

DISCIPLINARY POLICY AND PROCEDURE

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Author	Colin Fleet
Author's Job Title	HR Business Partner
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Owner	Jacqui Bate
Owner's Job Title	Director of Human Resources, OD & Communications

Chair: Kate Gordon Chief Executive: Nerissa Vaughan
Patron: Her Majesty The Queen

The Preferred Hospital for Local People



DISCIPLINARY POLICY

Contents

INTRODUCTION

1	Policy Statement	Page 3
2	Roles and Responsibilities	Page 4
3	Minor breaches and Informal Discussions	Page 6
4	Principles	Page 6
5	Trade Union Representatives	Page 6
6	Criminal Offences and Police Enquiries	Page 7
7	Statutory Reporting	Page 8
8	Suspension	Page 8
9	Health and Safety at Work	Page 9
10	Principles of Investigations	Page 9
11	Rights of Representation	Page 10
12	Witnesses	Page 11
13	Use of Disciplinary Sanctions	Page 11
14	Record Keeping	Page 12
15	Levels of Authority	Page 12
16	Grievances	Page 12

DISCIPLINARY PROCESS

17	Informal Counselling	Page 12
18	Arranging and Conducting Formal Disciplinary Hearings	Page 13
19	Stages of the Formal Disciplinary Procedure	Page 15
20	Significant Performance Weaknesses	Page 17
21	Referral to Children's Safeguarding Operations Unit	Page 18
22	Previous Employment history/spent warnings	Page 19
23	Policy Review	Page 19
24	Counter Fraud and Corruption	Page 19
25	Equality Impact Assessment	Page 20
26	References	Page 20
27	Associated Policies	Page 20
	Appendix 1 - Misconduct and Gross Misconduct	Page 21
	Appendix 2 - Levels of Authority to take action	Page 23
	Appendix 3 - Investigation Report Format	Page 24
	Appendix 4 - Confirmation of Investigation Officer Letter	Page 26
	Appendix 5 - Invitation to Investigation Meeting Letter	Page 27
	Appendix 6 - Invitation to Disciplinary Hearing	Page 28
	Appendix 7 - Letter detailing Disciplinary outcome	Page 29
	Appendix 8 - Protocol for Disciplinary Hearing	Page 30
	Appendix 9 - Proforma for Appeals	Page 31
	Appendix 10 - Managers Good Practice Guidelines	Page 32
	Appendix 11 - Disciplinary Procedure Flowchart	Page 33
	Appendix 12 - Equality Impact Assessment – Stage 1 Screening	Page 34

INTRODUCTION

1. POLICY STATEMENT

- 1.1 The Queen Elizabeth Hospital King's Lynn NHS Trust is committed to creating and maintaining a positive working environment and harmonious employee relations.
- 1.2 The main purpose of the disciplinary procedure is to encourage an employee whose standard of work and/or conduct is unsatisfactory to improve.
- 1.3 This procedure deals with issues of "conduct" as distinct from "capability." This distinction must be made in cases where continued substandard performance arises as a result of negligence, inappropriate attitude, breaching protocols, policies and a lack of application or not meeting behavioural expectations; on occasion with malicious intent.
- 1.4 Those which result from incompetence and the inability to function at the required level or inability to cope with the duties and responsibilities contained within the role are matters for the Trust Capability Policy.
- 1.5 Failure to properly report sickness absence is misconduct as are sickness absences that appear not to be genuine. Otherwise and where correctly reported, sickness is regarded as genuine and is managed under the Trust Sickness Absence Policy. In that Policy employees who have unacceptable levels of absence – albeit taken as genuine - are given the opportunity to improve their attendance levels through a series of counselling meetings, 'management advice' and/or 'notice' (rather than warnings) and improvement plans.
- 1.6 There are therefore similarities between the Capability Policy and the Sickness Absence Policy where a manager may 'advise' or give 'notice' to an employee for example where their absence or performance levels are becoming or have become acceptable and where the employee would be cautioned as to the consequences of a failure to improve. It would be inappropriate to 'warn' an employee about genuine sickness for which they have little or no control; other than to turn up for work when being unfit to do so.
- 1.7 In this Policy Managers may 'warn' employees about their conduct and behaviours applying appropriate sanctions. The employee would be in no doubt as to the seriousness of the issue.
- 1.8 Efforts should be made wherever possible to deal with problems both speedily and informally or through discussion with emphasis on issuing support, advice and guidance. However, the need does exist to have in operation formal disciplinary procedures when informal mechanisms are not considered appropriate and when, for example, discussion has failed.
- 1.9 The Trust procedure is based on guidance from the Advisory Conciliation and Arbitration Service (ACAS) with the emphasis on fair and thorough application of the guidance and procedure, the objective being to give staff the opportunity to improve their conduct, which is giving cause for concern.
- 1.10 This policy applies to all employees of the Trust including bank staff. In cases involving professional competence or personal conduct of medical staff, this policy should be read in conjunction with the document Maintaining High Professional Standards in the Modern NHS; a framework for the initial handling of concerns about doctors and dentists in the NHS.

