

# TRUST POLICY AND PROCEDURE FOR DISCIPLINARY OF EMPLOYEES EXCLUDING MEDICAL AND DENTAL STAFF

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# TRUST POLICY AND PROCEDURE FOR DISCIPLINARY OF EMPLOYEES EXCLUDING MEDICAL AND DENTAL STAFF

## 1 Introduction

The Trust aims to provide the highest standards of patient care and every employee has a significant role to play in delivering these. The Trust recognises that employees are its most valuable asset and anticipates that they will play an active role in its future.

The values and behaviours of our employees are central to achieving this. Employees represent the Trust to our patients and the public, and as such, the highest standards of conduct both professional and personal are required at all times to ensure that the organisation maintains and retains an excellent reputation.

Outlined in the Trust's Standards for C.A.R.E. (Compassion, Attitude, Respect and Equality) Guidance employees can find the Trust's required standards of conduct for recognised values and behaviours. Other relevant professional codes of conduct will also be adhered and referred to for example Nursing and Midwifery Council Code of Professional Conduct.

This policy provides a clear formal framework for taking disciplinary action when it is alleged that an employee has fallen below the required standard in an aspect relating to their employment. This framework is designed to ensure consistent, equitable and fair treatment for all employees.

This policy and its supporting procedures should be applied when:

- Informal approaches have failed to resolve conduct, or
- Formal approaches are appropriate because of the seriousness of the situation

Key principles include that employers and employees should deal with issues promptly (source: ACAS).

This procedure complies with the overarching legislative framework and with key ACAS documents.

## 2 Purpose and Outcomes

2.1 This policy will apply to issues that are deemed to be related to conduct. It does not apply to issues deemed as capability relating to performance as this is dealt with in accordance with the Trust's Capability Policy. This Policy does not cover health issues, which will be dealt with in accordance with the Trust's Health and Attendance Policy.

- 2.2 The Policy and its supporting Procedures have been developed to ensure that all employees are aware of:
- The standard of conduct required of them
  - The process to follow when dealing with misconduct and appropriate action to take.
- 2.3 The Procedure is designed to establish the facts quickly and deal consistently with matters of concern and ensure improvements are implemented.

### **3. POLICY IN PRACTICE**

#### **Implementation of the Disciplinary Policy and Procedure**

#### **3.1 Taking action within the Disciplinary Policy and Procedure**

Advice from Divisional HR Advice Teams on the application of this policy will be available to ensure fairness and consistency. When managing issues that may lead to disciplinary action, managers must seek Human Resources advice at the earliest opportunity.

Our policy includes action under both informal and formal action and provides for sanctions where appropriate ranging from outlining standards for improvement to dismissal.

##### **3.1.1 Disciplinary Procedure - Informal Action**

Informal action would take the form of an informal discussion which should be on a one to one basis between the employee and normally their immediate line manager. A record of the meeting, together with agreed action, should be confirmed in writing to the employee, with a copy retained by the manager.

At this point Mediation may be appropriate. Please see Mediation Policy.

##### **3.1.1a The purpose of informal action is to:**

- Explore the extent to which a problem exists by citing specific examples, facts or incidents
- Outline the standards of satisfactory conduct required and clarify the shortcomings in reaching these standards

- Explore possible reasons for the shortcomings by listening to any explanations or statements made by the employee
- Discuss how the employee should seek to improve
- Consider what training or support may be provided
- Agree the time period in which to achieve the standard required, how this will be monitored and the period at which reviews will take place
- Explain to the employee that failure to meet the established reasonable standards will lead to formal disciplinary action if their conduct persists.

Counselling may also be recommended at any point of the process.

### **3.1.2 Disciplinary Procedure - Formal Action**

The aim of taking formal action is to enable and encourage employees to behave at the standard required wherever possible. The Case Manager may decide that formal action may proceed without any informal action if the nature of the offence is a serious breach of conduct or if informal action has not achieved the required change.

3.1.2a Disciplinary action will not be taken against an employee until the allegation(s) has been investigated. This will normally require the holding of an investigatory meeting with the employee and any relevant witnesses before a decision is made to proceed to any disciplinary hearing;

3.1.2b The precise disciplinary action to be taken will depend on the facts of the case, the seriousness of the misconduct, whether the employee has any disciplinary warnings that are still current and any mitigating factors raised by the employee. Certain cases may be so serious as to warrant dismissal.

3.1.2c At all stages of the formal disciplinary and appeals process the employee will have the right to be represented by a companion.

3.1.2d The employee, against whom allegations have been raised, will be advised of the nature of the complaint in writing and will be given the opportunity to view the complaint prior to responding and stating their case before any decision is made.

3.1.2e It is important that the principles of natural justice are adhered to with regard to the disciplinary policy. Disciplinary action will therefore not be taken until an investigation has been completed and the Case Manager has determined that there is a case to answer requiring a Disciplinary hearing to be convened.

## 3.2 Suspension

3.2.1 Suspension is a neutral act and does not presume guilt, it is not in itself a disciplinary measure but an arrangement whereby the employee is suspended from their duties with the employment relationship continuing, pending an investigation/outcome under the disciplinary procedure. Any decision to suspend must not be taken lightly and must be discussed with Workforce Management or if taking place out of hours with the Senior Manager on-call, before a decision to suspend is taken.

3.2.2 Before a final decision is taken to suspend, alternative options, for example suitable temporary redeployment, or a change of working hours to allow for increased levels of supervision, should have been considered by the relevant manager. This will be in cases where there is a perceived risk to employees, patients or the Trust or where an investigation may be prejudiced if the employee remained at work.

An individual will only be suspended after consideration of the above, and will be in exceptional cases.

3.2.3 No disciplinary action or decision to suspend a Professional Organisation/Trade Union Representative will be taken until the matter has been discussed with the Director of Workforce Management or a nominee and the full time official or where this is not possible the Lead Partnership Facilitator will be contacted (please also see page 7 of the policy).

3.2.4 Suspension will normally be with full pay. Suspension without pay will be considered in circumstances where the Trust has established a reasonable belief that the employee is precluded from lawfully fulfilling the terms of their contract of employment.

