track procedure is not available to individuals where allegations relate to gross misconduct.

Any individual involved in the case may propose the fast track procedure as a way to resolve matters. If the individual concerned decides to opt for the Fast Track procedure,

they will need to complete the fast track request form. It remains the employees right to proceed with a full disciplinary investigation and if they choose to do this, they will not suffer any detriment for doing so.

8.1 The fast track procedure

Once an individual confirms they wish to proceed with the fast track procedure, the manager supporting the process will provide them with the fast track request form, which will detail the specific allegation(s). The individual will then have the opportunity to respond to the allegation(s), provide any mitigation and a written reflection in response.

The manager will then consider this information before determining any appropriate next steps. It will not always be necessary to take formal disciplinary action and a number of informal resolution options can still be considered at this stage. However, in cases where it is decided that there is a possible need for formal action, the manager should then arrange a fast track disciplinary meeting, which is a single meeting and will provide all parties with the opportunity to discuss the allegations and the responses provided.

8.2 Fast track disciplinary hearing

Where it is decided that the fast track meeting is necessary. The meeting will proceed as follows:

- a) The case will be heard by an appropriate manager. This will normally be the line manager or a more senior manager from the department.
- b) A HR representative will be in attendance to provide advice, support and guidance.
- c) As there has been no formal investigation, there is no need for a Case Investigator to attend.
- d) As with any formal disciplinary process, the individual has the right to be accompanied by a trade union representative or a workplace colleague.
- e) At the outset of the hearing, the manager should check the individual's understanding of, and agreement to, the fast tracked process.
- f) The manager will refer to the completed fast track request form which has been submitted by the individual and use this to guide a reflective discussion around the incident.
- g) Given that the allegations have been admitted, no witnesses will be called.
- h) The individual will be given the opportunity to present any further mitigating circumstances to the manager who will consider this together with all the evidence, prior to making a decision and confirming an outcome in writing.
- i) The manager should refer to Section 14 of this policy when considering issuing or extending any disciplinary sanction.

8.3 Requesting a fast track hearing once a formal investigation has commenced

If a full investigation has already commenced the employee under investigation may request a fast track process at a later stage. Any agreement to revert to a fast track after commencement of an investigation will be based on individual circumstances and will consider the appropriateness of doing so. This decision will be made by the case manager.

8.4 Appeal

An individual opting for a fast-tracked disciplinary process will be entitled to appeal, for example this might be because the member of staff feels the sanction was too harsh. The appeals procedure can be found in Section 15 of this policy.

9 Formal Investigation

A formal investigation should only be considered an option following completion of the fact find process, see Section 6. Once the fact find process has determined that a formal investigation is warranted, a Case Manager should be appointed. The Case Manager should review the fact find report and determine the Terms of Reference for the investigation. These Terms of Reference will be shared with the employee and will direct the investigation.

The Case Manager will appoint a Case Investigator to undertake the investigation process in accordance with the Terms of Reference. It is the role of the case investigator to investigate the facts and keep the Case Manager updated with regards to the progress of the investigation including any developments that may require potential changes to the investigation process for example a review of suspension status or possible changes to the terms of reference.

The Case Investigator has discretion as to how the investigation is carried out but in all cases the purpose of the investigation is to ascertain the facts in an unbiased and fair manner. Investigations are not intended to provide evidence that a staff member is guilty of the allegations, the Case Investigator should therefore seek any evidence which either supports or contests the allegations against the staff member. Information gathered in the course of an investigation may clearly exonerate or provide a sound basis for effective resolution of the matter without the requirement to move to a formal Disciplinary Hearing, e.g.; no case to answer.

To ensure an investigation remains fair and balanced the Case Investigator must make sure the staff member subject to the allegations is afforded the opportunity to provide their view of events in an investigation interview. In the majority of cases the staff member under investigation should be the first person who is interviewed as this may negate the need to speak to others and prevent unnecessary delays. The interview should be confirmed in writing to the staff member, providing them with the right to be accompanied. It is for the Case Investigator to determine any other members of staff, pertinent to the investigation, of whom they would like to interview. Investigation interviews should be arranged by the Case Investigator and the staff member should be informed in writing of the requirement to attend and offered the right to be accompanied.

The Case Investigator is required to complete the investigation in accordance with the timescales outlined in the Terms of Reference and submit their report to the Case Manager. If the Case Investigator anticipates a delay arising, this should be escalated to the Case Manager who in turn should inform the staff member subject to the allegations.

Case Investigators should be given sufficient time to complete the investigation within the specified timescales, if there is a requirement to be released from any clinical duties to enable, then this should be discussed with the appropriate clinical lead. Any barriers should be referred back to the Case Manager.

