

## Disciplinary (Conduct) Policy

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<b>POLICY SUMMARY</b>
<p>The Disciplinary (Conduct) Policy sets out the framework for the Trust's approach to the management of conduct, behaviour and practice concerns for managers, staff and staff representatives as well as the scope of the policy to whom it applies.</p> <p>It aims to ensure that the Trust sets out and maintains high standards of conduct, behaviour and practice by its employees and the principles to ensure any issues that may arise are dealt with in a timely, fair, reasonable and consistent manner within the legislative framework and in accordance with the ACAS Code of Practice and Guidance.</p> <p>The management of disciplinary (conduct) matters within the Trust will be built on and demonstrate the Trust's corporate values and behaviours of being open, compassionate and empowering.</p> <p>This policy should be read in conjunction with the Disciplinary (Conduct) Procedure.</p>

**The Trust monitors the implementation of and compliance with this Policy and Procedure in the following ways:**

The Disciplinary (Conduct) Policy and Procedure compliance is monitored via monthly reports to Directorate Senior Management Team Committees. Quarterly and Annual Reports are presented to the Workforce Transformation Group. In addition data is included within WRES and WDES reports published nationally.

<b>Services</b>	<b>Applicable</b>	<b>Comments</b>
Trustwide	Yes	
Essex MH&LD	Yes	
CHS	Yes	

**The Director responsible for monitoring and reviewing this policy is the Executive Director of People & Culture**

**ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST**

**Disciplinary (Conduct) Policy**

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**ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST**

**DISCIPLINARY (CONDUCT) POLICY**

**Assurance Statement**

The Policy aims to ensure that Essex Partnership University NHS Foundation Trust [‘the Trust’] sets out and maintains high standards of conduct and performance amongst its employees to ensure high standards of conduct, behaviour and practice.

The Policy sets out the Trust’s principles ensuring they are dealt with in a timely, fair, reasonable and consistent manner, within the legislative framework and in accordance with the ACAS Code of Practice and Guidance and recommendations made by Baroness Dido Harding (Chair, NHS Improvement) on 24 May 2019.

The management of disciplinary issues within the Trust will be built on and demonstrate the Trust’s corporate values and behaviours. These values being:

- Open
- Compassionate
- Empowering

In demonstrating these behaviours and values, supporting the achievement of its strategic objectives to:

SO1: Continuously improve service user experiences and outcomes

SO2: Achieve top 25% performance

SO3: Valued system leader focused on integrated solutions

**Equality and Diversity Statement**

The Trust is committed to ensuring that equality, diversity, and inclusion is considered in our decisions, actions and processes. The Trust and all trust staff have a responsibility to ensure that they adhere to the Trust principles of equality, diversity, and inclusion in all activities. In drawing up this policy all aspects of equality, diversity, and inclusion have been considered to ensure that it does not disproportionately impact any individuals who have a protected characteristic as defined by the Equality Act 2010

**ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST****DISCIPLINARY (CONDUCT) POLICY****1.0 INTRODUCTION**

- 1.1 This policy introduces the Trust's principles in relation to resolving disciplinary matters. Disciplinary rules and procedures are necessary for promoting positive employee relations and for safeguarding of patients.
- 1.2 The policy set instruction to understand that the vast majority of its employees provide the very best care they can, given the circumstances they are working in.
- 1.3 The Trust recognises it is very rarely the intention of staff to provide care that did not go as expected or planned. While this policy is predominantly about how employees are treated, this is with the intent to ensure that the benefits of a '**Just and Learning Culture**' for staff will have a significant and positive impact on patients and their families.
- 1.4 The policy guides managers and advisers to ensure they attempts to understand all actions before judging employees and that those employees should be supported to learn from their actions. Those responsible for the management of incidents should use the science of human factors, including investigative techniques, skills, expertise and methods that help us fully understand what happened in order to learn from errors or harm in the future.
- 1.5 The Trust recognises that disciplinary issues can relate to conduct (complying with Trust policy, rules and procedures), including negligence.
- 1.6 The policy emphasises the Trust's expectation of high standards of conduct from everyone and is committed to applying a '**Just and Learning Culture**'. This policy and associated procedure is designed to ensure a fair, systematic and consistent approach is taken when an employee's behaviour or action is in breach of disciplinary rules or falls short of the expected standards.
- 1.7 The fair treatment of employees supports a culture of fairness, openness and learning in the NHS by making staff feel confident to speak up when things go wrong, rather than fearing blame.
- 1.8 An objective and prompt examination of the issues and circumstances should be carried out to establish whether there are truly grounds for a formal investigation and/or for formal action. Would training for the employee, support, guidance or informal management be more appropriate and productive.
- 1.9 Where an employee's ability to do their job is affected by a lack of skill or knowledge this will be managed by following the Capability (Performance) Policy and Procedure or, in the case of ill health, the Management of Sickness and Ill Health Procedure .
- 1.10 This policy is in addition to the provisions, as set out in the terms and conditions of employment. Unless otherwise stated, this policy does not form part of an employee's terms and conditions of employment but is a statement of the Trust's current practice and may be changed from time to time.

- 1.11 The Trust recognises its responsibility in ensuring that all employees are aware of their obligations whilst at work and the behaviour and conduct expected of them. Employees also have a responsibility to familiarise themselves with the general rules and procedures referred to in their conditions of service and as related to their specific area of work and as required of them by their professional code(s) of conduct and NHS Constitution.
- 1.12 It is the commitment of the Trust and responsibility of all employees to not discriminate on any grounds. In formulating this policy, aspects of discrimination have been considered so that particular groups are not disadvantaged.
- 1.13 This policy and associated procedure applies to all employees except Medical and Dental staff or Temporary staff (including bank workers) – please refer to the Procedure For Maintaining High Professional Standards Policy and Procedure or Temporary Worker Conduct & Complaints Policy and Procedure

## 2.0 DUTIES

### Chief Executive

- The Chief Executive has delegated responsibility for ensuring compliance with this policy to the Executive Director of People & Culture.
- Promoting and leading on a **'Just and learning Culture'**

### Lead Executive Director

- Executive Director of People & Culture has strategic responsibility for ensuring there is compliance with this Policy and that it is applied in a fair and consistent manner.
- The Executive Director will cascade and communicate to all Executive Directors, Directors, Managers, Human Resources staff, Staff Side representatives / networks and staff so that they are fully aware of the Disciplinary (Conduct) Policy and Procedure and are aware of their responsibilities.
- The Executive Director will ensure that data relating to investigations and disciplinary procedures is collated, recorded and regularly and openly reported at Board level.

The Executive Director may share lessons learnt following disciplinary investigations and cascade those to relevant parties to initiate change.

### Deputy Director of Human Resources

- Ensure a disciplinary policy and procedure which promotes good employment relations and a **'Just and Learning Culture'** is in place
- Ensure managers are trained and supported in the implementation of the policy and procedure
- Ensure the disciplinary policy is reviewed and monitored regularly

### Human Resources

- Monitor policy implementation to ensure fairness and consistency across the workforce
- Monitor and report on the outcomes of disciplinary action to ensure fairness and consistency across the workforce and encompass the **'Just and Learning Culture'** by promoting and sharing lessons learnt
- Provide training on the implementation of the policy

- Provide advice and guidance on matters relating to the policy
- Inform the relevant Professional Lead of any allegation(s) made involving registered practitioners.
- Ensure the integrity of any investigation by maintaining confidentiality
- Assist in making arrangements for formal hearings in line with agreed timescales.
- Support the Chair of the hearing in ensuring the fair conduct of the hearing and compliance with the Trust Disciplinary Policy.
- Ask questions or clarify any issues raised during the hearing.
- Do not lead on the hearing or questioning.
- Provide advice to the Chair to support their determination of the appropriate sanction taking account of mitigation offered, the seriousness of the case, the sanctions applied in similar cases in the past, any previous warnings which are still in effect, the nature of the employee's job, the work record of the employee.
- Following disciplinary hearing, arrange for Investigatory Reports to be appropriately archived.

### **Commissioning Manager**

- Notify and consult with a Human Resources representative prior to any formal disciplinary action (including investigation) taking place
- Responsible for the completion of the Decision Making Tool. Produce Terms of Reference, which clearly outline the allegations to be investigated, the timescales for the investigation, the communication plan as well as the resources identified to support the investigation and an assessment of the independence of the investigation team.
- Identify an appropriate Investigating Officer and administrative support
- Identify an appropriate Support Officer and inform the employee of this support mechanism.
- Ensure the integrity of any investigation by maintaining confidentiality
- Consider the suspension, redeployment or restriction of duties of any employees within the scope of the investigation.
- Immediately following the review of an event, notify (in writing) the employee under investigation of the decision to commission an investigation, and of any subsequent changes to the Terms of Reference of the investigation
- Ensure all Terms of Reference are addressed within the Investigation Report, and sign off the report as complete
- Inform the employee of the outcome of the investigatory process and review decision
- If necessary, invite the employee to a formal agreed outcome meeting
- Delegate a hearing chair to an appropriate officer with the required scheme of authority **(APPENDIX 3)**
- Inform the employee of the outcome of any agreed outcome meeting, Notify any Professional Lead of any decisions as appropriate.

### **Investigating Manager**

- Establish and investigate the facts arising from the Commissioning Manager Terms of Reference
- Undertake the investigation in a timely manner and maintain the communication plan.
- Ensure the integrity of any investigation by maintaining confidentiality
- Highlight any additional allegations which may need to be included within the Terms of Reference to the Commissioning Manager
- Present an investigation report to the Commissioning Manager outlining investigation findings and subsequent recommendations in a timely manner
- Present Investigation Report at any formal disciplinary hearings

### **Support Officer**

- Keep the employee up to date and informed of any organisational / divisional changes
- Signpost the employee to appropriate welfare support e.g. Staff Support, Occupational Health, Here for You service, Wellbeing Adviser.
- The Support Officer should not discuss the case with the employee .
- In the case of suspension, a Support Officer should be identified for the employee to support them in keeping in touch and supporting wellbeing.

### **Line Manager(s)**

- Ensure employees are aware of the disciplinary rules, Trust values and standards of conduct required whilst at work, signposting to Trust policies
- Where an employee has breached misconduct under the disciplinary rule the manager must ensure appropriate action is taken under the informal procedure.
- Provide a thorough support and guidance including supervision, appraisals and induction to new employees by way of probation and local induction processes
- Provides impartiality and oversight to decision making in cases of misconduct. The role of the Line Manager is to constructively challenge and seek assurance on behalf of the Trust that cases are being handled fairly and proportionately, that decisions are well informed and the welfare of employees is given priority. The senior manager will seek to establish the following:
  - Clarity about the allegations and assurance that the manager has gathered enough initial information to support their proposed course of action
  - The action proposed by the manager is necessary, proportionate and justifiable in the circumstances and consistent with similar cases
  - That all alternatives have been fully explored to ensure the matters are being dealt with in the most constructive way and in accordance with just culture principles.
  - If further fact finding is needed, whether the manager can carry this out (has the time and appropriate skills) or if a trained investigator should be commissioned. For cases that may result in dismissal a trained investigator must carry out the investigation.
  - That the welfare of the employee and anyone else affected by the issues has been properly considered and a plan for support and communications has been developed and carried out.
  - That the manager themselves is getting the right support.
  - That no bias or conflicts of interest are potentially influencing the proposed actions
  - That there are sufficient grounds and understanding of the issues and circumstances to conclude there is a case to answer at a formal hearing.