3.2.5 To summarise, circumstances in which suspension may apply will include:

- Where the alleged offence is thought to be in the nature of gross misconduct (see Disciplinary Rules Appendix 1);
- Where the employee's presence constitutes a serious risk to themselves, patients, other employees, potential tampering of evidence or defiling of Trust property;
- Where the employee is under charge or suspicion of a criminal offence that significantly affects their status, role or responsibilities within the Trust;
- Where the employee's presence would preclude a full and proper investigation from taking place;

3.2.6 A decision to suspend an employee should be confirmed in writing by the

Case Manager within **3 working days** and should specify the exact nature of the allegation(s), the reason for suspension, the expected length of suspension, the name of the case investigator and the conditions under which the suspension shall continue.

- 3.2.7 In this letter it will also be confirmed to the employee that they must leave and stay away from Trust premises. They must not come onto the Trust's premises and not return without prior approval, or unless at the direct request of management. The employee must also hand over their Trust ID badge and any other Trust property e.g. office keys at the point of suspension (or as soon as possible thereafter).

Suspended employees may visit the Trust for hospital treatment, as a visitor to a patient, to attend an appointment with the Occupational Health Department or to attend a planned meeting with their Companion, subject to prior notification to the Case Manager.

- 3.2.8 In cases where patient safety is of concern, they will be advised that they must inform any other organisation that they work for that they are suspended.

- 3.2.9 Any breach of these conditions may, in itself, constitute a disciplinary offence. During the period of suspension the employee must be available during normal working hours. Employees must advise their manager of their whereabouts if they cannot be contacted at their home address or on their home telephone number.

- 3.2.10 During a period of suspension an employee may request to take annual leave in accordance with normal procedures. If the period of suspension coincides with the employee's agreed annual leave arrangements, permission to take leave should be obtained prior to the leave. Agreement by the line manager to continue to take the agreed annual leave will not be unreasonably withheld. This will form part of the employee's annual leave entitlement. Where an employee is suspended the usual provisions regarding carry over of annual leave will apply.

- 3.2.11 Fair access to information for composition of their case must be given to the employee, whether they are suspended or not. If there is risk associated with access then the employee should be accompanied by the case investigator and their companion or with relevant expert i.e. IT if access to IT data is required.

- 3.2.12 If an employee becomes ill during the suspension period they must follow the Health and Attendance reporting procedures.

- 3.2.13 During periods of suspension, an investigation will be conducted with the utmost urgency as any period of suspension should be as brief as possible. Any suspension period will be initially reviewed within **7 working days** and subsequently every **10 working days** by the Case Manager. A letter will

be sent by the Case Manager to the employee at each of these check points confirming the current status of suspension.

### **3.3 Investigation**

- 3.3.1 Prior to commencing a formal investigation a preliminary investigation should take place to review of the facts in order to help to determine the Terms of Reference
- 3.3.2 The Case Manager will set the Terms of Reference for the Investigation and determine the investigatory team and appropriate HR support will be identified. Once the issue under investigation is assigned it is imperative that it comes to a swift conclusion. Although where allegations of abuse against children or vulnerable adults have been made then reference to the Trust's Safeguarding Policies and Procedures must be made.
- 3.3.3 The employee will be informed in writing of the allegation and will be informed of any further allegations made against them found throughout the investigation process. This may be added to the investigation or may be a separate investigation. Where appropriate the clinical incident decision tree will be used as part of the investigation, see Guidance for HR Investigations.
- 3.3.4 As part of the investigation the employee will be interviewed and are entitled to be accompanied by a Companion. The employee will be expected to co-operate with the Trust to enable a timely and thorough investigation. Notes of an investigation meetings will be taken and staff will be given the opportunity to check the notes for accuracy, and are also able to submit additional written statements should they wish to. The individual will be given the opportunity to amend and sign the interview notes as an accurate record within a set timescale. If the signed notes are not received by the deadline, they will be deemed to be an accurate record.
- 3.3.5 A decision or action will only be taken after a thorough investigation has concluded. The employee will be informed of the investigation outcome in writing.
- 3.3.6 Confidentiality and the rights of the employee will be upheld throughout the process. Breach of confidentiality may result in further action in accordance with the disciplinary procedure. For further details of the investigation process the HR Investigation Guidance must be referred to. The investigation must be completed between **4 – 8 weeks** which is to be determined from the outset of the investigation.
- 3.3.7 Witnesses  
In order to establish the facts of a case it may be necessary to interview witnesses in order to establish an accurate account of the case. Interviews

will always state the individual's name, post title, band and the date they were interviewed. The individual will be given the opportunity to amend and sign the interview notes as an accurate record within a set timescale. If the signed notes are not received by the deadline, they will be deemed to be an accurate record.

Employees, who are witnesses, have a right to refuse writing a statement or for any statement they do not wish to be used as evidence as part of the investigation process and as evidence at a Disciplinary hearing. In normal circumstances, witnesses whose statements are put forward as part of a disciplinary case will be expected to attend Disciplinary hearings to provide evidence, unless:

- the witness is too ill to attend the disciplinary hearing;
- the statement is provided by a patient or a member of the public who cannot be required to attend the hearing and who has failed to agree to attend voluntarily.

They may have someone, a companion, attend the hearing with them if they wish (Trade union representative or work colleague).

All employees involved in an investigation will be informed of their continuing duty to maintain confidentiality.

Employees will be supported and encouraged to raise issues or concerns regarding the behaviour of other employees by utilising a number of Trust Policies and Procedures.

Employees will be able to call on witnesses in their defence and in response to allegations made and that these will be given reasonable paid time to attend.

### 3.3.8 External Investigations

If an allegation against an employee potential involves criminal behaviour, the Trust has the right to inform the Police or other Statutory Body. This will depend upon the evidence available and the circumstances of the case.

### 3.3.9 Where an employee is subject to an investigation by the Police or other statutory body, such as the Counter Fraud Team, the Trust will be entitled to pursue its own or complementary investigation unless specifically instructed that doing so would impede the criminal investigation. Where the Police or other statutory body instructs that the Trust's investigation process be halted, the arrangements will be suspended until further notice

until clearance to process with internal investigation is received. However, disciplinary action under this procedure will not necessarily await or be dependent upon the outcome of such investigations and their subsequent legal proceedings.