The investigation report should provide the Case Manager with sufficient detail to make an informed decision on how to progress the case. If there is evidence of misconduct/gross misconduct having occurred, then the case should proceed to a Disciplinary Hearing. Alternatively, the Case Manager may conclude no case to answer or learning outcomes.

The outcome of the investigation should be communicated to the staff member by the Case Manager.

In the event of the case proceeding to a Disciplinary Hearing the Case Investigator may be required to attend the hearing as a witness to support in the presentation of the Management Statement of Case however in most cases it will be the role of the Case Manager to attend the hearing and present the evidence.

Further information regarding the duties and responsibilities of the Case Manager and Case Investigator can be found at Appendix 4 & 5.

10 What is Required for Terms of Reference

Terms of Reference should provide the specific detail including the allegations associated to the case, once agreed they should be issued to the Case Investigator and shared with the staff member who is subject to the investigation. The case investigator should be advised of any potential witnesses and a list of documents, or any evidence to be obtained.

The Terms of Reference pro-forma details specific information that should be communicated to both the investigating officer and the staff member. It is important that the staff member is fully aware of:

- An overview of the reason for the investigation being initiated and any relevant background information.
- The allegations against the employee (i.e. exactly what it is that the employee is alleged to have done) in sufficient detail to allow the employee to understand the case they need to respond to.
- This should be followed by confirmation of which examples of misconduct or gross misconduct may apply in the event that the allegations against them are upheld. See Appendix 2
 - References to any Trust policies being followed eg; Disciplinary Policy, Bullying and Harassment policy.
 - The objectives of the investigation, making clear what the Case Investigator is required to do for example:
 - The anticipated timescales for completion and submission of the report.
 - Any changes to the Terms of Reference upon commencement of the investigation

Terms of reference should be reviewed by HR before being issued.

11 The Investigation Process & Reporting the Facts

The Case Investigator is to remain impartial; they are not a decision maker in the process. They are responsible for implementing a process that will ensure the investigation is fair and balanced with the integrity of evidence being maintained throughout, also establishing the facts and report the findings. It is the responsibility of the Case Investigator to judge and plan for what information is needed and how that information should be gathered and presented.

Along with considering witnesses to be interviewed, the investigation plan should also detail other evidence that might be required eg; CCTV footage, emails, job descriptions, system audits/data, screenshots. This information should be referred to in the investigation report as supporting evidence and provided as appendices to the report.

The Case Investigator must follow the Terms of Reference from the Case Manager for the duration of the process and as such they must feel assured that they understand what is being asked of them. If further clarification is required at this stage, then the Case Investigator should arrange to meet with the Case Manager to discuss the requirements of the case further.

The plan should consider each of the allegations separately and what “rule(s) have been broken”. The Case Investigator should access any relevant policy document(s) whereby any alleged breach has occurred, relevant policies should be referred to in the terms of reference, and also cited in the final Disciplinary report.

The Case Investigator must ensure that safeguards are in place throughout the investigation so that breaches of confidentiality are avoided as far as possible. Patient confidentiality must also be maintained throughout.

Meetings will need to be held with witnesses as promptly as possible. Some witnesses may be identified from the Terms of Reference however others may be identified during the investigation process as it develops. Any witnesses being interviewed must be offered the right to be accompanied, therefore some flexibility around dates may be necessary. Witnesses should make every effort to attend an interview so as to not delay the process unnecessarily.

It is advisable for the Case Investigator to plan questions in advance of any investigation taking place. Advice can be obtained from your HR support with this task if required.

A suitable venue to conduct interviews with witnesses will be required and this must be in a confidential area.

The Case Investigator is responsible for making sure the appropriate invite is sent to the person being interviewed; templates are available via the Trust intranet.

Notes should be taken of the investigation interview capturing the individual’s answers to the questions asked. The individual should be provided with a copy of these notes and asked to sign them to agree they accurately reflect the discussions held, or alternatively to provide any proposed amendments. As part of the investigation plan, consideration will need to be given to who will support this element of the process.

The Case Investigator must ensure there are sufficient written statements collected to establish the facts prior to concluding the investigation. Ideally and best practice suggests only to interview witnesses once where possible. The person who is subject to the allegations may need to be interviewed a second time and this will be dependent on how interviews with witnesses develop and whether further questions need to be asked.

Once the investigation has concluded the Case Investigator must ensure that a written record is kept of the investigation, the conclusions reached and provide a report to the Case Manager. The report must only include information that is factual and collected

during the investigation process, and should provide the Case Manager with sufficient information to make a decision as detailed in Section 12 of this policy.

If during the investigation further concerns come to light, but the Case Investigator believes this sit outside of the remit of the terms of reference, then this should be escalated to the Case Manager. In such circumstances additional allegations may need to be added to the TOR's or a separate investigation may be needed.