### **Employees**

- Attend investigatory meetings and disciplinary hearings as required in order to answer questions regarding the allegation(s) raised within the Terms of Reference
- Return statements and any other information requested for the completion of the investigation in a timely manner
- Ensure the integrity of any investigation by maintaining confidentiality

### **Witnesses**

- Attend investigatory meetings and disciplinary hearings as required
- Return statements and any other information requested for the completion of the investigation in a timely manner
- Ensure the integrity of any investigation by maintaining confidentiality

- Seek support through HR and various mechanisms where necessary

**Accredited Trade Union Representatives**

- Support the timely completion of any investigations conducted in accordance with this policy
- Ensure the integrity of any investigation by maintaining confidentiality, see **Appendix 6**

**Hearing Manager**

- Ensures the fair conduct of the hearing in accordance with the Trust’s Disciplinary Policy.
- Makes sure that the employee is aware of their right to be accompanied
- Explores if any adjustments should be made to proceedings to support employees and particularly for disabled employees or those with health conditions.
- Explains the procedure to be followed, introduce the parties taking part
- Checks that each side has all relevant documents
- Ensures each side has the opportunity to state their case
- Makes sure all relevant evidence is considered
- Considers whether further investigation is required if new matters arise
- Adjourns to consider the decision and weigh up all the evidence presented
- Decides whether allegations are substantiated on balance of probabilities
- Takes account of mitigating factors
- Considers any ‘previous disciplinary records and live sanctions’
- Decides on sanction with advice from other panel members, where applicable, and HR support
- Acts consistently with previous decisions.
- Informs the employee of the decision and the reasons for it
- Informs the employee of their right of appeal.
- Ensures adaptations and adjustments are made to proceedings to support disabled employees and those with particular needs.

**3.0 DEFINITIONS**

For the purposes of applying the provisions contained in this document a glossary of terms that are used within the policy and associated procedure are as follows:

Conduct	The manner in which a person behaves, especially in a particular place or situation.
Gross Misconduct	Gross misconduct is when an employee has done something that is very serious or has very serious effect and serious enough to destroy the contract between the employer and the employee, making any further working relationship and trust impossible.
Misconduct	Unacceptable or improper conduct or behaviour.
Negligence	Failure to take proper care over something.

Temporary Staff	Staff engaged by the Trust on a fixed term, secondment or bank working arrangement (Also includes agency staff).
Safeguarding	Protect from harm or damage with an appropriate measure.
Fraud	Wrongful or criminal deception with the intent to cause a gain for themselves or another, cause a loss to another or expose another to a risk of loss
Disciplinary Rules	Indicate the standards of conduct, behaviour and practice at work that the Trust expects from all its employees.
Theft	To dishonestly appropriate property belonging to another with the intention of permanently depriving the other of it
Bribery	The giving or receiving a financial or other advantage in connection with the "improper performance" of a position of trust, or a function that is expected to be performed impartially or in good faith.
Corruption	A form of dishonest or unethical conduct by a person.
Suspension.	Suspension is where an employee continues to be employed but does not have to attend work or do any work.
Restricted/Redeployed	Restricted duties or redeployed is where an employee has a temporary change to their substantive roles and responsibility during a short period of time

#### **4.0 PRINCIPLES – Just & Learning Culture**

- 4.1 The Trust accepts the evidence that we will provide safer care and be a healthier place to work if we are a learning organisation. Humans are fallible; they make mistakes and errors.
- 4.2 Patients' physical and mental health must remain the paramount concern of any treating health professional, whether or not there is a dispute over treatment or a clinical error is alleged to have been made.
- 4.3 The vast majority of things that do not go as planned are due to unintentional acts and choices, and only a tiny minority are as a result of intentional acts, recklessness or wilful behaviours. Processes should be designed to support the vast majority of staff to help them work safely.
- 4.4 The Trust will make attempts to change the mind-set and the language associated with safety – from blame to learning. However, this does not mean an absence of accountability. Accountability is about sharing what happened, working out why it happened learning and being responsible for making changes for the future safety of staff and patients.
- 4.5 The Trust will always want to understand why things don't go as planned in order to redesign systems and processes to minimise the chances of them happening again in future, and support individuals to work safely.

- 4.6 The Trust will learn about what works well, and why, in order to replicate and optimise these behaviours and processes.
- 4.7 The Trust will recognise that people are less willing to speak up if they are afraid of being punished or prosecuted. The Trust will build a '**Just and Learning Culture**' where individuals feel able to speak up, offering different levels of access (e.g. freedom to speak up guardians) and ensure that when they do speak up they are fully supported within the organisation.
- 4.8 As part of the Trust's '**Just and Learning Culture**', Disciplinary Rules will be published to ensure employees are clear about where the line must be drawn between acceptable and unacceptable behaviour. The Trust recognises that incivility, rudeness and bullying are damaging both to staff wellbeing and patient safety, and will seek to address these issues. That means being **Compassionate, Empowering and Open**.
- 4.9 The Trust will ensure that all our staff recognise that inappropriate responses may disproportionately impact on some groups of staff.
- 4.10 People must be confident that their identity, or the identity of any person implicated in any report they make, will not be disclosed without their knowledge, unless this is required by law.
- 4.11 If a more formal investigation is required, the Trust will ask what happened and why through 'Fact Finding' methods, and what can be learnt. A decision will be reached in accordance with the Disciplinary procedure and decision making tool. When we investigate when things go wrong, we will try to recognise and minimise the natural bias we all have, such as hindsight, outcome and confirmative bias. At all stages the emphasis will be on learning, not blame, and on why it happened rather than 'who did it'.
- 4.12 Those who report concerns will be notified in a timely way of the steps taken in response.
- 4.13 The Trust recognises that there will be circumstances where referral to a professional regulator may be appropriate for some staff in certain instances within the thresholds set by the regulator. When that happens, it will only be done in accordance with our principles of learning and never as an additional punishment, advice from the relevant Professional Lead should be sought prior to any referral being made to a professional / regulatory body.
- 4.14 The Trust recognise the importance of engagement with staff on this issue - linking patient safety to staff health and wellbeing, and recognising the contribution that frontline staff can bring. As an organisation we will emphasise the importance of staff wellbeing as a foundation for helping people to work safely. The Trust will ensure that advice given by Occupational Health will be followed in a timely manner.
- 4.15 The Trust will encourage and expect all staff to continually consider what factors can affect behaviour and performance, such as design of systems, processes, products, equipment and environmental factors. We will also consider factors including fatigue, workload, team relationships and communication on working safely.
- 4.16 No disciplinary hearing will be held without a level of investigation taking place; this may simply be the gathering of facts. The employee will be advised of the nature of the allegations against them and be given the opportunity to state their case prior to any decision being made

- 4.17 Any employee being investigated under this Policy will be afforded the right to representation, (by an accredited trade union representative or a work colleague) at disciplinary hearings where there may be a formal disciplinary sanction applied.
- 4.18 Where the events surrounding a disciplinary matter are clear, an investigation may consist purely of the gathering of facts and supporting documents; an investigatory meeting may not be necessary prior to an agreed outcome meeting or disciplinary hearing.
- 4.19 The Commissioning Manager and Investigating Manager will receive advice and guidance throughout all stages of the procedure from Human Resources.
- 4.20 Malicious allegations (made in conjunction with any policy) which are found to be untrue may be deemed as a disciplinary offence.
- 4.21 Except in a case of gross misconduct or gross negligence, an employee will not be dismissed for a first breach of misconduct.
- 4.22 Disciplinary sanctions can only be applied by Managers with the authority, experience and training to do so under the Scheme of Delegation (**APPENDIX 3**)
- 4.23 Where the facts are in dispute, no disciplinary penalty will be imposed until the case has been carefully investigated and it is concluded on the balance of probability that the allegations are substantiated and proven.
- 4.24 The disciplinary process will be dealt with as swiftly as is reasonably possible
- 4.25 Confidentiality will be observed at all stages of the disciplinary process by all parties including witnesses. Failure to maintain confidentiality is in itself a disciplinary offence.
- 4.26 Employees have the right of appeal against any formal sanction applied under the disciplinary policy
- 4.27 Where a person who is the subject of an investigation or disciplinary procedure suffers a form of harm, whether physical or mental, this will be treated by the Trust as a 'never event' and the Adverse Incident (including Serious Incidents) Policy and Procedure will be invoked.

## **5.0 MONITORING OF IMPLEMENTATION AND COMPLIANCE**

The Disciplinary (Conduct) Policy and Procedure compliance is monitored via monthly reports to Directorate Senior Management Team Committees. Quarterly and Annual Reports are presented to the Workforce Transformation Group. In addition data is included within WRES and WDES reports published nationally.

All disciplinary outcomes will be monitored to ensure that the policy and associated procedure is applied fairly and equitably and to ensure that no group is over represented through this process.

The Human Resources Department will collate and provide to the Trust Board, at least annually, monitoring information relating to disciplinary cases. This may include analysis of:

- Types of cases brought
- Outcomes
- Equality and Diversity metrics

Training will be provided to Managers via the Management Development Programme [MDP] on the application of the Disciplinary (Conduct) Policy and Procedure and update training is made available on a yearly basis. Accredited Trade Union Representatives also receive training via their union's training resources or can also attend MDP.

## **6.0 POLICY REFERENCES / ASSOCIATED DOCUMENTATION (EXTERNAL)**

- Nurse Amin Abdullah Independent Inquiry Report – Press Release by Terence Skitmore, partner of Amin Abdullah and Imperial College Trust Report
- Baroness Dido Harding, Chair NHS Improvement Letter dated the 24 May 2019
- ACAS Code Disciplinary Guidelines
- NHS Code of Conduct and NHS Constitution
- Employment Rights Act 1996 & Employment Act 2008
- Maintaining High Professional Standards Policy
- Health & Social Care Act 2008 (Regulated Activities) Regulations 2014
- Duty of Candour
- Southend, Essex & Thurrock Safeguarding Children & Vulnerable Adults Procedures
- The Equality Act 2010
- Health & Safety at Work Act
- Children Act 1989 and 2004
- Employment Act 2002
- Trade Union and Labour Relations (Consolidation) Act 1992
- Data Protection Act 2018 / GDPR
- Computer Misuse Act 1990
- Sharing Information on Healthcare Workers 2013 (National Guidance)
- General Data Protection Regulations (2016/679EU)
- The Money Laundering Regulations 2007
- Fraud Act 2006

## **7.0 REFERENCE TO OTHER TRUST POLICIES/PROCEDURES (INTERNAL)**

- Disciplinary (Conduct) Procedures (Appendices)
- Maintaining High Professional Standards Policy and Procedure
- Raising Concerns (Whistleblowing) Policy
- Capability (Performance) Policy and Procedure
- Fraud and Bribery Policy
- Appeals Procedure
- Information Governance Incident Reporting Procedure
- Grievance and Dignity and Respect Policy and Procedure[s]
- Maintaining High Professional Standards Policy
- Adverse Incidents (including Serious Incidents) Policy and Procedure

## **8.0 GLOSSARY**

<b>Term</b>	<b>Meaning</b>
ACAS	Advisory, Conciliation & Arbitration Service
WRES	Workforce Race Equality Standards
WDES	Workforce Disability Equality Standards
MDP	Management Development Programme
LCFS	Local Counter Fraud Service

**END**

<b>DISCIPLINARY HEARING PROCESS</b>
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1. The Hearing Manager will ensure that all parties are introduced and will explain the purpose of the hearing.
2. The employee/representative will be asked to state whether they admit or deny the allegation(s).
3. If the employee admits the allegation(s), they may present any mitigating circumstances to the panel.

Questions may then be asked by the Hearing Manager and panel. The process is then continued as paragraph 11 below.

4. If the employee denies the allegation(s) the Hearing Manager will call witnesses, including the investigating manager (where agreed) and will have the opportunity to ask questions of them.
5. The employee and / or their representative will have the opportunity to cross-examine the witnesses.
6. The Hearing Manager and panel will have the opportunity to re-examine the witnesses on any matters arising from prior examination.
7. The employee or their representative will present their case to the Hearing Manager and panel.
8. The Hearing Manager and panel will have the opportunity to ask questions of the employee.
9. The employee or their representatives will call any witnesses and have the opportunity to question them.
10. The Hearing Manager and panel will have the opportunity to ask questions of the employee's witnesses.

The Hearing Manager may adjourn the hearing at any time up to this point in order that any party may produce further evidence or conduct further investigation.

11. The employee or their representative will have the opportunity to sum up their case. No new information should be introduced at this time.
12. The Hearing Manager and panel may ask the employee or their representative to clarify any points made in their summary statement.
13. The Hearing Manager will bring the hearing to a close and will ask parties to withdraw to allow deliberations to take place. This will take place in private

and be attended by the Hearing Manager and panel only. The employee and their representative will be recalled should clarification of evidence be needed.