### 3.4 Investigation Conclusion

Following the conclusion of the investigation the Case Manager will decide, based on the findings of the investigation, whether or not it is appropriate for the case to proceed to a fast track disciplinary meeting, a disciplinary hearing or if there is no case to answer. This decision should include full consideration of the facts of the case and the impact of any system and procedure failings.

#### a) Fast Track Disciplinary Meeting

In circumstances where the employee has taken full responsibility for their actions during the investigation and accepted the allegations against them, the Case Manager may determine that a fast track disciplinary meeting is appropriate. The outcome of which may be a written warning of 6 months or no further formal action.

If the Case Manager deems that this may be appropriate they must meet with the individual to discuss the investigation outcome and their reasons for proposing the fast track disciplinary meeting, and explain the fast track process. The employee must agree to the fast track disciplinary meeting route being following before it can proceed. The Case Manager should then allow the employee a period of time to consider this outcome, usually no more than 72 hours. If the employee fails to respond in this timeframe by default the case will proceed to a disciplinary hearing.

#### b) Disciplinary Hearing

If the case is to proceed to a hearing then the Case Manager will write to the employee informing them of the decision to proceed to a Disciplinary hearing, the composition of the panel names of Chair of the Panel, Professional Advisor (if necessary in cases of Professional Code of Conduct) and HR Support and that the Chair will write to them informing them of the arrangements for the disciplinary hearing. This will be arranged within **10 working days** of completion of the investigation

If the investigation findings recommend a disciplinary hearing the management case will be issued to the employee.

### c) No Case to Answer

Where the investigation is concluded and the allegation is not upheld the Case Manager may determine that there is no case the answer. If this is the case no further action will be taken under this policy and the employee will be notified of this outcome in writing.

## **3.5 Fast Track Disciplinary Meeting**

The fast track disciplinary meeting enables a faster resolution and closure to a disciplinary matter for the employee. It is a less formal meeting than a disciplinary hearing consisting of the Case Manager, HR representative, the employee and their representative (where applicable). There may be no need to submit a management case for this meeting. The appropriate level of manager should be present if a sanction is being issued, in accordance with the schedule in appendix 5. The Investigating Team do not attend a fast track disciplinary meeting. A disciplinary meeting is not suitable in cases of gross misconduct or where an employee is already subject to a final written warning or the allegations are denied.

### 3.5.1 At the fast track disciplinary meeting:

- The Case Manager will detail the nature of the allegation to the employee and feedback the outcome of the case review;
- The employee will have the opportunity to give a response to the allegations and raise any mitigation;
- If no further issues come to light the Case Manager will consider outcomes which may be a written warning of 6 months and the reasons for the warning together with the improvement required. Or no further formal action, however this could include actions or improvements as stipulated by the Case Manager.
- The Case Manager will inform the employee that this is the first stage of the formal disciplinary procedure and state the likely consequences of further similar or related offences during the required period;
- Where the employee accepts the warning, this will be confirmed in writing, with a copy placed on their personal file. The employee will have the right to appeal and will have 10 working days from receipt of the letter to do so.

## **3.6 Disciplinary Hearing**

The disciplinary hearing procedure is contained in Appendix 4.

### 3.6.1 It is essential that Disciplinary hearings are handled effectively and conducted in a fair and systematic manner. The purpose of Disciplinary

hearings is to establish whether or not there is a case to answer by looking at the evidence.

3.6.2 The membership of the panel should comprise of a Chair, Professional Advisor (if necessary in cases of Professional Code of Conduct) and HR Support. The panel with the authority to take suitable disciplinary action, as required, is outlined in Appendix 3.

3.6.3 The Chair will make the necessary arrangements for the Disciplinary hearing and will write to the employee **10 working days** before the

Disciplinary hearing clearly stating the following:

- the nature of the allegation and the conduct that have been allegedly breached
- the date, time and place of the hearing, as well as the other panel members and details of any note takers who will be present, any special requirements
- right to have a companion
- right to call witnesses to the hearing
- that disciplinary action may be an outcome
- that summary dismissal may be an outcome where there is a clear possibility of a finding of gross misconduct
- names of all witnesses already confirmed to be called by the case investigator or employee
- enclose a copy of the Disciplinary Policy and Procedure
- The employee will receive the full management case at least **10 working days** prior to the date of the hearing. The employee will respond to the management case and return their response to the chair on the **3<sup>rd</sup> working day** prior to the hearing.

3.6.4 The Disciplinary hearing will normally take place within **3 working days** after the employee response period; however in exceptional circumstances this may be extended. The Chair will arrange for documents to be copied and circulated as appropriate. Requests for additional information to be supplied will not be unreasonably refused.

3.6.5 The employee must confirm the name of the companion they wish to accompany them at a hearing at least **5 days** prior to the date that has been set. If the companion cannot attend on the proposed date, the employee may suggest an alternative date that must suit everyone involved and must not be more than **5 working days** after the original date.

3.6.6 If all reasonable attempts to ensure the employee's attendance at the Disciplinary hearing have been exhausted, the case may be heard in the employee's absence, with the employee having an opportunity to forward written representations. Although, if an employee cannot attend due to exceptional and unforeseen circumstances on the day, the hearing would

normally be rearranged. The hearing would be rearranged only once.

Employees are required to take all reasonable steps to attend a Disciplinary hearing. In the event that they are unable to attend due to ill health then any Disciplinary meetings/hearings will only be delayed for a reasonable period of time and only where a medical opinion advises that attendance at a hearing would be detrimental to their health.

Occupational Health/other medical advice may be involved to assist with this decision. However, if the employee is too ill to attend a Disciplinary hearing, in the case of long-term absence it may be necessary to proceed in the employee's absence. If the decision is made to do this, the employee will be invited to submit a written statement for his/her case.

If the employee cannot attend for exceptional and unforeseen circumstances on the day, the hearing should be rearranged. The hearing would be rearranged only once.

Employees will be requested to confirm their attendance at a Disciplinary hearing. If they do not do this, management should make reasonable efforts to contact the individual and/or companion if known. When this has been done, if the reason for non-attendance is not reasonable, or if the employee states an intention of not attending then the hearing should proceed in the employee's absence. If the employee states an intention of not attending then the employee should be notified that the hearing is likely to proceed in their absence.

- 3.6.7 The party wishing to call any of their witnesses should contact them and inform them of the date and time of the disciplinary hearing.