12 Decisions for the Case Manager

Upon receipt of the investigation report from the Case Investigator the Case Manager is required to:

- Review the full content of the report, including all of the supporting information provided as appendices.
- Determine if there is a case to answer in each of the allegations that have been investigated.
- If there is a case to answer, consider the most appropriate outcome, this should follow the same considerations as Sections 7 & 8.
- If the Case Manager's decision is to refer to a Disciplinary Hearing confirm this through HR.
- Consider if there are any health concerns in respect of any staff members subject to the investigation process and if so ensure a referral to occupational health has been submitted or reviewed.
- Review whether any suspension/exclusion needs to continue.
- Consider if the concerns are serious and therefore should be referred to the appropriate professional body.
- The Case Manager is responsible for any communication to the individual(s) concerned with regards to the findings of the investigation and appropriate next steps.
- In cases where there is no case to answer, the Case Manager should consider if there are any learning outcomes and communicate these as appropriate.

13 The Disciplinary Hearing

If, after the investigation has concluded, the Case Manager considers it necessary to hold a disciplinary hearing, the employee must:

- be informed in writing of the arrangements for the hearing,
- their right to be accompanied,
- the allegation(s) which will be considered,
- and the potential consequences of the hearing for them.
- be provided with a minimum of ten working days' notice of the hearing will be provided, unless agreed otherwise by the employee or their representative.
- where possible the disciplinary hearing will be arranged within the member of staff's working shift.

The letter of request to attend a disciplinary hearing will be sent electronically via email, unless a specific request is made to post to the home address. The appropriate templates are available via the Trust intranet site.

If for any reason, the employee or their representative are not able to attend the scheduled disciplinary hearing, the employee should put a formal request into the Chair of the hearing requesting a postponement. A hearing will not be postponed without a valid reason, and not more than once, unless in exceptional circumstances. If a Trade Union representative or workplace colleague cannot attend on the date confirmed above and the hearing is postponed, it is expected that the individual provides an alternative date and time that is reasonable, and within ten working days of when the meeting was originally due to take place so the meeting can proceed with all parties in attendance. It will be the decision of the Chair as to whether grant the request for a postponement.

A hearing will not be postponed more than once, when 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 as per Appendix 3 of this policy. A professional representative will be present if required. A HR Representative will attend and advise the panel on matters pertaining to policy and procedure. The HR representative may also ask questions throughout the hearing however they will not hold a decision making role. The Employee and management have the opportunity to call relevant witnesses. All parties should be made aware in advance of the hearing of any witnesses attending.

At the hearing the Chair of the panel is to ensure the employee understands the matters to be considered, that they have an adequate opportunity to prepare and present their case and that the hearing is conducted fairly in all other respects. The Chair of the panel must ensure that the hearing is conducted in accordance with this Policy and with compassion and respect to all attendees.

The Chair of the panel may adjourn a hearing to enable them to pursue any necessary further enquiries, it should be noted that if a Chair is seeking additional information during this adjournment then the employee and their representative have the right to review and comment on this information prior to a decision being made. The Chair of the panel should adjourn in order for the panel to deliberate before reaching a final decision.

Before considering imposing a disciplinary sanction, it is essential that the Chair considers:

- the Chair must be satisfied that the investigation was fair, balanced and reasonable in the circumstances,
- and that no part of the process was flawed such as to render any panel decision unfair.
- If further investigation is required in order to properly determine whether the employee has committed misconduct, then the hearing should be adjourned to allow this to take place.
- Once satisfied that misconduct has occurred, the panel should consider what sanction to apply. Please refer to Section 14 for further clarification.
- In doing so, the panel must consider any mitigating or aggravating circumstances put forward within the investigation report or by the employee or their representative.

If a decision cannot be made on the day for whatever reason the Chair of the panel must inform all parties of the next steps, communication method and timeframe. At the conclusion of the hearing the 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.

Written confirmation of the decision will be forwarded to the employee as soon as is reasonably possible and no later than within 7 working days, 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 6 provides further details of the Procedure to be followed at a disciplinary hearing.

14 Possible Outcomes of the Hearing

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 Chair of the Panel to issue a final warning at a first disciplinary hearing should the nature of the offence justify this. With the exception in cases of **gross misconduct**, no individual should be dismissed unless they have a live final warning.

14.1 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 from the date it is issued. If a further act of misconduct occurs while the warning is live, then further disciplinary action may result following which a second or final written warning (depending upon the seriousness) may be issued. After the expiry of the 6-month period, the warning will be disregarded for cumulative disciplinary purposes but will be retained on file. Any expired warnings may be taken into account in future disciplinary cases in relation to the issue of mitigation.

14.2 Second Written Warning

A second written warning may be given where there has been a further breach of discipline or where they fail to improve during the live period of a first warning, but it is not deemed sufficiently serious to escalate straight to a final written warning. A second written warning will normally remain live for a period of 12 months. If a further act of misconduct occurs while the warning is live, then further disciplinary action may result following which a final written warning or may be issued. After the expiry of the 12-month period, the warning will be disregarded for cumulative disciplinary purposes but will be retained on file.