14. The employee and their representative should be recalled and informed of the Hearing Manager decision verbally wherever possible and reasonable to do so.

In all cases, and whether or not the decision has been given verbally at the end of the hearing, the employee will be sent a letter outlining the reasons for the decision usually within five working days and will be advised of their right to appeal.

## DISCIPLINARY RULES

Employees need to be aware of the standards required of them in the course of their normal day-to-day duties and the possible consequences of any failure to adhere to these standards.

Listed below are the types of issues that, if breached, may result in disciplinary action. These rules are not exhaustive and serve only as a guide, although they do form part of your contract of employment.

### 1. CONDUCT

#### **Attendance**

Every employee is required to attend regularly for work within the terms of their contract of employment. Employees may not be absent from work nor leave their place of work or duties without the relevant authorisation of their line manager.

#### **Time keeping**

Every employee is required to attend work punctually, and where directed, to maintain an accurate attendance record.

#### **Confidentiality**

All information, including manual or computerised records, relating to patients, employees, salaries, tenders or other potentially sensitive information, is to be regarded as confidential at all times.

#### **Following Instructions**

All employees must carry out instructions given by management effectively and efficiently as required. Any concern about the practicality, legality or safety of an instruction, should be raised with the manager.

#### **Health and Safety**

In accordance with the Health and Safety at Work Act 1974, employees have a duty to take reasonable care to avoid injury to themselves and others whilst at work. Any personal and protective equipment provided, must be used appropriately. The occurrence of any incident that poses an actual or potential hazard to a patient, employee, contractor or member of the public, must be reported in accordance with the Trust's Incident Reporting Procedure.

#### **Use of Trust Facilities**

Employees must not use the Trust's facilities, materials or equipment for purposes unrelated to their job, without the manager's agreement.

## **Appointments and Business Interests**

Employees are not precluded from accepting other employment outside of their normal working hours. However, such employment must under no circumstances hinder or conflict with that employee's contractual obligation to the Trust. Employees are therefore required to inform the Trust of any outside employment or activity which may do so.

Employees must declare if they (or anyone else in their immediate family or household) have any business interests in a contract that is made between the Trust and a third party. If an employee becomes aware of any contract being entered into by the Trust in which they (or anyone else in their immediate family or household) might have a pecuniary interest, they must notify the Trust in writing.

## **Additional Employment**

Employees are reminded that under the terms and conditions of their employment, they must declare any other employment they undertake in addition to their work with the Trust.

Written consent must be gained from the line manager prior to undertaking external to the Trust, the Trust does not prevent employees from taking secondary employment and will not unreasonably withhold permission to do so provided it does not interfere and is not likely to interfere, with the employees performance of their employment with the Trust.

It is an express term and condition of employment that employees must not undertake any work in any capacity whilst off sick.

## **Declaration of Interests, Bequests, Gifts & Hospitality**

Failure to comply with the Trust's requirements for all employees to declare interests and any gifts, bequests and hospitality received is likely to be construed as a breach of the Trust's regulations.

## **Communication with Press, Media or Other Third Parties**

Any employee who intentionally passes on information obtained during the course of employment that is likely to harm the interests of the Trust, its patients, service users, employees or property, may be subject to disciplinary action. Employees are expected to notify and liaise with the Trust's Communications team when dealing with media.

The attention of staff is drawn to the recognised internal channels by which they can make representation to the Trust, for example, use of the Whistleblowing and Grievance Policies or by contacting the Guardian Service.

## **Appearance and Personal Hygiene**

Employees are expected to be clean and tidy at work and to wear clothing appropriate to their occupation. This may be subject to departmental safety or hygiene rules that must be observed.

## **2. GROSS MISCONDUCT**

Exceptionally serious offences such as those given below will be regarded as gross misconduct and may warrant summary dismissal. Examples of gross misconduct are, but not limited to:

### **Theft**

Any instance of theft, attempted theft or dishonesty arising out of employment with the Trust.

### **Fraud**

Any deliberate fraudulent act, for example, falsification of timesheets, sickness certification or other claim forms etc. Offences, criminal or civil which could be related to fraud or corruption (behaviour outside the boundaries of accepted NHS business practice) will be subject to the Trust's Counter Fraud / Anti-Crime Specialist(s)'s scrutiny in consultation with the Director of Resources and in accordance with the Trust's Fraud and Corruption Policy.

### **Assault**

Any verbal or physical assault (or attempted assault) upon a patient, employee, contractor or member of the public.

### **Criminal Action/Inquiries**

Any criminal police inquiry or action resulting from a criminal inquiry, arrest, charge, caution or conviction in circumstances where there is a connection between the criminal action/ inquiry and the employment relationship which brings about a loss of trust and confidence or where the Trust has been brought into disrepute.

Any failure by an employee to disclose any of the above.

### **Gross Negligence**

Any action or failure to act, that threatens or could threaten the security or health, safety and well-being of a patient or service user, employee, contractor or member of the public or which seriously damages public confidence.

## **Harassment, Bullying and Discrimination**

Breaches of the Trust's Equalities Policies or Respect and Dignity at Work Policy, including any form of harassment, bullying or discrimination including sexual offences, verbal abuse or intimidation directed at a patient, service user, employee, contractor or member of the public.

## **Relationships with Patients**

The Trust regards as wholly unacceptable and close, personal relationship between an employee and a patient whom they meet as a result of their employment. Personal relationships of a sexual nature may additionally be considered a criminal offence.

## **Confidentiality**

All information, including manual or computerised records, relating to service users, employees, salaries, tenders or other potentially sensitive information, is to be regarded as confidential at all times. Serious breaches of confidentiality will potentially amount to gross misconduct.

## **Following Instructions**

All employees must carry out instructions given by management effectively and efficiently as required. Any concern about the practicality, legality or safety of an instruction, should be raised with the manager. Where there is a serious breach i.e. a wilful refusal to obey lawful instruction without proper reason, it will potentially amount to gross misconduct.

## **Breach of the Trust's Standing Orders or Financial Instructions**

Any serious breach of the Trust's Standing Orders or Financial Instructions.

## **Corruption**

Receipt of money, goods, favours or excessive hospitality in respect of services rendered. (see NHS circular HSG(93)5 which sets out the principles for Standards of Business conduct for NHS staff). This includes the acceptance of any gift or consideration from individuals or contractors that may be considered as an inducement.

## **Serious Misrepresentation**

Any serious misrepresentation/falsification including, declaration of health, qualifications held, previous positions held, falsification of date of birth. Also any failure to disclose a criminal conviction, charge or caution prior to or during employment other than where non-disclosure is protected by the Rehabilitation of Offenders Act. Or deliberate falsification of professional registration, immigration status; or the requirements to satisfy the Fit and Proper Person Test.

## **Records**

All employees are expected to keep clear and accurate records (including electronic records) relevant to their practice a failure to maintain appropriate care records including misrepresentation, falsification or retrospective recording would constitute a breach of policy.

## **Misuse of Information Technology**

Any serious breach of policy as set out in the Trust's IM&T Security Policy, Internet Usage and Social Media policies in relation to the inappropriate or excessive use of IT equipment, Internet access and/or Email or Social network sites.

## **Data Protection**

Any deliberate misuse of data protection information and/or deliberate interference with computerised information or information held on manual files.

## **Malicious or Wilful Damage to Property**

Any deliberate damage to property belonging to the health service, a patient, employee, contractor or member of the public.

## **Health and Safety**

Serious breaches of health and safety legislation and/or the Trust's Health and Safety Policy.

## **Fitness for Duty**

Being unfit for duty, other than for medical reasons, for example, through substance and/or alcohol misuse. This may include sleeping whilst on duty.

## **Policies or Statutory and Contractual Codes**

Serious breaches of the Trust's policies or relevant statutory or professional, Codes of Practice and Conduct, the NHS Code of Conduct for NHS Managers (e.g. practising whilst unregistered) and NHS Constitution. This includes actions outside of the normal workplace and hours of work which as a result, may question the honesty or integrity of the employee or potentially harm the Trust reputation or bring the Trust into disrepute.

Failing to bring to the Trust's attention any investigation or action taken by either their professional body, or any other statutory body, regarding their conduct, behaviour or practice.

## **Failure to maintain Professional Registration**

It is a statutory requirement to maintain professional registration in certain professions to practice without registration is a breach of the terms and conditions of employment, this includes where registration has lapsed, revalidation is not approved or the employee is suspended or removed from the register for whatever reason.

## **Mental Health Act 1983 and 2007**

The Sexual Offences Act 2003 confirms that it is a criminal offence for a care worker to engage or attempt to engage in behaviour of a sexual nature with a person with a mental disorder.

## **Conduct likely to bring discredit to the Trust or relevant organisation or profession**

This rule may be breached when an employee intentionally, recklessly or without reasonable cause acts in a manner which damages, or is likely to damage, the reputation of the Trust or organisation or profession to which they belong.

## **Breach of Trust and Confidence**

This rule may be breached when an employee acts in a way which can reasonably be considered as damaging or likely to damage, the relationship of confidence and trust between them and the Trust. This confidence and trust can be explicit or implied.

## **Bribery Act**

Offences described under the Bribery Act 2010.

## **Duty of Candour**

An employee will have breached Duty of Candour if they fail to be open and honest with a patient in relation to their care or take part in investigations or audits relating to patient care.

**EPUT NHS FOUNDATION TRUST LEVELS OF AUTHORITY**

<b>CATEGORY OF STAFF</b>	<b>SUSPENSION/ISSUE OF VERBAL OR FIRST WRITTEN WARNING BY:</b>	<b>ISSUE OF FINAL WARNING BY:</b>	<b>DISMISSAL DOWNGRADING OR TRANSFER BY:</b>
Chief Executive	Trust Chair	Trust Chair	Trust Chair with Non-Executive Trust Members
Executive Directors	Chief Executive	Chief Executive	Chief Executive with Trust Chair/Non- Executive Trust Members
Other staff directly responsible to the Chief Executive	Chief Executive	Chief Executive	Chief Executive
Staff Directly responsible to:  Executive Directors (Directors/Deputy Directors)	Executive Director	Executive Director	Executive Director
All other staff	Immediate Manager	Next Level Manager above Immediate Manager	The appropriate:  Executive Director / Divisional Director or Associate Director (or equivalent).  Senior (Service) Manager as authorised by the Executive or Divisional Director.

## FAST TRACK/AGREED OUTCOME PRINCIPLES

Where the disciplinary outcome of a particular case is anticipated to result in a sanction e.g. first written warning, an employee and /or staff side may ask management to move directly to that conclusion without completing a full investigation. The Manager may also suggest to staff side that the case may be suitable to be dealt with under Fast Track/agreed outcome. It should be noted however that there should be sufficient information for both the employee to request a Fast Track/agreed outcome and for management to make a decision on the appropriateness of the request i.e. Datix form. At the meeting there must be a belief that the employee has learnt from the experience and is unlikely to repeat their misconduct and adhere to the values of the Trust.

Fast Track/agreed outcome will not be considered for matters of gross misconduct or where dismissal maybe appropriate. Nor can it be used if any of the allegations are contested by the employee or if there is a connected disciplinary process involving another employee.

In the event that the Manager/Senior Manager considering the facts decides that there may be no case to answer with the detail/evidence they have been given; this should be discussed with Human Resources.

Staff who are not in a union should discuss their concerns with their manager, the Trust's staff side chair, Human Resources or a workplace colleague before considering a request for 'Fast Track/agreed outcome.

1. All requests must be submitted to the fact finder, commissioning manager or line manager, who will liaise with the HR department, before any investigation commences.
2. A meeting with the employee and their staff side representative (if in a union) will be necessary at this point to gather further information. The Line Manager/Senior Manager will be responsible for the collection of this information so that this can be passed on to the fact finder, commissioning manager or line manager for the decision making.
3. The Investigations Team Leader will seek to ensure that the employee has discussed the matter with their staff side representative, Human Resources or a workplace colleague if they are not a member of a staff side organisation before making such a request.
4. There will be no right of appeal against a warning given using Fast Track/agreed outcome

Cases that may fall under the Fast Track/agreed outcome but not exhaustive could include: social media, drug errors, lack of documentation, confidentiality, minor IG breaches, breaches of procedure internet misuse etc. Please note that this list is not exhaustive.