The party wishing to call a witness referenced in the other party's case should inform the hearing panel chair of their wish.

All witnesses requested at a hearing will be housed and called independently by the panel to attend a hearing to ensure confidentiality is maintained.

The outcome of the hearing should never be pre-empted.

- 3.6.8 The Disciplinary hearing should be conducted in accordance with Appendix 4, and in such a way that all present have the opportunity to say what they wish to say in regards to the case, raise any questions and receive a response to issues that they consider to be appropriate.
- 3.6.9 The companion has a right to address the hearing, but does not have the right to answer questions on the behalf of the employee.
- 3.6.10 The Panel will decide whether or not, on the balance of probabilities, the allegations are found proven on the basis of the evidence presented and representations made.

3.6.11 The Disciplinary hearing will concern itself with whatever sanction, if any, should be applied, taking into account all evidence presented and any plea in mitigation.

3.6.12 The outcome of a Disciplinary hearing will wherever possible, be given verbally at the conclusion of the hearing. It will always be confirmed in writing (within **5 working days** of the hearing unless an alternative date is mutually agreed).

The letter confirming a disciplinary sanction should include the following:

Written and Final Written warnings

- The precise nature of the (gross) misconduct and why it is considered so serious;
- Other points that were considered as alternatives to dismissal if relevant;
- The level of improvement required;
- The time limit for achieving the improvements;
- Review periods during the time period of the warning;
- The consequences of failure to achieve or maintain improvements, in particular that any repetition of the misconduct or similar within the specified timescale could lead to the next level of warning;
- Confirmation that any repetition of the misconduct, or further misconduct on related issues within the specified timescale, could lead to dismissal;
- Confirmation of the length of the disciplinary warning and that a copy will be maintained on the employee's personal file throughout this period;
- Deferment of incremental pay progression; and
- Procedure for appeal against the decision.

Dismissal

- Reasons for the decision;
- The date the contract of employment is to be terminated;
- Whether the dismissal is considered to be gross misconduct;
- Details of actions short of dismissal (See section 5.8.4); and
- Procedure for appeal against the decision.

3.6.13 It is important in the interests of both the employee and the Trust that written records are maintained during the disciplinary process by the line manager. Records will include, where appropriate:-

- Details of the complaint against the employee;
- The employee's defence;
- Findings made and action(s) taken;
- The reason for the action(s) taken;
- Whether an appeal was lodged;

- The outcome of the appeal;
- Any report to a professional registration body.

### **3.7 Sanctions**

3.7.1 Where the allegations are proven, in deciding the sanction the disciplinary panel must take into account this policy, the employee's current disciplinary and general record, together with actions taken in any previous unspent similar cases within the Trust, the explanations given by the employee and, most importantly, the level of disciplinary sanction that is reasonable under the circumstances presented to them.

Where more than one allegation has been made against an employee, the manager should confirm the allegation(s) that have been upheld and that have contributed to a decision to award a disciplinary sanction.

The following sanctions may be implemented at any stage if the employee's misconduct warrants such action, after consideration at a disciplinary hearing.

Where the sanction relates to a professionally registered health care professional it may necessary to consider reporting that individual member of registered staff to their professional regulatory statutory body.

It will be the panel chair who is responsible for informing the individual of the referral and for completing the referral form and collating the evidence to support the referral. The panel chair considering a referral must, in ALL cases contact and notify the divisional professional lead. Please refer to the Professional Registration Policy.

If the practitioner being referred is a midwife, immediate contact must be made with Head of Midwifery to ensure that the Local Supervising Authority and the individual's Supervisor of Midwives are informed.

#### **3.7.2 Written Warning – 6-12 months**

If conduct does not meet acceptable standards the employee will normally be given a written warning. This will include the reason for the warning, improvement required, notification of deferment of any incremental pay progression due and the appropriate timescales. A further act of misconduct or failure to improve within a set period would normally result in a final written warning.

A record of the written warning and clarified expectations will be kept for the length of the warning, but will then be considered spent and removed from personnel records – subject to achieving and sustaining satisfactory improvement.

A shorter warning of 6 months may be more appropriate as a corrective measure in line with HR advice based on agreed criteria.

### **3.7.3 Final Written Warning – 18 months**

If the offence is sufficiently serious, or if a further misconduct of a similar kind occurs, or there is no improvement or insufficient improvement in standards or standards are not maintained, a final written warning and a performance improvement plan will be given if appropriate. This will include the reason for the warning, improvement required, notification of deferment of any incremental pay progression due and the appropriate timescales. It will also warn that if no improvements result, dismissal or other appropriate action will be taken at a third stage.

A record of the warning and clarified expectations will be kept for the length of the warning, but will then be considered spent and removed from personnel records – subject to achieving and sustaining satisfactory improvement.

### **3.7.4 Sanctions short of dismissal**

Alternatives to dismissal should always be considered. As an alternative to dismissal a final written warning with the following options may be considered:

- transfer to another department
- transfer to an alternative post at the same grade
- transfer to an alternative post at a lower grade

The terms and conditions relevant to the alternative available post will apply and the employee will not be entitled to any protection of pay or existing terms and conditions of employment under any Trust policy or procedure. Any such offer of employment must be voluntarily accepted by the employee.

A final written warning will accompany the offer of alternative employment. If the offer of alternative employment coupled with a final written warning is rejected, the employee shall be dismissed. The employee shall have a period of 5 working days from the hearing in which to accept this offer; the period may only be extended by the employer. If this is declined the outcome will automatically be dismissal.

A copy of the accompanying final written warning and clarified expectations will be kept for the length of the warning, but will then be considered spent and removed from personnel records – subject to achieving and sustaining satisfactory improvement.

### **3.7.5 Dismissal**

**3.7.5a Dismissal with Notice:** If there is still a failure to make improvements or sufficient improvement is not made, or the improvement is not maintained or further matters of misconduct occur, the employee will normally be dismissed with pay in lieu of notice.

**3.7.5b Dismissal without notice:** Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice, known as summary dismissal.

3.7.5c Dismissal decisions can only be taken by the appropriate senior manager (see appendix 3). Professionals, in most cases, will be reported to their respective professional organisations for cases of serious or gross misconduct. This will be confirmed in the outcome letter.