14.3 Final Written Warning

A final written warning may be given where there has been a further breach of misconduct or where they fail to improve during the live period of a second written warning, or where deemed sufficiently serious, during the live period of a first warning.

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 occurs while the warning is live, then further disciplinary action may result following which the employee may be dismissed (depending upon the seriousness). After the expiry of the 12-month period, the warning will be disregarded for cumulative disciplinary purposes but will be retained on file.

14.4 Single Stage Final Warning

In instances where the employee has no live warnings, but the degree of misconduct is deemed to be very serious, such that a first warning would be insufficient (including cases of persistent repeated acts of unacceptable behaviour), or in cases of gross misconduct potentially warranting dismissal but where there are significant mitigating circumstances, a “single stage final warning” may be given. For examples of gross misconduct see Appendix 2. 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 the employee may be dismissed (depending upon the seriousness). After the expiry of the 12-month period, the warning will be disregarded for cumulative disciplinary purposes but will be retained on file.

14.5 Dismissal

Summary dismissal is warranted as a first disciplinary action only when the offence relates to gross misconduct. In such cases dismissal is without 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 considering all current disciplinary warnings which have been issued. Dismissal in these circumstances will be subject to notice as governed by the terms of the employee’s contract.

In the event of a dismissal arising from a disciplinary hearing, the line manager is responsible for making sure the required workflows are transacted on ESR, any Trust property is returned and to check with Finance/Payroll for any other financial commitments in place at the time of the dismissal eg; fleet car.

14.6 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 is offered and opts to accept downgrading with single stage final warning as an alternative to dismissal, there will be no right of appeal.

15 Appeal

Notification of an Appeal Hearing

If a staff member wishes to appeal against the outcome of the disciplinary hearing, they should submit an appeal within 10 working days of the date of the disciplinary letter to the appropriate manager cited in the disciplinary outcome letter. The staff member should be aware that an appeal is not intended to be a rehearing of the original disciplinary matter and therefore any appeal must clearly outline the reasons for appeal.

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 Chair of the Disciplinary Hearing panel is responsible for providing a full statement of case outlining the reasons for taking disciplinary action/dismissal 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 Appeal panel no later than 10 working days before the Appeal.

The appellant will provide the full details of their 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 along with the Appeal Panel pro-forma.

These Statements of Case 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, 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 3). A Professional and / or Independent Representative will be present if required. A 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 (MHPS)

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 should satisfy themselves on the following points:

- Was the manager's decision to take disciplinary action reasonable, based on the evidence and circumstances?
- Is the treatment of the employee consistent with the Trust's general approach to similar cases?
- Has the matter been handled fairly and appropriately and is it consistent with the Trust's Disciplinary Procedure?
- Has the manager been biased or prejudiced in anyway when reaching the decision?
- 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 should focus on reviewing the decision that was taken and hear the relevant evidence to test this decision.

Witnesses are not usually required to attend the appeal hearing, unless any further relevant evidence brings a requirement for a witness to be present.

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

16 Restricted Duties or Suspension

Suspension should be a last resort and used only when temporary redeployment to alternative duties or an alternative work location is unsuitable or will not sufficiently address patient safety, colleague safety, security risks or protect the integrity of the investigation.

The decision to suspend from duty, or take an action short of suspension and apply a restriction to duties, will normally follow the fact find process. A manager should always seek advice from an HR Manager/HR Business Partner prior to holding a suspension meeting.

To support the decision the appropriate manager should complete the Suspension/Action Short of Suspension Decision Rationale proforma. This proforma is only accessible through your HR Manager or HR Business Partner.

Suspension is a neutral act and whilst a member of staff is suspended from the workplace they will remain on full pay. The Line Manager for the employee must inform payroll when a member of staff has been suspended from duty to ensure that their pay is managed appropriately. Suspension from duty is not a disciplinary measure and should not imply that such action will follow.

We must remain mindful that suspension may be stressful for the individual. The individual should always be advised of the support available to them through the Occupational Health Department and Employee Assistance Programme. These services can provide welfare and specialist support during the period of suspension. In addition, support will also be available from the Case Manager, HR Manager, Trade Union Representative, and the Freedom to Speak-Up Guardians.

If deemed necessary to suspend, the individual should be made aware of the named person who has been appointed to provide them with pastoral care and personal support. It is essential that the named person makes regular contact with the staff member.

Authority to suspend should be in line with appropriate delegated level of authority (see levels of authority at Appendix 3).

Employees can be accompanied by a Staff Side representative or a witness at a suspension meeting. Every effort will be made to contact a staff side representative; however, the suspension meeting should proceed as arranged if a representative is not available.