Please note that medication errors will be considered as part of the Fast Track/agreed outcome process, however every error will be reviewed by a panel, consisting of Lead Nurse, HR and Manager to consider the suitability of the Fast Track/agreed outcome process.

If the Fast Track/agreed outcome process is agreed; a meeting will take place with a senior manager of the Service, no witnesses will be called. Notes will be kept of the meeting. The senior manager hearing the case will not be the manager who was involved with any of the previous direct discussions with the employee.

**This meeting must have taken place within 72 hours of the issue being raised with their manager or staff representative**

**The process for a Fast Track/agreed outcome meeting will be as follows:**

- Introductions
- The senior manager outlines the nature of the allegation(s) accepted by the employee and advises that it (they) will be awarded the agreed sanction.
- The senior manager confirms with the employee that they accept the allegations previously stated.

- The employee or their representative will have the right to put forward any comments or statements relating to the incident (including any mitigation).
- The senior manager may wish to question the employee.
- The senior manager will adjourn briefly to give consideration to the case. If more information is required to make a decision on the sanction the meeting may be adjourned to allow a further investigation to take place.
- The senior manager will then communicate their decision to the employee and their representative. The penalty will not exceed the previously stated limited sanction but in exceptional circumstances (e.g. the employee denies some of the allegations) the manager may decide that the matter should be referred for further investigation and/or to a full disciplinary hearing for potentially a higher sanction to be considered.
- The senior manager will send a letter confirming the decision to the employee. The record of any warning will be kept on the personal file.
- The disciplinary sanction imposed will be given in accordance with the Trusts' Disciplinary policy, procedure and related appendices.

## INVESTIGATION TOOLKIT

**This toolkit sets out the steps to be taken when concerns about the conduct of an employee that needs to be investigated or when suspension may be required. This toolkit is to be read in conjunction with the Trust's Disciplinary Procedure.**

### 1. INTRODUCTION

The purpose of this toolkit is to ensure that concerns regarding the conduct or performance of staff, which require formal investigation, are investigated in a fair and consistent manner. Investigation may be a preliminary step which leads to action being taken in accordance with other Trust policies.

If you have any queries in relation to this or the policy then please do not hesitate to contact your HR Business Partner or HR Advisor.

### 2. SCOPE

This process applies to all staff and formal investigations unless overridden by other policies relating to a specific staff group or set of circumstances.

In the case of some straight forward line management concerns in relation to conduct or performance of an employee, a formal investigation may not be necessary. A decision may be made to deal with the matter informally. Examples of where an informal process may be used would include sickness issues and persistent lateness.

However, in more complex cases, or where others may have witnessed alleged incidents or may have relevant information, a matter should be fully investigated before a decision is made regarding further action to be taken. In cases where the manager suspects financial irregularities the matter should be brought to the attention of the Director of Finance. It should be noted that in cases of suspected fraud, the matter will be referred to the NHS Counter Fraud Management Service and interviews may be carried out in accordance with Police and Criminal Evidence (PACE) legislation.

### 3. SUSPENSION

In certain circumstances (as outlined below) it may be necessary to suspend an employee from duty pending investigation into allegations made.

The following are examples of what may be considered as gross misconduct. Please note that the list is not exhaustive.

- Theft/Misappropriation – any instance of unauthorised removal of property from the Trust or from a service user, carer or members of staff
- Physical Assault – Physical assault upon a service user, carer, a fellow employee or member of the public;
- Threatening/Menacing Behaviour towards a service user, carer, a fellow employee or a member of the public;
- Recklessness/Negligence in work – any action, or failure to act, which threatens the health and safety of a service user, carer, member of the public or another member of staff;
- Serious Damage – to Health Service property, property of service users'/carers, or members of staff;
- Corruption (FA06) – receipt of money, goods, favours or excessive hospitality in respect of services rendered;
- Confidentiality – loss of confidential information, unauthorised access to confidential information, disclosure or breach of confidence in relation to information regarding a service user/carer or member of staff except where such a breach constitutes a protected disclosure for the purposes of the Trust's Concerns at Work;
- Unlawful discrimination or harassment;
- Breach of Professional Code of Conduct including failure to maintain registration with

- appropriate professional body;
- The concealment or destruction of evidence of malpractice;
- Inappropriate or Unprofessional relationship with any service user
- Deliberately accessing or downloading material from any site that is of a pornographic, discriminatory or of an offensive nature – IM&T Security Policy (IT02);
- Sleeping whilst on duty;
- Possession or attempt to supply alcohol or substances (which may or may not be illicit);
- Consumption of alcohol or substances (which may or not be illicit), either prior to reporting for duty or whilst on duty, which may impair ability to undertake duties;
- Inappropriately accessing the Internet during working hours (unless related to work or educational purposes);
- Inappropriate use of internet and social network sites, for example Facebook and Twitter;
- Communicating any material which breaches the Trust Equality and Diversity policies;
- Commits a serious act, which is deemed to be prejudicial to the interests of the Trust or its employees;
- Breach of Trust Corporate Smoking Cessation Policy (SA20) on more than 2 occasions;
- Knowingly taking carers/parental/paternity/adoption leave for purposes other than supporting a child/dependant;
- Making false allegations against another employee;
- Victimising an employee who has raised concerns under the Whistleblowing, Dignity at Work, Grievance, Disciplinary Policies/Procedures;
- Serious breach of the Trust's Standing Financial Instructions (SFIs), Standing Orders (SOs), and/or Scheme of Reservation and Delegation (SoRD);
- Misrepresentation at any time, including at the time of appointment or when applying for any post in the Trust, e.g. previous positions held, qualifications held, date of birth, declaration of health, or failure to disclose a criminal offence or pending criminal action, subject to the provisions of Rehabilitation of Offenders Act 1974

The act of suspension is not a disciplinary act. It is a neutral act enabling the individual to be released from their place of work pending investigation and a decision on the appropriate outcome. Whilst suspended, the employee will normally remain on full pay.

Suspension will normally be carried out by the employee's manager. A period of special leave whilst a preliminary investigation is undertaken, this would normally be for no longer than 24 hours could be applied before a decision to suspend. However in exceptional circumstances, in the absence of the employee's manager, another manager may suspend a member of staff on the basis of the criteria above (for example 'out of hours' or during annual leave of the employee's manager).

Notification of the suspension and the reasons for the suspension will be confirmed in writing to the employee as soon as possible and within 5 working days of the date of suspension.

NOTE: - A suspension may have to be carried out 'out of hours' when a staff side representative may not be available. In such a situation, the individual may be accompanied by a workplace colleague.

### **3.1 Letter of Suspension**

The written confirmation of suspension must be sent to the employee within three working days, and should include the following details:

- The reason for the suspension
- The fact that it will be on full pay
- That it is a neutral act, a precautionary measure and is not a disciplinary sanction.
- The name and contact details of the identified Support Officer
- The terms of the suspension e.g. not to enter the workplace other than to obtain treatment for themselves or their family, or to attend an arranged meeting with their trade union representative.
- Not to enter the workplace without prior agreement from their authorised manager.
- Not to access systems

- Not to discuss or disclose any specific information relating directly to the case. Any breaches of confidentiality may be deemed in itself misconduct.
- The support available from the Occupational Health Department if required.
- A contact name and number for any queries.
- That during their period of suspension they must not undertake any bank or agency work.

The letter of suspension will also include the Conduct Investigation Support Leaflet (Appendix 7) ensuring that the employee is aware of all opportunities for support and advice available to them.

During the period of suspension the Investigating Officer or the individual's Line Manager must maintain regular contact with the suspended employee, in order to keep the employee informed of any progress in the investigation.

#### **4. The Investigation**

The purpose of the investigation is threefold:

- To determine whether or not there is a prima facie case to answer ("sufficient to establish a fact or raise a presumption unless disproved or rebutted.")
- To be thorough, fair and objective, respecting the rights of all the involved parties
- To collect relevant evidence and to establish facts, to be used in preparation for action in the event that formal procedures need to take place.

##### **4.1 The Investigating Manager**

Following the reporting of an incident, the appointment of the most suitable Investigating Manager will be discussed and agreed between the Human Resources representative and an appropriate level of Management.

When appointing an Investigating Manager it is important to consider the following factors:

- The independence of the investigator/s;
- Credibility of the investigator/s;
- Specialist knowledge required;
- Sensitivity of the situation;
- Time available to undertake the investigation;
- The necessary skills, training and experience of investigator/s – have they done an investigation before and/or attended management development programme
- The possibility of witness interviews/statements.

#### **5. Terms of Reference of the disciplinary Investigation**

The Terms of Reference (TOR) for an investigation provides a specification for exactly what the Investigating Manager needs to do and how the investigation should be conducted. It includes key information about the roles of the different people involved and the timescales to work to. This template should provide some standard wording around the conduct of investigations and the terms of reference for an investigation.

These should be shared with the employee/s concerned and with any staff representatives involved. The terms of reference should include the following:

- Allegation points
- Copies of all documents raised to date regarding the issue and any witness statements received to date
- Timescale for investigation
- Plan of communication with employee
- Resources to support investigation
- Assessment of independence of investigating manager
- Details of witnesses that management wish to be interviewed should be included within the Terms

of Reference and the Investigating Manager may decide on other witnesses to interview. The employee may also suggest other potential witnesses during the investigation, where an Investigating Manager decides not to interview witnesses suggested by the employee they should provide a clear rationale for this decision.

- Relevant policy and procedures used in conjunction with the investigation

It is important to understand the Trust obligations in regard to Whistleblowing and this must be discussed with a HR Representative prior to the commencement of any investigation.

The Investigating Manager will interview relevant staff, or collate witness statements / questionnaires and collect relevant information and collate this into a written report or outcome letter. In cases which result in a Disciplinary Hearing this will form the basis of the presentation of case.

## **6. Interviews**

For the interview process to be successful, it must be seen to be consistent, fair and objective. The investigating Manager/s will approach the investigation with an open mind. This can be achieved by following a few simple rules:-

- The process must be geared to clear criteria and/or terms of reference
- Where the matter is a complaint, the complainant should normally be interviewed first, followed by the individual about whom the complaint has been made.
- Where there is no complainant, the employee against whom the allegations are made would normally be interviewed first.
- During those initial interviews the individual should be asked whom they wish to be interviewed as witnesses. It may also be necessary to collect some background information before these interviews take place.
- Introduce everyone, outline the purpose of the interview and investigation and the process which will be followed.
- Explain what will happen with the notes of the meeting, sign up and timescales
- Consider the use of questionnaires, where necessary – this should be used whereby a witness's information could be captured via this method. If the information captured still leaves questions to be answered please revisit.
- Explain the decision making process and that the role of the Investigating officer is to fact-find only, not to form a judgement. It is important that the investigating manager seeks facts which could either prove or disprove the allegations made.
- Discuss confidentiality and stress its importance and any consequences of breaches.
- Do not make comments regarding findings to date and remain impartial.
- Concentrate on the facts, e.g. events, times, dates what was seen and heard.
- The extent of the investigation should be proportionate to the seriousness of the issue
- The investigating manager should try to put all individuals at ease
- All individuals have the right to be accompanied by either an accredited Trade Union Representative or a Work Colleague.
- Individuals should be available for meetings and not unreasonably delay the investigation. Written testimonials or telephone meetings can be accepted. Where an employee does not cooperate, they must be informed that the investigation will conclude with the information available, if necessary.
- Reluctant witnesses should be told that the interview will be held privately, that a note will be taken which they will be able to verify for accuracy and should be reminded of their obligation of good faith to the employer
- Where a member of staff is absent from work through sickness, Occupational Health will be consulted. An investigation should not be delayed on the grounds of absence nor should it compromise an individual's health. The Investigating Manager should be empathetic to the circumstances and ensure that all measures of support and reasonable adjustments are considered to support participation before making a decision to proceed with the investigation regardless.
- If an individual claims the allegations are vexatious, explain that the allegations at hand must be investigated initially and should there be evidence of malice, this be investigated subsequently.