## **3.8 Appeals**

3.8.1 The opportunity to appeal against a disciplinary decision is essential to natural justice. However, it is important to set out grounds under which an appeal will be heard, which are as follows:

- The failure to follow policy; or
- The decision reached was not reasonable in all of the circumstances

3.8.2 The membership of an appeal panel (see appendix 3) will comprise of a Chair, Professional Advisor (if necessary in cases of Professional Code of Conduct) and HR Support. The panel with the authority to take suitable disciplinary action, as required, is outlined in Appendix 3. The Chair should be more senior than the manager who chaired the original panel. Neither person on the appeal panel must have had any involvement in the case previously.

3.8.3 To lodge an appeal the individual should give written notice confirming the grounds of the appeal to the appropriate senior manager within **10 working days** from receipt of the written confirmation of the disciplinary decision. All reasonable steps will be taken to ensure that an appeal hearing is normally heard within **10 working days** of the appeal being lodged.

3.8.4 It is the responsibility of the Appeal Panel Chair to arrange the time, date and location of the appeal hearing and inform all parties of this. The employee and their companion will be given at least **5 working days** written notice of the date and time of the appeal hearing and will be expected to take all reasonable steps to attend.

If the companion cannot attend on the proposed date, the employee may suggest an alternative date that must suit everyone involved and must not be more than **5 working days** after the original date.

- 3.8.5 At least **5 days** before the appeal, the individual lodging the appeal will submit any further details of their appeal to the Chair. Both sides must also name any witnesses they wish to recall.
- 3.8.6 Documents from both the employee and management sides must be submitted to the Chair by the date provided. Documentation will then be exchanged and copies sent to all parties involved in the appeal on the same date.
- 3.8.7 An appeal hearing will have the authority to uphold, rescind, or reduce the original disciplinary decision. How the appeal should be run is covered in appendix 2.
- 3.8.8 The outcome of an appeal hearing will be confirmed in writing within **5 working days** of the hearing.
- 3.8.9 The decision of an appeal hearing will be final (there is no further internal right of appeal or challenge).

### **3.9 Grievances**

- 3.9.1 If a grievance is lodged relating to an on-going disciplinary matter, advice on the most appropriate course of action should be requested from the Workforce Management Department.
- 3.9.2 Normally a grievance relating to a current matter should be addressed during the course of a disciplinary hearing or appeal and should not be subject to separate Trust Grievance procedures.
- 3.9.3 If during the course of a disciplinary hearing process an employee raises a grievance or concern that is related to the matter, the Chair of the Panel, following advice from the Workforce Management Department, may consider whether it is appropriate to adjourn the hearing for a short period while the matter is reviewed. Notwithstanding this, it may also be appropriate to hear the grievance or concern after a disciplinary or appeal hearing has taken place.

### **3.10 Resignation of an employee**

- 3.10.1 Prior to the completion of an investigation or prior to a disciplinary hearing taking place, if an employee resigns who is the subject of an investigation then the investigation must be completed and the case investigator will recommend to the Case Manager whether any further action is required e.g. notifying a professional body regarding potential professional misconduct; notification to the Independent Safeguarding Authority.

3.10.2 If the outcome of the investigation is to proceed to a disciplinary meeting or disciplinary hearing, this will proceed in most cases.

3.10.3 If a reference is subsequently requested in relation to an employee who has resigned and matters remain outstanding, the investigation outcome and nature of the allegations will be disclosed in the reference.

Where a disciplinary action has been taken and the employee has subsequently resigned any response to a request for a reference will include the unspent time remaining on the disciplinary sanction.

#### **4. Monitoring Compliance and Effectiveness**

Wherever possible the fact that an employee is subject to action under this Policy and its Procedures, any information released during the course of an investigatory process or Disciplinary hearing and the outcome will remain confidential to those involved. This does not restrict the Trust's reporting and governance obligations.

The key requirements will be monitored in a composite report presented on the Trusts Monitoring Report Template:

Monitoring Requirement :	Monitoring compliance with the requirements of: Process for handling issues of allegations of misconduct / gross misconduct Process to be followed once action is required to investigate allegations of misconduct / gross misconduct Monitoring outcomes of disciplinary / appeal cases including suspensions
Monitoring Method:	Current and retrospective review of cases to determine compliance with the process for handling and dealing with cases. Recommendations and action plans will be developed from the analysis and will be part of the annual reporting mechanism
Report Prepared by:	Deputy Director of Workforce Management
Monitoring Report presented to:	The recognised formal committees and forums in place at the time
Frequency of Report:	Bi-Annually

In addition the following interim/ operational reports will be provided and will inform the above composite report.

Partnership Forum will be provided with reports as above.

## **5. References**

Employment Rights Act 1996

The Equality Act 2010

ACAS Code of Practice on disciplinary and grievance procedures

Disciplinary and grievances at work: the ACAS guide

Nursing and Midwifery Council Standards for Conduct, Performance and Ethics and all associated documents

Health Professions Council Standards for Conduct, Performance and Ethics and all associated documents

British Psychological Society Code of Professional Standards

Health Professions Council Standards of conduct, performance and ethics

## **Appendix 1 - Procedural Responsibilities**

### **1. Employees**

Employees have a responsibility to perform their duties and conduct themselves to the standards required, ensuring good practice is maintained.

Employees are responsible for raising with their manager any genuine concerns they may have. This includes concerns about the conduct of a colleague. Employees may raise issues with their manager, seek advice from HR or a Trade Union / Professional Association representative, or use the Whistleblowing Policy / Mediation Policy, as appropriate.

### **2. Managers**

Managers will participate in any Trust training deemed necessary to ensure that they have the necessary skills to undertake their responsibilities appropriately.

Managers are responsible for making their employees aware of the policy requirements and the standards required of them by the Trust.

Managers are responsible for ensuring systems are in place to minimise the need for the use of this policy, e.g. effective communication, compliance with workplace rules and procedures, performance appraisal.

Managers are also responsible for providing guidance in HR investigations. Reasonable adjustments to the policy, for example due to someone's disability, will be considered where appropriate.

### **3. Case Manager**

The Case Manager is independent of the investigation and they set the terms of reference (ToR) for the case and they are responsible for allocating case investigator(s). They will receive the investigation report, and are responsible for considering the report recommendations, implementing appropriate action, whether this results in a fast track disciplinary meeting, disciplinary hearing or no case to answer, and for seeking HR advice as appropriate.