During a period of suspension employees should not attend any WUTH premises unless it is necessary for medical purposes or planned visits to patients. In such circumstances the employee must notify the Case Manager or HR Manager/Business Partner in advance of attending the premises, except in emergency situations which will be considered an exception to this rule. The suspended staff member must not contact anyone who is potentially a witness in the investigation at all but could contact other staff members not likely to be 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.

During suspension, the employee must be ready and available to engage with the Trust or return to work, if required, upon reasonable notice; this includes attendance at investigation or other management meetings. If the employee is unavailable due to sickness or wishes to take annual leave they must report/request this in the usual way, and ESR will be updated with the appropriate detail. Any pre-booked annual leave will remain in place and recorded on ESR. Any requests to cancel pre-booked leave will be considered in accordance with the Trust's Annual Leave policies.

17 Consideration of Referral to a Professional Body/Other Agencies

17.1 Referral to a Professional Body

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, Nursing Officer or Responsible Officer.

17.2 Referral to the Disclosure & Barring Service (DBS)

Following any decision taken to restrict duties or suspend a member of staff, see Section 16, the Trust will need to consider its statutory duty to make a referral to the Disclosure and Barring Service (DBS) if the nature and severity of the allegations pose a risk of harm to adults and children with care and support needs.

Examples of the types of alleged relevant conduct potentially warranting a referral are detailed below:

- Endangers a child or adult, or is likely to endanger a child or adult
- If repeated against or in relation to a child or adult, would endanger a child or adult, or be likely to endanger a child or adult
- Involves sexual material relating to a child (including possession of such material)
- Involves sexually explicit images depicting violence against human beings (including possession of such images)
- Is of a sexual nature involving a child or adult

Some more specific workplace examples of harm might include:

- Physical abuse eg; assault, misuse of medication, improper restraint etc.
- Sexual abuse eg; indecent exposure, sexual harassment, inappropriate touching etc.
- Emotional or psychological abuse eg; humiliation, controlling, making a vulnerable person feel worthless etc.
- Extremism
- Financial abuse eg; theft/fraud, exploitation
- Neglect or omission eg; failing to administer reasonable care

(this list is not exhaustive)

As a regulated activity provider, the Trust is responsible for the management or control of regulated activity and therefore has a legal duty to refer. It is a criminal offence to fail to make a referral without good reason. In addition, where appropriate the Trust will report an employee to the professional regulator, e.g. GMC, NMC, HCPC or Social Work England, see also section 17.1 above.

The need to refer is based on the two following conditions being met:

- (1) Permission to engage in regulated activity is withdrawn by the Trust for the following reasons:

- Suspension/Restrict Duties
- Re-deployment
- Dismissal
- Retired
- Redundancy
- Resignation

and (2) you think the person has either:

- Engaged in relevant conduct
- Satisfied the harm test; or
- Received a caution for, or a conviction for a relevant offence

If the criteria for referral to the DBS are satisfied, this must be actioned during any decision making process leading to the termination of the contract of employment or redeployment. The referral must be completed by the individual's line manager, supported by the member of HR advising on the case.

If, however, it is determined that the criteria are satisfied following a formal hearing, the duty falls to the Chair of the Hearing panel to complete the referral or identify a nominated person to complete it ie; Case Manager or Line Manager.

Referrals should be made using the Barring Referral Service via the GOV.UK website [Barring Referral Service - GOV.UK](#). Appendix 8, provides further information on what information is required to make a barring referral.

When making a barring referral on behalf of the Trust you are permitted to provide the required information under UK General Data Protection Regulation (UK GDPR) and the Data Protection Act (DPA).

18 Right to Representation

Employees have a statutory right to be accompanied where they are required or invited by management to attend any formal disciplinary meetings. The chosen companion may be a fellow worker, a trade union representative, or an official employed by a trade union.

19 Staff Support

Just and learning culture principles maintain that when an incident or unexpected event occurs the question must be asked "Who got hurt" and "Who are the victims". This might be a patient or a member of staff who was witness to an incident, it might also be the person of whom an allegation has been made against them. In any event the Trust is committed to ensuring staff are supported through the Occupational Health Service and/or the Employee Assistance Programme which offers a 24 hour helpline for colleagues to access if needed. The above support service must be offered to staff involved in an incident or unexpected event.

Other welfare support should be considered if an employee is suspended, please refer to section 16.

20 Confidentiality

Within the Procedure

The application of this policy will be undertaken in a manner that ensures total confidentiality of the issues and that requires the members of staff and management involved to maintain confidentiality. 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 may lead to action under the Disciplinary policy.

With regards to any press enquiry, the names of any members of staff will not be released in regard to any investigation or hearing into disciplinary matters. The employer will only confirm publicly that an investigation or disciplinary hearing is underway where it is necessary to do so.