- To ask non-leading questions you must be comfortable with being vague in how you ask your questions. Here's some examples:
- “How would you use this?”
- “What would you do with this information?”
- “What would you do next?” or my favourites, “What's next?”
- “How do you feel about what you're doing there?”

## 7. Note Taking

Verbatim notes do not need to be taken, but the key points of any answers should be noted. There may be repetition, but it is still important to record these responses.

## 8. Additional Evidence

Other relevant information that may need to be accessed could include:

- Financial records. If there are any doubts around this issue then Audit should always be consulted.
- Occupational health documents (subject to the requirements of the Access to Medical Records Act and the Data Protection Act)
- Minutes of meetings
- Appraisals, training records
- Supervision notes
- Rosters
- Observation sheets
- Details of any performance management documents
- Evidence from clients/patients, it may be appropriate to involve another professional in some incidents with sufficient expertise to communicate with, elicit and evaluate this type of evidence – where it is considered necessary to interview service users / patients the relevant responsible medical officer should be consulted first.
- Documentary evidence which could include policies and procedures, emails, log books
- Emails from IT department
- Closed Circuit Television (CCTV) evidence
- Body worn camera evidence

When collecting additional information Investigating Manager should be mindful of the General Data Protection Regulation (GDPR) 2018, the Telecommunications Regulations 2000 and advice should be sought from the relevant specialists in these areas if necessary.

## 9. Evaluation of Data and Conclusion of the Investigation

Having gathered all the facts the Investigating Manager needs to reach a conclusion and make a recommendation as to whether there is a case to answer under the relevant policy.

Where there is no case to answer the recommendations may include correct guidance for individuals including managers, training, or other appropriate action.

In respect to the disciplinary report this may include deciding whether:

- There is no case to answer and no further action should be taken.
- There is a need to arrange for corrective guidance or a recorded conversation to be given to the employee to correct the misconduct/situation
- The case highlights training or capability issues which should be addressed using the appropriate procedure.
- There is a potential case to answer and a formal hearing should be arranged under the appropriate procedure.

All parties involved, excluding witnesses, need to be informed of the decision in writing.

Where the case is proceeding to a formal hearing the Investigating Manager must agree with their HR Representative the content, investigation reports and all appendices of evidence.

### Disciplinary Decision Making Tool

This tool supports a conversation between management about whether a staff member involved in an incident warrants formal investigation/action. The tool highlights the important principles that need to be considered before formal management action is taken, and allows management to make certain they are treating all staff equally, compassionately and fairly, ensuring that any decision taken is not based on unconscious bias.

This tool can be used at any stage of a disciplinary process, and it may need to be revisited if more information becomes available. The Tool should always be used to establish if an alleged incident involving an employee/worker should be formally investigated under the Trusts disciplinary procedure. This guide does not replace HR advice and should be used in conjunction with the Trusts policy and procedure on disciplinary matters

*Insert details on where to send the form and who to contact if require further assistance.*

<b>Name person completing Form:</b>	
<b>Supporting HR Representative:</b>	
<b>Name of Individual/s under review:</b>	
<b>Individual(s) Ethnicity</b>	BAME / NON BAME
<b>Date of alleged incident:</b>	
<b>Date form completed:</b>	
<b>Brief details of incident:</b>	

#### Deliberate Harm Test

1a. Did the member of staff intend to cause harm?  
NO



Yes	<b>Recommendation:</b> Investigation required, Consider suspension or deployment of staff, referral to police, contact relevant professional body	End
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#### Health Test

2a. Did the staff member appear to be under the influence or was there any other indications of physical or mental ill health  
NO



Yes	Recommendation: Follow Employee wellbeing policies and procedures and fitness to practice reviews, which is likely to include occupational health referral. Need to review why concerns had not been recognised and addressed earlier.	End
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#### Operating Systems Test

3a. Are there agreed protocols/policies/accepted practices in place?

#### Skills and Performance Test

3c. Did the individual know how to and can, but chose not to  
4a. Would you expect individuals in a similar role/position with similar experience to act in a similar manner?

YES



NO	<b>Recommendation:</b> Action singling out the individual is inappropriate where there are Trust wide issues with operating systems. A fact finding exercise should be undertaken to identify issues with operating systems with actions identified to address. Training/supervision support may need to be provided to the individual to improve practice.	END
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4b. The individual has not had training relevant to the concerns?

4c. Has the individual failed to have had regular supervision/handover?

NO



YES

**Recommendation:** Action singling out the individual is inappropriate where there are Trust wide issues with supporting skills and performance. A fact finding exercise should be undertaken to identify issues with systems with actions identified to address. Training/supervision support may need to be provided to the individual to improve practice.

END

**Mitigating Circumstances**

5a. Was there any significant mitigating circumstances?

NO



YES

**Recommendation:** Formal action may not be appropriate, seek HR and relevant technical/clinical advice on what degree of mitigation applies and if informal action would address the concerns appropriately.

END

**OUTCOME**

**Matters to be reviewed prior to deciding outcome:**

- Is there sufficient understanding of the issues or concerns, and the circumstances relating to them, to justify the action recommended?
- Considering the circumstances would the application of this action recommended represent a proportionate and justifiable response?
- How will appropriate resources be allocated and maintained to ensure the action recommended is allocated and maintained to ensure it is conducted fairly and efficiently?
- How will you ensure that independence and objectivity is maintained at every stage of the action recommended?
- What will be the likely impact on the health safety and wellbeing of the individual(s) concerned in the action recommended and on their respective teams and services?
- What immediate and ongoing direct support will be provided?
- How will you ensure the dignity of the individual(s) concerned in the action recommended is respected at all times and in all communications and that your duty of care is not compromised in any way, at any stage, of the action recommended?

**Please detail below the action recommended (Please tick all relevant boxes)**

Informal Disciplinary Procedure or 'fast track' agreed outcome		Performance Management – CAPABILITY PROCEDURE	
Training Requirement		Increased Supervision/Mentoring	

Changes to procedures/policy/guidance/protocols/practices		Notification to professional lead – consideration of referral to professional body	
Suspension/Exclusion		Restricted Duties	
Health Concerns – Sickness and wellbeing procedures		Formal Investigation – DISCIPLINARY PROCEDURE	

**In taking the above action is this consistent with how other employees have been treated for the same or similar conduct or concerns? Yes/No**

**Please provide the rationale for course of action**

**If Formal Investigation – DISCIPLINARY PROCEDURE is recommended please provide:**

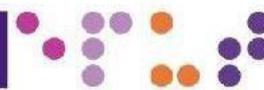
**Reasons why informal action / learning procedure is not applicable:**

**Reasons why 'fast track' (agreed outcome) procedure is not applicable:**

# Conduct Investigations



Support and information for staff



## General information

The trust recognises that becoming the subject of a workplace investigation can be extremely stressful. It is important to respond to and participate in an investigation carefully and calmly.

Staff members may find themselves subject to an investigation under either the Disciplinary (Conduct) Procedure, if they hold a substantive post, or the Managing Temporary Worker Conduct & Complaints Policy & Procedure, if they are a bank worker.

Aside from this being a stressful time due to the investigation process itself, this may be exacerbated by the involvement of a safeguarding process, involvement from the Police, or because of a suspension/preclusion from the workplace as a result of the concerns raised. In light of this, this leaflet will briefly describe the process followed in each of these scenarios.

The trust has a number of different support mechanisms; these are detailed below:

- [Redacted]

## Keeping in touch

A designated member of line management will be allocated to keep in touch and support you throughout the investigatory period. This is put in place to support your general wellbeing. The designated manager will contact you at the start of the investigatory process and agree a plan for keeping in touch.

The designated manager (Support Officer) will not be involved in the investigatory procedure or any other procedures that may follow from this.

**One of the Trust's Staff Health and Wellbeing Leads will also be available to provide you with support throughout the investigatory period should you wish to access this.**

If you wish to nominate an alternative designated manager or support person this will be considered. Anyone involved in the investigatory process (including potential witnesses) cannot also act as the designated manager support.

For bank workers the designated manager will be the Bank Staff Relationship Manager, supported by an appropriate operational manager.



## Safeguarding investigation

When a safeguarding process is deemed necessary due to the nature of the concerns raised, the trust's safeguarding department will be involved. They will liaise with the senior manager and HR representative concerned as to what information can be released to you both during and after the safeguarding investigation. Where possible, an internal disciplinary investigation will run separately but parallel to the safeguarding investigation.

## Police/other involvement

It may also be necessary, due to the nature or seriousness of the concerns at hand, that the Police, Violence & Abuse Prevention and Reduction Advisor, Counter Fraud / Anti-Crime Specialist, or a combination of these parties be involved in the investigation process. This is where there are concerns that fraud/corruption/bribery or another criminal act may have been committed. These parties may be involved or consulted with prior to any internal investigation or action by the trust.

Any police investigation will take precedence over internal procedures and the trust should take care not to prejudice any investigation by the Police or an external body. To avoid this it may only be possible to inform a staff member that an allegation has been made against them. No further information will be provided at the initial stages as clearance from the Police will be required to ensure the integrity of the investigation. Staff members being investigated will be supported by the trust.

## Suspension

Suspension is a protective measure that may be necessary if you're a bank worker, may be necessary to support you during the investigation process, either where your continued presence could compromise the process, or where management feel that there may be a risk to the health and safety of you or others. Alternative arrangements, such as temporary redeployment or restricted duties, will be considered as alternatives in the first instance. Suspension will be for as short a time period as possible.

If you are suspended or precluded, you will be unable to work while the investigation is taking place. You may be able to undertake some training if this is deemed appropriate. Substantive staff members will receive their full contractual pay which will be calculated on the basis of your average earnings over the three months prior to the date of suspension.

Your suspension will be reviewed at regular intervals: after two weeks, four weeks, and after eight weeks. You will be kept informed of the progress of the investigation in writing by the Investigating Manager at these intervals.

If you are off sick during a period of suspension you will receive sick pay accordingly and will need to report your absence/provide any certificates to your line manager as you usually would. During any period of suspension you must be available to attend investigatory meetings as if you were at work. If there are periods of time when you will not be available, you will need to book annual leave in the usual way via your line manager.