Should a fast disciplinary meeting take place the Case Manager for managing this process, as outlined in section 3.5.

Should a disciplinary hearing be held, the Case Manager is responsible for collating the management report and presents the management case to the hearing panel. The Case Manager should not read the case report verbatim.

#### **4. Case Investigator**

The Case investigator is an independent manager who is responsible for conducting the investigation in line with the terms of reference into the allegation made against the employee and to write the investigation report and supported by HR. The purpose of an investigation is to establish the facts of the case.

#### **5. Workforce Management**

Workforce Management are responsible for providing advice and support to ensure that the policy is applied fairly and consistently. Workforce Management will regularly review and revise this policy and assist with the training, communication and dissemination of this policy.

#### **6. Companion**

At any stage of the procedure an individual may be accompanied by a companion. This companion may be either, an accredited trade union/professional association representative, or a fellow employee. The companion cannot be someone who is part of the investigation. A fellow employee who has agreed to accompany a colleague will be entitled to a reasonable amount of paid time off to fulfil that responsibility. Fellow employees are not obliged to accept a request to accompany an individual, and they should not be pressurised to do so.

If the employee under disciplinary investigation or action is an accredited Trade Union representative, the Director of Workforce Management is informed, the full time official is contacted in the first instance prior to the procedure commencing where this is not possible the Lead Partnership Facilitator will be contacted.

#### **7. Director of Workforce Management**

The Director of Workforce Management is responsible for ensuring that the policy is implemented appropriately and that disciplinary appeal outcomes are monitored to ensure that there is no bias in accordance with the Trust's Equality, Diversity and Human Rights Policy.

#### **8. The Workforce Policy Review & Approval Process**

The recognised formal committees and forums in place at the time are responsible for the review, approval and monitoring of this policy.

## Appendix 2 - Policy Definitions

<b>Conduct</b>	is the way employees behave, their actions and attitudes.
<b>Informal action</b>	is advice, support and guidance which should precede formal action, in order to rectify minor faults in conduct, other than in cases of gross misconduct, or minor failure to perform at the required standard.
<b>Misconduct</b>	is conduct which is unacceptable and which will result in disciplinary action being taken. This will initially be a warning; however, if there is insufficient improvement, misconduct could ultimately result in dismissal.
<b>Gross misconduct</b>	is conduct which is such that it indicates that the employee no longer intends to be bound by his or her duties or destroys the trust and confidence the Trust must have in an employee. Gross misconduct will normally result in summary dismissal.
<b>Capability</b>	is an employee's ability to perform their work to the required standard. See the Trust's Capability policy.
<b>Sanction</b>	a level of disciplinary warning issued by a disciplining manager which may include dismissal.
<b>Suspension</b>	is a neutral act and does not presume guilt, it is not in itself a disciplinary measure but an arrangement whereby the employee is suspended from their duties with the employment relationship continuing, pending an investigation/outcome under the disciplinary procedure

## Appendix 3 - Misconduct and Gross Misconduct Rules

### 1. Misconduct

Examples of **misconduct** include (this list is not exhaustive):

#### 1. Failure to follow reasonable management instruction

Employees must carry out the reasonable instructions of managers and those designated in charge. Employees have a duty not to undertake any procedure or action that they do not feel competent, trained or capable of doing, and must raise this with their manager.

#### 2. Non attendance for duty

Employees are expected to attend for duty at the correct time and work their contracted hours.

In cases of sickness, sudden domestic emergency, or other good reason(s) which prevents an employee from reporting for duty, it is the responsibility of the employee to inform their ward/department in accordance with appropriate departmental procedures and the guidance in the Health and Attendance Policy/Flexible Working.

#### 3. Smoking, in contravention of the non-smoking policy

Employees are reminded that the Trust has a policy for non-smoking on NHS premises and smoking is therefore not permitted in Trust premises, buildings, grounds, properties and vehicles.

#### 4. Dressing inappropriately

Special attention should be paid to laundering, grooming and personal hygiene. Employees who wear their own clothes to work should ensure that they present a professional image at all times, and that clothing worn at work could not be considered "casual" or "revealing". Those Employees required to wear uniform should ensure that it is complete and not worn with non-essential "extras". Employees must, at all times, display their ID badge for security purposes.

Where relevant, the Dress Code Policy should be referred to.

#### 5. Conducting private business

Conducting private business arrangements in paid time is forbidden. Private business arrangements are when an employee undertakes other

paid work during paid time, the result of which provide additional personal income by way of cash and goods.

## **6. Negligence of security**

All employees have a general responsibility for the security of the property of the Trust, for avoiding loss.

Departmental rules and procedures within the Trust policy will, as appropriate, deal with security arrangements. Deliberate or negligent disregards or security will be treated as a disciplinary matter.

## **7. Bringing the Trust into disrepute**

Employees should behave in a way that will not bring the Trust into disrepute. If they do, disciplinary action may be taken, even though the behaviour may occur outside of work.

## **8. General misconduct**

Non adherence to the required standards laid down by University Hospitals of Derby and Burton NHS Foundation Trust for recognised values and behaviour as outlined in the Standards for CARE Guidance.

## **9. Breaching Trust policies, procedures and rules**

Employees must follow relevant Trust policies and procedures.

## **10. Non maintenance of Professional Registration**

An employee who has not taken appropriate steps to maintain professional registration.

## **2. Gross Misconduct**

Examples of **gross misconduct** include (this list is not exhaustive):

### **1. Mutual trust and confidence**

Any incident where an employee has acted in such a way as to fundamentally undermine the relationship of mutual trust and confidence between the employer and employee.

### **2. Unauthorised removal/use of property**

Any instance of unauthorised removal/use of property from the Trust, or from patients, visitors, or other employees on Trust premises.

For this purpose, unauthorised removal/use of property also includes consumption of food provided for patients, making private telephone calls and passing personal letters through the (paid) official mailing system. The Trust's property must not be removed from the premises for personal use, or used for private purposes without prior written approval of the appropriate manager.

### **3. Damage to Property**

Deliberate or negligent damage to Trust, patients', visitors' or colleagues' property.