Personal data released to the case investigator for the purposes of the investigation must be on a need to know basis, fit for the purpose and proportionate to the seriousness of the matter under investigation. The trust will operate consistently with the guiding principles of the Data Protection Regulations.

21 How to Handle Criminal Convictions and Dismissals

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 a police investigation / prosecution before taking fair and reasonable action.

Disciplinary action including dismissal will not be automatic in proven criminal cases.

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. However, there are various factors to consider before deciding to proceed with an investigation in such circumstances and advice must be sought from an HR Manager before doing so.

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

Even in cases where the Trust is unable to investigate an alleged criminal offence pending conclusion of the police investigation and/or trial, there may be other substantial factors that would be relevant in deciding whether or not the alleged criminal offence renders the employee unsuitable to continue in the Trust's employment, as follows:

- The relevance of the offence to the job for which the individual is employed and whether or not the Trust can have trust and confidence in them to perform that role, regardless of the outcome of the criminal process, including the potential risk to patients, the public, other employees, or to the employee themselves.
- The potential for damage to the reputation of the Trust if the employee remains in the Trust's employment.
- The availability of the employee to perform their role for the foreseeable future.

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

In any circumstances where these factors might be relevant to the continued employment of the employee, further advice should always be sought from HR before taking any action.

22 Allegations of Fraud, Bribery and/or Corruption

All NHS employees are expected to always be honest and act with integrity and probity, not making, permitting or knowingly allowing to be made, any untrue or misleading statement or information relating to their duties or functions of the Trust.

The Trust is committed to fraud prevention and takes the issues of fraud, bribery and/or corruption very seriously and any suspicious activity will be referred to the Local Counter Fraud Specialist (LCFS) and the results of any investigation could lead to disciplinary action being taken up to and including dismissal and/ or civil, criminal prosecution proceedings being instigated against the appropriate person/ persons involved and the Trust.

Depending on the allegations, it may be necessary to make a referral to a relevant body, such as:

- For an employee registered with a professional body, e.g. Registered Nurses, Allied Health Professionals or Doctors, the regulatory body may be notified.
- For all staff, it may be necessary to inform other agencies, such as the Police, the NHS Counter Fraud Authority, the UK Border Agency, the Disclosure and Barring Service.
- Where allegations concern the safeguarding of children or vulnerable adults, the Trust's Safeguarding Lead must be notified without delay.
- In cases relating to personal data breaches, the Trust has a legal duty to report to the Information Commissioners Office within 72 hours, so these need to be raised with the Trust's Information Governance Team without delay.

The Trust will provide full co-operation to any such bodies with their investigations and be in regular contact. The Trust will aim to continue with internal investigations and only delay if instructed by an external body. The employee will be informed if any such referral is made and provided with details of the referral.

In circumstances where fraud, bribery or corruption is alleged, the Trust will contact the Local Counter Fraud Specialist (LCFS) for advice, and the investigation will be conducted jointly with them, in accordance with this procedure, and those procedures agreed to

address alleged incidents of fraud. There may be occasions where the Local LCFS or Manager and / or any police investigations may have to be conducted prior to the Trust's investigation process (HR should seek to take advice from the LCFS or Manager and / or the police prior to the internal investigation commencing).

However, once the internal investigation is fully completed, any resulting formal disciplinary action should be instituted without delay unless the Trust is advised to the contrary by the police or the LCFS or Manager.

In all cases where there is a quantifiable financial loss to the Trust that is proven to be attributable to an individual's actions, then the LCFS / Manager or the Responsible Manager (Chair) at the disciplinary hearing must consider the process for the recovery of losses incurred to fraud. This is particularly relevant where a decision to dismiss is considered so that the Trust can recover losses from any final salary payments.

23 References

- Just Culture, Sidney Dekker (2017, *Third Edition*)
- NHS Improvement, A just culture guide
- Disclosure and Barring Service (*DBS*)
- Advisory, Conciliation and Arbitration Service (*ACAS*)
- General Data Protection Regulation (2018)

Appendix 1 – A Just Culture Guide

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?



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

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?



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

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



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

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?



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

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



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

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 2 - 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, bribery, 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 report being subject to a police investigation, arrested, cautioned, or convicted of a criminal offence, or issued with a reprimand letter for an offence committed.
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.

Appendix 3 – Delegated Levels of Authority

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 Senior Line Manager or Head of Service	Appropriate line manager who is senior to the decision maker at the hearing stage	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.

In cases of where suspension becomes necessary this should be undertaken by the appropriate line manager or nominated Case Manager, supported by a HR Manager or HR Business Partner.