## DISCIPLINARY (CONDUCT) PROCEDURE

<b>PROCEDURE REFERENCE NUMBER</b>	HRPG27A
<b>VERSION NUMBER</b>	2.1
<b>KEY CHANGES FROM PREVIOUS VERSION</b>	Reference to LCFS in 3.1 amended to Counter Fraud / Anti-Crime Specialist(s)
<b>AUTHOR</b>	HR Business Partner
<b>CONSULTATION GROUPS</b>	Policy Sub-Group Workforce Transformation Group Joint Partnership Committee
<b>IMPLEMENTATION DATE</b>	April 2017
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<b>LAST REVIEW DATE</b>	July 2021
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<b>PROCEDURE SUMMARY</b>
<p>This procedure sets out the framework for the Trust's approach to the management of conduct, behaviour and practice concerns and the process to be followed in dealing with disciplinary (conduct or negligence) matters. Where issues of concern relate to capability (performance) these should be dealt with in accordance with the Trust's Capability Performance Policy and related procedure.</p> <p>This procedure should be read in conjunction with the Disciplinary (Conduct) Policy.</p> <p><b>The Trust monitors the implementation of and compliance with this procedure in the following ways:</b></p> <p>The Disciplinary (Conduct) Policy and Procedure compliance is monitored via monthly reports to Directorate Senior Management Team Committees. Quarterly and Annual Reports are presented to the Workforce Transformation Group. In addition data is included within WRES and WDES reports published nationally.</p> <p>Data relating to investigations and disciplinary procedures will be collated, recorded and openly reported at Board level on a quarterly basis.</p>

**Scope**

Services	Applicable	Comments
Trustwide	✓	

**The Director responsible for monitoring and reviewing this procedure is the Executive Director of People & Culture**

## DISCIPLINARY (CONDUCT) PROCEDURAL GUIDELINE

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<b>ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST</b>
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## DISCIPLINARY (CONDUCT) PROCEDURE GUIDELINE

<b>1.0 INTRODUCTION</b>
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- 1.1 This procedure introduces the Trust's principles in relation to resolving disciplinary matters. Disciplinary rules and procedures are necessary for promoting positive employee relations and for safeguarding of patients.
- 1.2 The Trust recognises that disciplinary issues can relate to conduct (complying with Trust policy, rules, values and procedures), including negligence. The disciplinary procedure will be invoked by management in circumstances where it is alleged that conduct has fallen below the required standards.
- 1.3 Unless otherwise stated, this procedure does not form part of an employee's terms and conditions of employment but is a statement of the Trust's current practice and may be changed from time to time.
- 1.4 The Trust recognises its responsibility in ensuring that all employees are aware of their obligations whilst at work and the behaviour and conduct expected of them. Employees also have a responsibility to familiarise themselves with the general rules and procedures referred to in their conditions of service and as related to their specific area of work and as required of them by their professional code(s) of conduct and NHS Constitution.
- 1.5 This procedure applies to all employees of the Trust with the following provision:
  - a. Medical and Dental staff – this procedure does not apply to issues concerning professional conduct and / or competence of Medical and Dental staff who are subject to the provisions of the Maintaining High Professional Standards Policy and Procedure.
  - b. Temporary staff (including bank workers) – temporary workers are required to maintain the Trust's expected standards of conduct, behaviour and practice. Any issues of conduct will be addressed using the Temporary Worker Conduct & Complaints Policy and Procedure.
  - c. Trade Union Officials – such staff are subject to the provisions of this procedure. However, in most cases no formal action will be taken until a senior trade unions representative or full time officer has been informed.

<b>2.0 GUIDING PRINCIPLES – JUST AND LEARNING CULTURE</b>
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- 2.1 The principles of a Just and Learning Culture are set out in Section 4.0 of the Disciplinary (Conduct) Policy.
- 2.2 Any allegations of misconduct in the Trust will mean a commitment to developing a **Just and Learning Culture**, whereby cases are thoroughly assessed to ensure there is sufficient understanding of the issues or concerns, and the circumstances relating to them, to justify the initiation of formal action.
- 2.3 The Trust and those involved with utilising this procedure should always be asking whether any actions are **proportionate** and **justifiable** and whether managing situations informally achieves a more productive outcome.

- 2.4 Before any disciplinary investigation or formal procedures are followed, the Trust must ensure those involved include trained and / or experienced investigators and managers who hear cases at formal hearings and expanded our pastoral support for employees. The Commissioning Manager will be accountable when applying the **Just and Learning Culture**.
- 2.5 The HR service must be fully consulted prior to any action being taken in relation to this procedure.
- 2.6 Regular communication and pastoral support will be maintained at each stage of the disciplinary procedure, to ensure its effective implementation and application.
- 2.7 In usual circumstances employee(s) affected will be made aware of the nature of the allegations made prior to the instigation of this procedure.
- 2.8 Where there are allegations of misconduct, or negligence, the Trust will conduct an investigation as soon as possible, having due regard to all the circumstances.
- 2.9 All employees and parties involved in disciplinary procedures must ensure the confidentiality of events and discussions. An unreasonable breach may be considered as a disciplinary offence in itself.
- 2.10 In addition to their statutory rights all employees have the opportunity to be accompanied at suspension or investigatory meetings by a work colleague, an accredited representative of a recognised trade union, or an official employed by a recognised trade union. The Trust will not normally agree a request for an employee to be accompanied by an individual deemed to be a witness or who could compromise any investigation including cause unnecessary delay.
- 2.11 All employees have the right of Appeal against any formal disciplinary action taken (see Section 11) in accordance with the Appeals Procedure.
- 2.12 The Trust will ensure that a written record is maintained at all stages in the disciplinary procedure.

### **3.0 INTERFACE WITH OTHER POLICES AND PROCEDURES**

#### **When this Disciplinary Procedure is applicable and Interface with other Policies/Processes**

##### **3.1 Allegations of Fraud and the interface with NHS Counter Fraud**

Any internal investigation into allegations of potential fraud should be deferred until a full and detailed discussion has taken place with the nominated Counter Fraud / Anti-Crime Specialist(s) (CF / ACS). The involvement of NHS Counter Fraud does not necessarily mean a disciplinary investigation will not take place and each situation is to be judged on its own merits.

For both the CF / ACS and HR, any matter referred which raises any suspicion of fraud, bribery or corruption must be dealt with in accordance with the requirements set out in this procedure and the Trust's Fraud and Bribery Policy (CP11).

All and everyone aware of potential fraud is responsible for raising this directly to the CF / ACS.

### 3.2 Duty of Candour

There is a duty for NHS bodies to be open, honest and transparent. This includes:

3.2.1 The Trust sharing information from a disciplinary investigation with Service Users and carers regarding a patient safety incident, where appropriate and in accordance with Information Governance rules regarding confidentiality.

3.2.2 Encouraging open and honest dialogue with Service Users.

3.2.3 Where appropriate, interviewing service users as part of the process.

### 3.3 Whistle-blowing (Raising concerns)

3.3.1 When concerns are raised about unlawful conduct, financial malpractice or dangers to the public or the environment, this will be investigated in line with the Trust's Raising Concerns (Whistleblowing) Policy and Procedure regarding patient care or Matters of Business Probity/Conduct Policy and Procedure. If as a result of this, there are concerns about the conduct of an employee, the Disciplinary (Conduct) Procedure will be invoked.

### 3.4 Dignity and Respect at Work (Grievances)

3.4.1 Any complaints raised in relation to bullying and harassment will be investigated in line with the Trust's Dignity and Respect at Work Procedure. If it is found that there are concerns about the conduct of an employee, the Disciplinary (Conduct) Procedure will be invoked.

### 3.5 Safeguarding

3.5.1 All allegations of safeguarding concerns should also be referred to the Trust's Safeguarding team irrespective of employment status of the worker.

### 3.6 Information Governance

3.6.1 Information Governance ensures that one of the Trusts most important assets, information, in both clinical and management terms, is respected and held in secure and manageable conditions. It is therefore of paramount importance to ensure that information is efficiently managed on the basis of the HORUS categorisation:

- 3.6.1.1 **H**eld safely and confidentially
- 3.6.1.2 **O**btained fairly and effectively
- 3.6.1.3 **R**ecorded accurately and reliably
- 3.6.1.4 **U**sed effectively and ethically
- 3.6.1.5 **S**hared appropriately and lawfully

The Trust has put into place a range of appropriate policies, procedures and management arrangements to provide a robust framework for Information Governance.

3.6.2 All data loss/data breach incidents should be raised via DATIX and will be fully investigated by the Trust, and should it be identified that there has been any misconduct by staff then the seriousness of the incident will determine the level of misconduct applicable. For further information see Trust Information

Governance & Security Policy and Procedure.

### 3.7 Registered Body and referral to leads

3.7.1 Where any allegations of gross misconduct and / or gross negligence have been raised against a registered member of staff, including temporary workers, then the relevant Professional Lead will need to be notified immediately. The Management of Referrals to Regulatory Bodies Policy and Procedure will need to be adhered to when any referrals are being considered.

### 3.8 Special Rules – Criminal Charges

3.8.1 Staff must disclose to their manager any convictions, cautions, warnings, reprimands or bind overs that are issued to them prior or during employment. Where an employee conduct is the subject of a criminal investigation, charge or conviction an investigation of the facts will be undertaken before deciding whether to take formal disciplinary action.

3.8.2 Each disclosure will be considered on a case by case basis. The investigating officer will need in writing a statement from the Police or relevant safeguarding authority including a rationale as to whether or not the fact finding/preliminary investigation can continue. This information should also be included in the final disciplinary report.

3.8.3 A criminal investigation, charge or conviction relating to anything outside work may be treated as a disciplinary matter if considered that it is relevant.

## 4.0 INFORMAL PROCEDURE

4.1 Cases of misconduct can often be addressed effectively and swiftly by the employee's immediate line manager having a structured discussion (meeting) with the employee regarding the standards required and the required improvement in their conduct or behaviour.

All incidents or concerns must be assessed as to whether learning or informal procedures can achieve a resolution prior to any decision being made to proceed.

Examples of what may be considered as misconduct are found on the disciplinary rules (**APPENDIX 2**).

4.2 Utilising the Decision Making Tool may not always be necessary when identifying misconduct, however managers can utilise it in making the decision and may assist in the application of the **Just and Learning Culture**.

This meeting can occur within supervision or during an individual meeting where the Manager should:

- Explain that the meeting is informal in approach and is to discuss some concerns that have been identified.
- Discuss the concerns with the employee and explain that the reason for holding an informal meeting is to reflect on them and take any corrective action in given timelines, where necessary.
- Inform the employee of the standards expected by the Trust and the level of improvement needed.

- 4.3 A record of the meeting must be kept and shared with the employee, and a review period should be agreed. Any review period should generally not exceed 6 months.

This record could involve a reflective statement which is a statement of reflection by both the manager and the employee as to what has been learnt and what additional support or training may be required in relation to the situation which has occurred. The reflective statement will be signed by both the manager and the employee and retained as a supervision record. Reflective statements are not a conduct record.

- 4.4 The Informal Procedure is not designed to replace the disciplinary procedure and may be referred to in future conduct concerns. In appropriate cases it allows an alternative approach to achieving improved conduct and / or behaviour.

#### **4.5 Statements**

4.5.1 After an incident or an allegation is made the manager should request staff members to write an account about what they have witnessed immediately after the incident or the alleged incident has occurred. Staff will be asked to sign and date the statement.

4.5.2 Managers must advise witnesses that their information may be utilised as part of the disciplinary procedure and be seen by the alleged individual for their response to the allegations made.

### **5.0 PRELIMINARY INVESTIGATION & FAST TRACK PROCEDURE**

#### **5.1 Fact Finding and Preliminary Investigation**

5.1.1 Where an incident or concern comes to light, the manager will need to undertake an initial preliminary investigation (fact finding). Only if the facts of the matter are clear and established, or the incident or concern potentially constitutes gross-misconduct or gross-negligence, can a decision be made to proceed immediately to a more formal investigation, which can be established through the Decision Making Tool.

5.1.2 Where CCTV, body worn cameras or other recordings are in use these should be viewed or heard within 24 hours of the incident occurring and any footage secured and saved. A decision will be made based on the recording as to whether any further procedure should be instigated.

5.1.3 The fact finding should not be an extensive investigation and or all of the witnesses to be spoken to; gathering of documentation etc. it should normally be completed within a maximum period of 72 hours.

5.1.4 The 'Fact Finding' is normally undertaken by the manager of the employee or a delegated individual who is able to collect statements from the main witness(es). The fact finding manager, in consultation with HR, would then come to a conclusion as to whether a more full and thorough investigation is necessary in keeping with the relevant policy (i.e. performance or conduct) and refer to the relevant Commissioning Manager. The Commissioning Manager or fact finding manager will at this point need to complete the Decision Making Tool.

- 5.1.5 Depending on the seriousness of the allegation(s) management may meet with the employee and share the raised concerns with them for their response. Managers should not do this without first consulting with HR and it may be necessary to review this action as part of the Decision Making Tool.
- 5.1.6 If the employee is met with then copies of evidence can be shared with them as long as prior consent has been obtained from witnesses. All other evidence can also be shared. The 'Fact Finding' or 'Preliminary' meeting can have HR support present depending on the circumstances.
- 5.1.7 The employee should be given the opportunity to be accompanied by an accredited representative of a recognised Trade Union or current work colleague. A fact finding meeting will not be delayed if a chosen representative is unable to attend.
- 5.1.8 Notes of the meeting must be taken and shared with the employee following the fact finding meeting.