### **4. Fraud or corruption**

All employees are expected to comply with the Trust's Fraud and Corruption Policy.

Fraud or corruption, for example;

- Failure to declare a financial interest in contracts deemed a conflict of interest.
- Making false declarations on applications for employment in the Trust which could lead to gaining employment by deception. Examples include false declarations of previous employment, referees or qualifications.
- Making false declarations or failing to disclose required information on a DBS check.
- In accordance with the financial regulations, the Director of Finance or their nominated representative must be informed where the alleged offence involves possible financial irregularities or a breach of the Trusts' financial regulations. This investigation may involve Internal Audit and / or Counter Fraud and Security Services.
- Receipt of expenses and sick pay where not entitled. All cases will be referred to the NHS Counter Fraud team for thorough investigation which could lead to criminal prosecution.

### **5. Breaching confidentiality**

Employees must respect the confidentiality of patients, other service users and colleagues at all times. No information concerning these groups of people should be divulged to anybody who is not directly concerned with their care or management in the normal course of work. If in doubt please refer the matter to your line manager.

## **6. Gross negligence**

Negligently acting or failing to act, especially when this results or could result in injury to persons, or loss of or damage to property.

## **7. Gross non adherence of Professional Code of Conduct**

Registered professional health care staff must also comply with the relevant standards set by their regulatory or professional bodies. A non adherence of such standards may lead to action by the Trust - independent of any action taken by the regulatory or professional body concerned. The alleged non adherence will be investigated and appropriate steps taken to prevent a recurrence and address any wider causes.

Midwives are covered by Statutory Legislation and the function of the Local Supervisory Authority LSA. The function of the LSA is to ensure that statutory supervision of midwives is of a satisfactory standard and thus ensures safe and secure midwifery care. Cases of alleged professional misconduct by midwives will be investigated and action taken under the direction of Supervision, which is separate but works alongside management. The Case Manager will decide if the case is progressed under this precedent, instead of the Trust Disciplinary process.

Notwithstanding the officers of the Trust are responsible for taking their own actions against midwives within the provisions of this disciplinary procedure in events of misconduct.

## **8. Safeguarding of children or vulnerable adults**

Where an employee is alleged to have abused a vulnerable adult/child then it is important that any disciplinary investigation is conducted alongside the Safeguarding Policies and Procedures. Appropriate advice needs to be taken from the appropriate senior leads.

## **9. Verbal or physical abuse, assault, threatening behaviour, harassment or bullying and discrimination**

The Trust wishes to provide a caring environment in which Employees feel valued and where differences are recognised and utilised fully in delivering effective care to patients. All patients, employees and members of the public should therefore be valued as individuals. They should be treated fairly and with respect, regardless of age, disability, gender, marital status, membership or non-membership of a trade union, race, religion, domestic circumstances, sexual orientation, ethnic or national origin, social & employment status, HIV status, or gender re-assignment. Bullying, harassment and victimisation are viewed with great concern and may be considered gross misconduct.

The Bullying and Harassment Policy should also be referred to.

## **10. Using drugs, alcohol or other abusive substances**

Employees must not arrive at work under the influence of alcohol or drugs/narcotics, nor should they consume alcohol or non-medically required drugs whilst on duty or during designated breaks. An employee's ability to carry out their duties, including on-call commitments, must not be impaired in any way because of alcohol, drug or substance abuse. Breach of these guidelines is potentially gross misconduct unless recognised as an underlying health issue.

## **11. Breaching Health and Safety**

Any reasonable action or failure to act which threatens the health and safety of a patient, member of public or another employee or contractor working on the Trust premises. Employees are expected to familiarise themselves with and observe any reasonable instructions issued by the Trust on the safe performance of their work.

## **12. Conviction of certain criminal offences**

Employees charged with or convicted of a criminal offence must disclose criminal offences on application. When a conviction (including caution) happens during employment employees are required to report this to their manager at the earliest opportunity. The Trust will consider the implications on the employee's continued employment on a case by case basis.

## **13. Breaching Data Protection and use of IT**

The internet, intranet and e-mail are provided to enable employees to perform their duties in the most effective way. Employees should only access systems or software programmes which they are authorised to use as part of their duties. Access to inappropriate web sites including social networking sites or use of email/internet facilities for private purposes is forbidden. Computer passwords should not be revealed, shared or falsely used under any circumstances. Systems must not be used to breach confidentiality or to send or access illegal, harmful or inappropriate material, which includes obscene language, pornography or other degrading or demeaning material.

The following must be adhered to by employees in terms of their use of the internet outside of work:

- Employees must not discuss work related information (including photographs on any social networking or internet sites).
- Employees must not make any comments about patients, visitors or carers as patient and employees' confidentiality must be maintained at all times.

- Employees must not make any inappropriate comments about other employees and must not give views on behalf of the Trust or any other NHS departments unless authorised to do so by their line manager.
- Employees must not join a chat group in the name of an NHS organisation.
- Employees must not set up a website or online group for University Hospitals of Derby and Burton' services outside the main Trust website.
- Employees must not design a website from their home computer and publish under the name of an NHS organisation or department.

The copying of software from any source on to any computer owned by the Trust, which is not authorised by the Trust, is strictly forbidden. See Information Management Technology Policy and the Internet and Email Policy

#### **14. Failure to disclose a Personal Financial Interest**

Employees must declare any personal financial interest in:

- Outside companies, firms
- Or other agencies

With which the trust deals with, as soon as such interest becomes known to the employee.

See Declaration of Financial Interest Policy

#### **15. Misrepresentation**

Employees must not make a false or deliberately misleading statement in a job application, health declaration or other employment context.