Appendix 4 – Task List for a Case Investigator

- ☐ Review the terms of reference that should have been sent to you from the Case Manager, this should be undertaken before commencing any aspect of the investigation.
- ☐ If any elements of the terms of reference are unclear refer back to the Case Manager for clarification.
- ☐ Make sure you understand how the allegations align to disciplinary conduct, as per appendix 2 of this policy.
- ☐ Obtain a copy of the fact find report if not already received.
- ☐ Familiarise yourself with any relevant policies and be clear on what “rule” has been breached. Relevant policies should be referred to within the Terms of Reference.
- ☐ Familiarise yourself with any professional standards, code of practice relevant to the case.
- ☐ Understand the timescales for completion of the investigation.
- ☐ Make contact with your HR Manager and make arrangements to hold an initial planning meeting.
- ☐ Consider the types of evidence that you might require eg; system audit reports, CCTV, pharmacy records and begin to gather this information
- ☐ Develop an investigation plan, considering the order of the witnesses you want to meet with to take a witness statement.
- ☐ Consider when best to meet with the member of staff of whom the allegations are against.
- ☐ Arrange statement interviews, consider the right to be accompanied, see section 13 of this policy.
- ☐ Make sure your HRM support is available to attend any statement interviews.
- ☐ Send out invite letters to those you need to interview.
- ☐ Plan interview questions as appropriate for each witness.
- ☐ Very important, listen/look for ‘red flags’ or indicators that the employee needs some support, discuss with HR and consider escalation to the named mentor/line manager at the earliest opportunity.

- ☐ Escalate any other concerns that might arise during the process to the Case Manager.
- ☐ Once all statements have been taken, commence populating the investigation report as per the template document.
- ☐ Ensure the Case Manager is kept updated with regards to any delays to the investigation or anything that would mean a suspension could be lifted or amended duties altered.
- ☐ Once complete present the investigation report to the Case Manager detailing the findings from the investigation process and include any required appendices.
- ☐ Respond to any feedback from the Case Manager as timely as possible.
- ☐ Keep records as necessary and be prepared to attend the hearing should the Case Manager determine a case to answer.
- ☐ Destroy any records 6 months following a closed case.

Appendix 5 – Task List for a Case Manager

- ☐ Review the content of the fact find report and consider the appropriate next steps as per section 19 of this policy.
- ☐ If required support with the steps outlined in section 11 of this policy, Restricted Duties or Suspension.
- ☐ Nominate a Case Investigator.
- ☐ Develop Terms of Reference making clear the allegations to be investigated.
- ☐ Populated the terms of reference with details of the expected timescale for completion of the investigation and make reference to any breach of Trust policy and procedure, professional standards or Code of Practice in the terms of reference. See section 17 of this policy.
- ☐ Issue the terms of reference to the nominated Case Investigator. This can be a face-to-face meeting if preferred.
- ☐ Issue the terms of reference to the individual subject to the allegations.
- ☐ Establish arrangements for communication including phone/email and home address details.
- ☐ If the employee of whom is subject to the allegations is suspended, diarise bi-weekly reviews and ensure the staff member is informed in writing of the outcome of your case review.
- ☐ Very important, listen/look for 'red flags' or indicators that the employee needs some support, this might have been escalated to you by the Case Investigation. In such circumstances discuss with HR and consider escalation to the named mentor/line manager at the earliest opportunity.
- ☐ Ensure relevant parties are kept updated with regards to the progress of the investigation, advise on any delays and update the terms of reference with any further allegations that might come to light during the investigation or any revised timescales for completion of the investigation.
- ☐ Chase the Case Investigator for the investigation report if not received as anticipated.
- ☐ Review the investigation report.
- ☐ Feedback to the Case Investigator should you view the investigation as incomplete or if the report requires further information inserting.

- ☐ Once you are satisfied with the report, consider the appropriate next steps based on the findings of the investigation. See section 19 of this report.
- ☐ Taking advice from HR, communicate in writing the outcome of your decision to the individual subject to the allegations.
- ☐ Keep records as necessary and be prepared to attend the hearing should you determine a case to answer.
- ☐ Consider whether any referrals are appropriate as per section 12 of this policy and seek support from HR with regards to taking the appropriate next steps.
- ☐ Destroy any records 6 months following a closed case.

Appendix 6 – Procedure to follow at Disciplinary Hearing

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

- Introduce all present and confirm the credentials of the employee's representative
- Explain 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 immediately, or as soon as is reasonably possible and inform the individual that they have the right to appeal. Any appeal should be made to the Chief People Officer within 10 working days of the date of the outcome letter, clearly outlining the reasons for the Appeal.

Appendix 7 – 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 should 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 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 full 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 points.
5. 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 8 – What you need to make a Barring Referral

If you find you do not have all of the following information, you should complete as much of the form as possible.

1. your contact details
2. details of the person being referred (including their name, address, date of birth and national insurance number)
3. contact details for any other agencies involved in investigating the relevant conduct
4. details of the risk of harm or harm suffered
5. documents in support of your referral (for example, statements, reports, meeting minutes and other evidence)

What does a good referral look like ?