## 5.2 Fast Track (Agreed Outcome) Procedure

- 5.2.1 The Trust, must ensure its commitment to a **Just and Learning Culture** and has introduced a 'Fast Track' process to help expedite the Disciplinary (Conduct) Procedure wherever possible. Where the facts are not in dispute, or admitted, and where the outcome of the investigation would not result in dismissal the fast track / agreed outcome procedure can be followed.
- 5.2.2 Where it is identified that the 'Fast Track' process can be utilised the procedure for this is set out at **Appendix 4**.
- 5.2.3 The 'Fast Track' process cannot be used for matters of serious allegation(s) of Gross Misconduct or Gross Negligence or where a continued pattern of behaviour or live sanction is evidenced. There may however be occasions where the alleged act constitutes Gross Misconduct or Gross Negligence but after admittance and consideration of mitigation dismissal is not considered a possible outcome.

Individuals who are appointed as Commissioning Managers, Investigating Managers and / or Hearing (and Appeal) Managers will have received comprehensive training and will be able to demonstrate the aptitude and competencies required to undertake these roles. Where training has not been undertaken within the preceding 12 months an update briefing will be provided by a member of the HR service.

## 6.0 SUSPENSION

- 6.1 Suspension should never be an automatic approach for the Trust to use when dealing with a potential disciplinary matter. The suspending manager must consider the guiding principles of the **Just and Learning Culture** as set out in the Disciplinary (Conduct) Policy at Section 4.0. Suspension must not be a reactive decision and managers should consult with HR and utilise the Decision Making Tool (**APPENDIX 6**) before a decision to suspend is applied.

- 6.2 Suspension should be only by exception and as a last resort. Although seen as a 'neutral act' by the Trust it may be perceived as a detrimental one if not correctly and sensitively applied. Any decision made to suspend must be approved by a senior manager, at Band 8b or equivalent.
- 6.3 Managers looking to suspend staff must read this section in conjunction with 'Investigation Toolkit' (**APPENDIX 5**)
- 6.4 Managers **must** ensure they approach suspension in a **sensitive** and **compassionate** manner and ensure the appropriate support mechanisms are provided to the employee, which can be obtained from the HR team.
- 6.5 Most disciplinary procedures should not require suspension. Consideration must be given as to whether the employee will usually be able to continue doing their normal role while the matter is investigated.

6.5.1 Suspension should usually only be considered if there is an allegation of serious misconduct and:

- the employee could tamper with evidence, influence witnesses and / or sway the investigation into the allegation
- there is a risk to other employees, property or patients
- the employee is the subject of criminal proceedings which may affect whether they can do their job.

- 6.6 Suspension must be a last option and the suspending manager must first consider if a temporary adjustment to the employee's working arrangements would negate the need for suspension.

It should not be necessary to consider suspension employee who is absent from work in any event. Any potential requirement for suspension will be reviewed when a return to work date is known.

- 6.7 Alternatives to suspension could include the employee temporarily:

- being moved to a different area of the workplace
- working from home
- changing their working hours
- being placed on restricted duties
- working under supervision
- redeployed to a different role within the Trust.

There should be no financial detriment experienced by an employee who is suspended from duty and any suspension will be on full pay.

Only if all other options are not practical or have been exhausted, may suspension become necessary.

- 6.8 There should be no assumption of guilt associated with a suspension and suspension must not be used as a disciplinary sanction. However, a suspension can still have a damaging effect on the employee and their reputation.

6.9 Therefore, if a suspension is necessary, the suspension and the reason for it should be kept confidential. If it is necessary to explain the employee's absence, the manager should discuss with the employee how they would like it to be explained to colleagues and/or Service Users.

6.10 The following matters must be considered in all circumstances where suspension is applied:

- Help the employee remove any belongings from the workplace e.g. ID badge/workplace pass etc.
- Explain the reasons for suspension and how long it is expected to last.
- Explain the employee's responsibilities during their suspension e.g. being available during their contracted hours.
- Provide a point of contact 'Support Officer' (usually the line manager) that they can contact if they have any concerns.
- Agree how they will keep in regular contact with the employee throughout.
- Give details about support from the Employee Assistance Programme (EAP), the Here for You service, EPUT Health and Wellbeing Leads and Occupational Health details/advice.
- If it is also necessary for the employee to continue liaising with work colleague(s) for support then it would need to be explained that the case cannot be discussed.
- If possible inform the employee who will be the Support Officer to assist in their wellbeing needs during the entirety of the investigation or at least explain that this will be provided to them in the launch letter.

## **7.0 PROCEDURE FOR FORMAL INVESTIGATIONS**

### **7.1 Formal procedure**

7.1.1 The formal procedure will only be instigated in the following circumstances, where it can be justified that:

- a. The incidents or concerns cannot be resolved through learning (informal procedure),
- b. Where the incidents or concerns cannot be resolved through the 'fast track' (agreed outcomes) procedure, OR
- c. Where the incident or concern potentially constitutes gross-misconduct or gross-negligence.

Prior to any formal investigation being launched a review of the allegations and fact finding must be undertaken and a Decision Making Tool (**APPENDIX 6**) must be completed by the manager, in consultation with HR.

7.1.2 If the employee is of an ethnic minority (such as Black, Asian or any other Ethnic Minority Group) then the Decision Making Tool must also be shared with BAME Network Lead(s) for review. The BAME Network Lead must respond within 24 hours with any comments, where any comments are received after 24 hours these will be forwarded to the Investigating Manager for consideration during the investigation process.

- 7.1.3 If there is no agreement that the disciplinary investigation process should be launched and Commissioning Manager still decides to continue with a formal investigation, then this should be noted within the Terms of Reference.
- 7.1.4 Employees who are the subject of an investigation should be made aware of any investigation to be launched verbally and followed up in writing within 5 working days of the alleged incident being known, wherever possible. This letter should inform the employee of the allegation(s) which should be sufficiently detailed to enable the employee to respond.
- 7.1.5 The conduct investigation support leaflet (Appendix 7) should be included with the letter informing the employee of an investigation.
- 7.1.6 An HR representative, not previously involved in any decision to instigate disciplinary proceedings or be a potential witness to the events, will be assigned to support the Investigating Officer. As part of the investigation, the Investigating Officer must write to the employee to invite them to a meeting to discuss the allegations. A record of the meeting will be made, written and / or electronically and shared with the employee.
- 7.1.7 The Investigating Officer must provide an update to the Commissioning Manager every two weeks for the duration of the investigation process. Regular contact must also be maintained with the staff member every two weeks as a minimum, or alternative time period as agreed and detailed within the terms of reference. The format and regularity of this contact, e.g. letter, email, should be agreed at the outset of the investigation. If the employee is suspended from work a review of the suspension must be undertaken after six weeks and the outcome of the review communicated with the employee in writing.
- 7.1.8 If for any reason the investigation exceeds the six week deadline the Commissioning Manager, along with their HR support must write to the Service Director, and include the Associate Director of Human Resources, providing them with an update of the delay and request the necessary extension. If an extension is approved the employee will be informed of this and advised of the date by which a further review of suspension will take place.

## **7.2 Terms of Reference and Employee Support**

- 7.2.1 The Commissioning Manager will set the Terms of Reference at the commencement of the investigation. If new issues come to light during the course of the investigation, the Terms of Reference must be amended and an update provided to the employee.

The Terms of Reference must outline the allegations to be investigated, the timescales for the investigation, the communication plan as well as the resources identified to support the investigation and an assessment of the independence of the investigation team.

- 7.2.2 The Trust recognises that investigations, meetings and hearings can cause anxiety and / or distress to any party involved. Every attempt will be made to ensure that these proceedings are conducted in accordance with the timescales set out in the policy and with dignity, courtesy and respect.

7.2.3 The Commissioning Manager will be responsible for providing the necessary support to employees involved in disciplinary proceedings including:

- Delegating a Support Officer to assist in the employee wellbeing needs during the entirety of the investigation.
- Advice and support will also be available from managers, Human Resources, recognised Trade Union representatives and Professional Leads.
- Additional advice and counselling will be available through Occupational Health.
- Employees can also access confidential support/career advice/counselling through the Trusts' Employee Assistance Programme or Here for You service workplace options

7.2.4 Any concerns can be raised in confidence with the Freedom to Speak Up Guardian Service, EMRE Network and Equality & Inclusion Network(s) who will provide information and emotional support in a strictly confidential, non-judgemental manner.

7.2.5 Employees who are subject of a disciplinary investigation process must be provided with the Conduct Investigations Support Leaflet which can be found at Appendix 7.

7.2.6 Any employee experiencing stress and anxiety symptoms related to the disciplinary investigation must be offered Occupational Health support. Managers doing the referral to Occupational Health must ask for their opinion whether or not the employee is fit to attend investigatory or disciplinary meetings/hearings. Occupational Health advice should also be sought to understand if any additional adjustments are required to enable the employee to participate in these proceedings.,

7.2.7 The employee's Manager and / or Support Officer must keep in regular contact, as mutually agreed, with the employee, whilst the investigation is ongoing.

### **7.3 Investigation Procedure**

The procedure for conducting investigations is set out in detail within the Investigation Toolkit at **Appendix 5**. The Investigating Manager should familiarise themselves with the Investigation Toolkit and review this alongside the Terms of Reference provided in consultation with their allocated HR support.

During the investigation procedure the employee should be provided with the opportunity to identify to the Investigating Manager potential witnesses and evidence, in addition to that provided in the Terms of Reference. The Investigating Manager should provide a clear rationale within their final report as to why any witnesses were not contacted for statement(s) or their evidence not considered.

### **7.4 Notes of Investigatory Meetings**

7.4.1 All individuals interviewed as part of the investigation will be provided with a copy of the notes of the investigatory meeting. They will be given the opportunity to make amendments and additions where appropriate and they are required to confirm that it is an accurate reflection of what has been said, and return to the Investigating Officer.

Notes must be returned as soon as possible after receipt of the draft statement and by the date for return provided, extensions may be agreed in exceptional circumstances. Failure to return the notes in a timely manner will mean that the notes of the investigatory meeting will be understood to be agreed.

## **7.5 Employee resignation during an investigation**

7.5.1 Where an employee leaves before an investigation is completed, notes will be kept so that any reference provided for that employee will indicate that there is an unresolved investigation into alleged misconduct. Such references must be fair and accurate, but will state that procedures have not been completed, reflecting the current position. In some cases, it may be necessary to conclude the investigation following resignation of an employee. In addition, referral to the Disclosure and Barring Service and/or professional body may also be necessary. Advice should be sought from the HR team in these circumstances.

## **7.6 Where a grievance is raised**

7.6.1 Where a formal grievance is raised during a disciplinary process, the appropriate action will be determined on a case by case basis.

7.6.2 If the issues relate to the content of the disciplinary process or the disciplinary process itself the matter will generally be dealt with as part of the disciplinary process.

7.6.3 The two processes may run concurrently where possible, following agreed timescales, unless the content of the grievance is so significant in relation to the disciplinary case that a deferral of the disciplinary proceedings becomes inevitable.

## **7.7 Deciding if there is a case to answer**

Once the investigation is complete, the Investigating Officer will prepare a report for the Commissioning Manager. The investigation report and associated statements / evidence should be submitted to the Commissioning Manager within 15 working days of completion of the investigation.

Having received and reviewed the report, the Commissioning Manager will decide whether there is a case to answer in consultation with the allocated HR support. Human Resources will offer professional support/advice to the Commissioning Manager.

At any point during the formal investigation if admission is received by the employee the Commissioning Manager must be notified. The Commissioning Manager may decide to stop the investigation and invoke the 'Fast Track' (Agreed Outcome) process immediately. This decision may be applied when it is in no-one's interest to proceed with the investigation and disciplinary hearing where both parties are in agreement not to do so.

The outcome of the Commissioning Manager's review should be notified to the employee, in writing, within 5 working days of receipt of the investigation report.