## **Appendix 4 - Disciplinary and Appeal Hearing Procedure**

1. Hearings will be chaired and all persons present will be given the opportunity at the appropriate time to ask any questions they consider relevant. Hearings will follow the order set out below.
2. Introductions and process will be explained by the Chair to both parties. Adjournments can be requested throughout or agreed at the beginning of the hearing by either party.
3. The management side will state their case and accept questions of fact or detail from the employee or companion, and from the Chair and any other panel members.
4. Management case witnesses may be called. Witnesses to first take questions from the management side, followed by the employee or companion and lastly the Chair and any other panel members. The management side may re-examine their witnesses if necessary.
5. The employee to state their case and accept questions of fact or detail from the management side and from the Chair and any other panel members.
6. Employee case witnesses may be called. Witnesses to first take questions from the employee or employee representative followed by the management side and lastly the Chair and others present. The employee or employee representative may re-examine their witnesses if necessary.
7. The management side to present their summary of case, followed by the employee or companion to present their summary of case.
8. The Chair may ask questions or request points of clarification at any time. Both management side and employee or companion may be asked to clarify or enlarge any statement made.
9. Companion and management representatives may be questioned.
10. If information, additional to that supplied in the written submissions, is presented at the hearing then either side may seek an adjournment. The Chair may adjourn the hearing to allow further investigation to be conducted.
11. The Chair will adjourn the hearing to consider all matters and will only recall both parties to clarify points of uncertainty on evidence already presented. If recall is necessary then both parties will be recalled notwithstanding only one is concerned with the issue.
12. The outcome of the hearing will be confirmed in writing within five working days of the hearing and where possible the outcome will be communicated at the end of the hearing.

13. In cases of an appeal the employee will present their case first. The process of questioning, adjournments and presentations of case will remain the same as at the Disciplinary hearing.

## Appendix 5 - Levels of authority to take disciplinary action and appeals

Category of Staff	Level of manager issuing disciplinary sanction		HR Support	Professional Issues
	Sanction up to final written warning (dismissal not anticipated)	Where the outcome of the hearing may be dismissal (or an alternative to dismissal)		
Divisional Directors, Executive Directors and those that report to the Chief Executive	Chief Executive and Chair	Chief Executive and Chair	Executive Director of Workforce Management	In cases of alleged Professional misconduct, the appropriate Professional Lead must be involved as soon as the issue is identified.  Any disciplinary panel convened to hear a case of alleged professional misconduct must include  a professional representative
Senior Managers directly responsible to Divisional/Associate Directors and Executive Directors	Divisional Directors (Clinical) and Executive Directors (Non Clinical)	Executive Director	Divisional HR Manager / Senior HR Advisor	
Employee	An appropriately graded manager to present the level of sanction, which would be the grandparent or band 7 as a minimum	Divisional Director, Executive Director, Operational Manager, Heads of Department or person directly accountable to either, nominated for the purpose	Divisional HR Advice Team	

**Appeals Procedure**

Level of Warning	Appeal to
<p><b>Written</b></p>	<p><b>A manager senior to the person who issued the sanction.</b></p>
<p>Final written warning, dismissal, or any other action in lieu of dismissal</p>	<p>A manager senior to the person issuing the sanction and appropriate HR support (see above) (plus professional representation if appropriate) In some circumstances an Executive Director may be involved for example in cases of Professional Misconduct.</p> <p>In the cases of Senior Managers the appeal would be to another Executive Director and their appropriate HR Manager.</p> <p>Divisional Directors and Executive Directors seeking an appeal would need involvement of a Non Executive Director and the Chair of the Trust</p>

## Appendix 6 Policy Review and Approval Process

<b>Reference Number:</b> HR 2014 002	<b>Version:</b> 3.1		<b>Status:</b> Final	<b>Author:</b> Sue Hawkins <b>Job Title:</b> Head of Human Resources (HR)
Version / Amendment History	<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Reason</b>
	1a	Feb 2000	Director of HR	Original Policy
	2 - 2.4	August 2009	HR Quality Improvement Lead	ACAS Code of Practice Implementation
	3	June 2011	Head of HR	Major Amendments
	3.1	December 2014	Deputy Director of Workforce Management	Review and minor amendments
<b>Intended Recipients:</b> All employees including flexible staffing and students on placements. Medical and dental staff to be excluded.				
<b>Training and Dissemination:</b>				
<b>To be read in conjunction with:</b> Standards for CARE Guidance, Whistleblowing Policy, Mediation Policy, Safeguarding Policies and Procedures, Declaration of Financial Interest Policy, Flexible Working Policy, Capability Policy, Health and Attendance Policy, Dress Code Policy, Dignity at Work (Handling Bullying, Harassment and Discrimination in the Workplace) Policy, Fraud and Corruption Policy, Information Management Technology Policy, Policy And Guidelines For Dealing With Confidential Information, Equality, Diversity & Human Rights Policy, Internet and Email Policy, Professional Registration Policy, Guidance for HR Investigations				
<b>To be used in conjunction with:</b>				
<b>In consultation with and Date:</b> Partnership Forum and Operational Managers (July 2014) and Trust Joint Council (November 2014), Workforce Performance Forum (December 2014), Management Executive (December 2014)				
<b>EIRA stage One Completed</b>		Yes		
<b>Stage Two Completed</b>		N/A		
<b>Procedural Documentation Review Group Assurance and Date</b>			To be confirmed	
<b>Approving Body and Date Approved</b>			Workforce Performance Forum December 2014 and Management Executive December 2014	

<b>Date of Issue</b>	December 2014
<b>Review Date and Frequency</b>	September 2017 (and every 3 years thereafter). Extension agreed to December 2020
<b>Contact for Review</b>	Deputy Director of Workforce Management
<b>Executive Lead Signature</b>	Director of Workforce Management
<b>Approving Executive Signature</b>	Director of Workforce Management

## Appendix 7 HR Policy & Guidance Implementation Plan

**NB:** The Snr HR Lead is responsible for completing the implementation plan and co-ordinating the launch of the new policy/guidelines into the organisation.

<b>Policy/Guidelines Title:</b>	Disciplinary Policy
<b>HR Snr Lead (responsible for the policy)</b>	Estelle Carmichael
<b>Policy/Guidelines effective date:</b>	December 2014

<b>Version Control</b> (please outline any previous versions of policies/guidelines that this replaces)			
Name of policy/guidelines (inc version) that are replaced and need to be removed/archived	Where are they held (e.g. intranet, HRshared drive)	Date to be archived/removed	Who is responsible for removing it
Disciplinary Policy version 3	Intranet, HR shared drive	December 2014 – on implementation of version 3.1	Employment Services

<b>How will it be disseminated?</b> <i>Please describe below how the policy will be launched within the organisation and who is responsible for the different elements</i>			
Method	Date	Responsibility	
		Name	Job Title
Communication plan via Intranet / FLO	23/12/14		
Divisional HR Teams	23/12/14		