- **Timely**, balance the need for a swift response with a need for sufficient documentary or supporting evidence
- **Accurate and fully-completed referral form**. recognition of any gaps, if present
- **Chronology**, detail the sequence of events from initial notification to the final outcome
- **Relevant information**, to facilitate the DBS decision-making process
- **Victim impact**, what was the impact on the victim
- **Training and supervision records**, accurate, dated training and supervision records
- Internal and external investigative and disciplinary processes, this should include interviews, police intervention, and/or multi-agency meetings. Include recruitment and additional employment information i.e. any previous misconduct or complaint

Equality Analysis

The Equality Analysis (EA) form should be completed in the following circumstances:

- All new policies
- All policies subject to renewal
- Business cases submitted for approval to hospital management impacting on service users or staff
- Papers submitted to hospital management 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

Title	Disciplinary Policy		
Policy Reference	135		
Lead Assessor	Jill Ingrey		
Date Completed	January 2025		
What groups have you consulted with? Include details of involvement in the EA process	Staff in area concerned	☐	Staff side colleagues ☒
	Service users	☐	HR ☒
	Other	☐	Other ☐
	Please Give Details		
What is being assessed? Please provide a brief description and overview of the aims and objectives			
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 (Staff, patients, wider community?)			
This policy applies to all staff employed under the contract of employment with the Trust.			

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 proposal/document has any impact (positive, negative or neutral) on groups from any of the protected characteristics listed overleaf.

When considering any potential impact you should use available data to inform your analysis such as PALS/Complaints data, Patient or Staff satisfaction surveys, local consultations or direct engagement activity. You should also consult available published research to support your analysis. For further support with this, please refer to the Library and Knowledge Service accessible via the Trust's intranet site or switchboard.

Section 1 – Initial analysis

What is the impact on the equality groups below?		
Positive: • Advance equality of opportunity • Foster good relations between different groups • Address explicit needs of equality target groups	Negative: • Unlawful discrimination, harassment and victimisation • Failure to address explicit needs of equality target groups	Neutral: • It is quite acceptable for the assessment to come out as Neutral impact • Be sure you can justify this decision with clear reasons and evidence if you are challenged
Equality Group	Any potential impact? Positive, negative or neutral	Comments / Evidence (For any positive or negative impact please provide a short commentary on how you have reached this conclusion)
Disability (inc physical and mental impairments)	Neutral	
Age	Neutral	
Race (all ethnic groups)	Neutral	
Religion or belief	Neutral	
Sexual Orientation	Neutral	
Pregnancy & Maternity	Neutral	
Gender	Neutral	
Gender Re-assignment	Neutral	
Human Rights	Neutral	
Mental Health	Neutral	
Other e.g. Carers	Neutral	

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 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.

In all cases - you should submit this document with your paper and / or policy in accordance with the governance structure with copies to wih-tr.EqualityWUTH@nhs.net for monitoring purposes.

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.

Who and how have you engaged to gather evidence to complete your full analysis? (List)	
Name & Job Title	Name & Job Title
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 and or policy in accordance with the governance structure.

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

Consultation, Communication and Implementation

Consultation Required	Authorised By	Date Authorised	Comments
Equality Analysis	Jill Ingrey		This document is embedded within the Policy template
Policy Author Checklist	Jill Ingrey		Checked for workforce / development, medicines, finance or wider corporate implications.
Other Stakeholders / Groups Consulted as Part of Current Version Development	Policy, Terms & Conditions Partnership Steering Group Terms & Conditions Workforce Steering Board		
Trust Staff Consultation via Intranet	N/A		

Date notice posted in the News Bulletin.	N/A	Date notice posted on the intranet	09/09/2025
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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/Business Partners 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. Changes will be incorporated into Training slides for any Disciplinary Training sessions.	HR Services

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 / Lawrence Osgood	Suspension – to include ability to contact colleagues who are not likely 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: • Section 2 • Section 4 • Section 7 • Section 9 • Section 10 • Section 11 • Section 18
Jan 2025	5	Jill Ingrey	Full review/re-write
July 2025	5.1	Jill Ingrey	Updates at Section 7.2 with regards to make a barring referral and included Appendix 8 guidance on referring.
Aug 2025	5.1	Amy Park	Insertion of section 22 to comply with Economic Crime & Corporate Transparency Act 2023 (ECCTA) coming into force September 2025. Bribery also added to point 1, appendix 2.

Monitoring Compliance with the Policy

Describe Key Performance Indicators (KPIs)	Target	How will the KPI be Monitored?	Which Committee will Monitor this KPI?	Frequency of Review	Lead
Case duration	12 weeks	ER Tracker	Workforce Steering Board	Monthly	Head of HR

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 team	Workforce Steering Board	Annual