## **8.0 DISCIPLINARY HEARINGS**

### **8.1 Accredited Trade Union Representation and Work Colleagues**

- 8.1.1 Employees are entitled to be accompanied by an accredited trade union representative or a current work colleague to any Agreed Outcome, Disciplinary or Appeal Hearing under this procedure. Any work colleague accompanying an employee to a hearing should not themselves have any prior involvement in the proceedings
- 8.1.2 If a worker's chosen companion will not be available at the time proposed for the hearing by the employer, the employer must postpone the hearing to a time proposed by the worker provided that the alternative time is both reasonable and not more than five working days after the date originally proposed. Wherever possible and providing it does not cause unnecessary delay the date of the hearing should be agreed with all parties in advance.
- 8.1.3 The Trust does not permit legal representation at any stage during the disciplinary or appeal procedures.

### **8.2 Disciplinary Hearing Procedure**

- 8.2.1 If it has been established that the matter should be referred to a formal disciplinary hearing, then arrangements for this should be made without delay. Disciplinary hearings will be conducted in accordance with the Disciplinary Hearing Process set out at **Appendix 1**.
- 8.2.2 The Hearing Manager must not be the Commissioning Manager; another senior manager must be appointed to hear the case, in line with the Trusts Level of Authority as detailed in **Appendix 3**.
- 8.2.3 Disciplinary hearings should be held as early as possible. As a general guide, the hearing should take place within 10 weeks of the commencement of the investigation wherever possible. In order to avoid delay, the manager hearing the case should agree a mutually convenient time and date as soon as possible for the hearing with the individual and their accredited trade union representative. Where an accredited trade union representative cannot attend on the date proposed, the individual can request that an alternative time and date be arranged within the next 5 days of the original hearing.
- 8.2.4 A letter containing details of the allegation(s) and setting out details of the date and time of the disciplinary hearing, together with copies of all documentation that will be used or referred to during the Disciplinary Hearing, should be sent to the individual at least five working days in advance unless otherwise mutually agreed. However, best practice would be that where possible documents would be sent out as soon as possible.
- 8.2.5 The Disciplinary Hearing Panel will be appointed by the Commissioning Manager and its composition needs to ensure objectivity and independence is maintained.

The Disciplinary Hearing Panel will be chaired by a senior manager different to the Commissioning Manager in accordance with **Appendix 3** (Levels of Authority) and will include a HR representative. The nature of some allegations may make it appropriate for an additional manager / representative or

professional advisor to form part of the panel.

The composition of the panel should be considered to take into account gender, race, disability, age, religion and sexual orientation and forethought should be given to this when determining panel membership.

- 8.2.6 In circumstances where an employee requests the postponement of a Disciplinary Hearing and is unable to offer an alternative date within five days of the original hearing it will be re-arranged. If the employee is not able to attend a second hearing there is no obligation on the Trust to rearrange it again and the Hearing Manager may decide to proceed with the hearing in the absence of the employee. The letter confirming the rearranged meeting should include notification to the effect that the matter may be dealt with in their absence.
- 8.2.7 The Disciplinary Hearing Panel the case at the disciplinary hearing will not have any prior involvement in the formal investigation. Decisions relating to the level of disciplinary action to be taken, if any, will be a matter of judgement for the Hearing Manager, in consultation with the Disciplinary Hearing Panel, who has listened to the information presented during the Disciplinary Hearing. They will take into consideration:-
- the seriousness of the disciplinary breach in question
  - the relevance and context of facts/information presented
  - issues relating to fairness, consistency and the substantial merits of the information presented
  - any currently live relevant disciplinary warnings
- 8.2.8 If the disciplinary hearing could result in dismissal, the individual should be notified of this in the invitation letter sent. The employee should, no later than five working days prior to the Disciplinary Hearing, also make available copies of any statements and/or written material which they intend to refer to, along with details of any witnesses who will be present to give evidence.
- 8.2.9 Both the employee who is subject investigation and the Hearing Manager will be given the opportunity to request witnesses to attend the Disciplinary Hearing, this may include requesting the attendance of the Investigating Manager. Their subsequent evidence should clearly demonstrate why their attendance is relevant.
- 8.2.10 Support must be given to the witnesses by the HR support to the Hearing Manager. Their attendance may be necessary but it can be daunting for any witnesses attending and support mechanisms must be offered. This can include discussing the process of the hearing; what the witness's expectation is; advising them to bring their statement with them.
- 8.2.11 Character witnesses are not relevant to the disciplinary hearings. Where possible, agreement will be reached on which witnesses should be invited to attend the Disciplinary Hearing. The Disciplinary Hearing Panel considering the case may also request the attendance of witnesses if their presence is necessary.
- 8.2.12 Although the Disciplinary Hearing Panel may support attempts to invite the witnesses the onus is upon the employee, or their representative, to ensure that their witnesses have been contacted and invited to attend. The Trust will ensure that every effort is made to facilitate their availability at the hearing.

- 8.2.13 Variations to the Disciplinary Hearing procedure detailed above and within **Appendix 1** can be made with the mutual agreement of the employee and / or their representative and the Disciplinary Hearing Panel.
- 8.2.14 On conclusion of the presentation of case and witness evidence, the Disciplinary Hearing will be adjourned while the relevant matters are considered by the Disciplinary Hearing Panel. Once the Disciplinary Hearing Panel has considered all matters, the hearing will usually be reconvened so that the Hearing Manager may give their decision.
- 8.2.15 The Hearing Manager will consider the allegations made as they relate to the Trust's Disciplinary 'Rules' as set out in **Appendix 2**. These rules are not exhaustive and serve only as a guide, although do form part of the terms and conditions of employment.
- 8.2.16 Once a decision that the allegations have, on the balance of probability, been proven the Hearing Manager will be informed of any 'live' disciplinary sanctions or previous related warnings which may need to be considered in the determination of sanction.
- 8.2.17 The HR adviser will be responsible for advising the Hearing Manager on previous sanctions imposed on cases of a similar nature to ensure there is consistency and fairness considered in the application of these.
- 8.2.18 In all cases following a Disciplinary Hearing, all relevant parties will be notified of the outcome in writing usually within five working days. The employee will be notified of their right of appeal.
- 8.2.19 After the conclusion of the Disciplinary Hearing, the outcome should be confirmed by the Hearing Manager in writing within 5 working days of the date of the hearing where possible, any delays in the decision for exceptional circumstances must be communicated in writing. If the decision of the Chair/panel has been that no formal sanction is to be issued, then this should be confirmed, along with any other associated recommendations.
- 8.2.20 In addition it may be deemed necessary to refer the case to a professional body in accordance with the Referrals to Regulatory Bodies Policy e.g. NMC as well as a DBS Referral. This will be confirmed in the outcome letter where necessary.

## **9.0 OUTCOMES OF DISCIPLINARY HEARINGS**

The Disciplinary Hearing may result in any of the following formal actions:

### **i. No Action**

The case was unsubstantiated or there was a case to answer but no action is to be taken as there are exceptional mitigating circumstances. The employee will be informed in writing and all records of the hearing and investigation will be removed from the employee's personal file.

The only exception would be where the allegation(s) related to issues around the abuse, care or bullying and harassment of patients, clients and/or employees, in which case the records of the hearing should be retained.

There is no right of appeal on this action.

### **ii. Further investigation required**

This is where the Hearing Manager feels that they require further evidence to be obtained, by the Investigating Manager before making a final decision. If this is the case, the Disciplinary Hearing will be adjourned and reconvened at a future date at which time the additional information can be considered and final outcome reached.

There is no right of appeal on this action.

### **iii. Informal Action**

This is the first formal disciplinary stage and will normally be for cases where there is minor misconduct, unacceptable conduct and/or failure to conform to standards following supervision advice.

Informal action could include the production of a reflective statement which is a statement of reflection by both the manager and the employee as to what has been learnt and what additional support or training may be required in relation to the situation which has occurred. The reflective statement will be signed by both the manager and the employee and retained as a supervision record. Reflective statements are not a conduct record.

A 'verbal' warning could be given and that the employee has been notified of their right to appeal will be held as a record on the personal file. A verbal warning will be considered as spent after 6 months or any lesser period considered appropriate by the Hearing Manager.

### **iv. First Written Warning**

This will normally be for cases where there is misconduct or unacceptable conduct or behaviour or where there has been a failure to conform to standards following previous management advice and /or previous verbal warning(s) which are not 'spent'. It will warn that further formal action will be considered if there is no satisfactory improvement.

A written warning will normally be considered 'spent' after 12 months or any lesser period considered appropriate by the hearing officer.

**iv. Final Written Warning**

This will normally be for cases where the misconduct or unacceptable conduct or behaviour is considered more serious or where there has been failure to conform to standards following a previous written warning(s) which is not considered 'spent'. It will notify the employee that dismissal will be considered if there is no satisfactory improvement.

A final written warning will be for a period of 12 months or for up to 18 months (in cases of misconduct of a serious nature or unacceptable conduct or behaviour following previous warning(s) or as an alternative to dismissal). It is intended to provide the employee a last, and final, opportunity to demonstrate acceptable conduct and / or behaviour.

**v. Dismissal**

This will normally be for cases of misconduct of a serious nature or unacceptable conduct or behaviour following previous warning(s) which are not considered to be gross misconduct. The employee will be provided with written reasons for dismissal and the date on which the employment will terminate. The dismissal will be with notice or with pay in lieu of notice and will include any accrued, untaken statutory annual leave to which they are entitled.

It should be noted that there is nothing in the ACAS Code of Practice that states that there has to be a similarity in the type of misconduct to justify a dismissal. This is particularly so where, as an outcome of a previous warning it has been made clear to the individual that any further misconduct is likely to result in disciplinary action which could include dismissal.

**vi. Summary Dismissal**

This will be for misconduct or unacceptable conduct or behaviour considered constituting gross misconduct or gross negligence (**see disciplinary rules attached as Appendix 2**). The employee will be provided with written reasons for dismissal and the date on which the employment is terminated.

In cases of gross misconduct, gross negligence or gross professional misconduct, the employee will normally be dismissed summarily i.e. without notice or pay in lieu of notice, although any accrued, untaken statutory annual leave to which they are entitled will be paid.

The dismissal will take effect from either the date of the hearing, where the individual was verbally informed, or if the decision was conveyed in writing, the date on which the Trust could reasonably expect the employee to have received the letter and therefore be informed of their dismissal.

**vii. Transfer to an Alternative Post (Dismiss and Re-engage)**

In exceptional circumstances, as an alternative to the termination of employment (dismissal) and / or in conjunction with a written warning, the employee may be dismissed and re-employed in an alternative post. This may be at a different band, and if so the employee will assume the terms and conditions of the new post without protection of pay.

Where it is as an alternative to dismissal, if the employee does not accept the offer of re-employment then dismissal will be effective from the end of the notice period.

## **10.0 DISCIPLINARY RECORDS & EXPIRED SANCTIONS**

- 10.1 Normally the validity of disciplinary warnings will be considered to have expired after the specified period (see above). This is provided that there has been the desired and sustained improvement conduct and / or behaviour and there have been no further warnings or action taken against the employee during this time.
- 10.2 In these circumstances, previous warnings should generally be disregarded for future disciplinary purposes. In exceptional circumstances it may be permissible to take into account previous spent warnings in relation to subsequent disciplinary action.
- 10.3 These exceptional circumstances are where a clear reason to dismiss has already been established, and past misconduct would evidence that a lesser penalty would not be warranted.
- 10.4 Additionally, such circumstances could relate to where a pattern of behaviour emerges and/or there is evidence of abuse. However the circumstances in which this will be the case are rare and advice should be sought from HR when this is being considered.
- 10.5 Where an employee is absent during the course of a 'live' warning for a continuous period exceeding four calendar weeks, the warning will normally be extended by the length of the period of absence.

## **11.0 APPEALS**

- 11.1 Employees have the right to appeal against any formal sanction issued under this procedure, with the exception of informal action(s), the decision to suspend and 'Fast Track' (Agreed Outcomes).
- 11.2 Appeals will be conducted in accordance with the Appeals Procedure HRPG58

## **12.0 VARIATION TO TIMESCALES**

- 12.1 Time scales regarding the procedural steps indicated in this procedure and within the Disciplinary Hearing Procedure at **Appendix 1** are subject to reasonable variation.
- 12.2 Any references to 'working days' mean Monday to Friday, excluding weekends and bank holidays.

**END**