1.11 It is the manager's responsibility to ensure that all staff are aware of the existence and content of the disciplinary procedure and provide copies as requested.

2. ROLES AND RESPONSIBILITIES

2.1 Responsibilities of the Head of Department/Divisional Manager

The Head of Department/Divisional Manager:

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

2.2 Responsibilities of the Manager

Managers are responsible for:

- Ensuring that the Trust's protocols and standards of performance and conduct are conveyed and fully explained to their staff.
- Complying with the principles and procedures of the disciplinary process and ensuring that disciplinary decisions are of a consistent standard across the Trust.
- Ensuring their employees know whom they are accountable to and the extent to which they are authorised to act.
- Ensuring there is a nominated appropriate person authorised to take disciplinary decisions in their absence. Consideration needs to be given to the appropriate experience, expertise and accountability of the nominated person.
- Ensuring there is an accurate written record kept throughout the disciplinary process.
- Ensuring that investigations are carried out quickly, objectively and fairly.
- Requesting and establishing an investigation panel or officer as required by the circumstances of the case.
- Assessing the report or results of any investigation and deciding whether any case should be considered under the disciplinary procedure or whether there is a case to be heard.
- Establishing a disciplinary hearing and the issuing of all letters to the employee and any witnesses requesting attendance at all meetings.
- Informing and seeking support from a senior member of the HR Department prior to any formal meetings and always prior to any dismissal of an employee.
- Any suspected fraud or corruption should be reported to the Trust's nominated Local Counter Fraud Specialist

2.3 Responsibilities of the Investigating Officer

The Investigating Officer will be responsible for:

- Conducting a fair, impartial and timely investigation in order to determine whether there is a case to answer.
- Providing a report outlining the facts of the case and the evidence produced including copies

of witness statements as appropriate (see Appendix III for format of report).

- Arranging and conducting interviews with any witnesses as appropriate. This will involve obtaining all the evidence as signed and dated factual statements from all those involved. The person being investigated may choose to make a statement or not once the case for formal disciplinary consideration is established. The Investigating Officer will inform the employee under investigation of their choice in this circumstance.
- Presenting a report to the line manager for consideration and presenting a case to the disciplinary panel if felt appropriate.

2.4 Responsibilities of the Employee

The employee is responsible for:

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

2.5 Responsibilities of senior members of the Human Resources Department

The senior member of the HR Department is responsible for:

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

2.6 Responsibilities of the Trade Union Representatives

The trade union representative is responsible for:

- Advising members on the policy and procedure as requested.
- Providing support to members at investigations, hearings and appeals if required to do so by their member. Being sympathetic, firm and fair minded, reassuring the member that the issue will be dealt with fairly and competently but not raising expectations or holding out false hopes.

- Receive any papers or written statements within the time limits specified if required to do so by their member.
- Address Disciplinary Hearings and to present and sum up the employee's case, respond on behalf of the employee to any views expressed at Hearings and confer with the employee during the hearing.
- Support, but does not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent management from explaining its case.

3. MINOR BREACHES AND INFORMAL DISCUSSIONS

- 3.1 Feedback and discussion with the emphasis on issuing support, guidance and advice will be used to deal with initial minor breaches of discipline and substandard performance. This will be with the objective of encouraging and helping the employee to improve and designed to reduce a need to invoke the disciplinary procedure. Such feedback will be treated as line manager counselling and is not part of the formal disciplinary process.
- 3.2 The salient points of the discussion session, outlining expectations regarding improvement and that failure to improve could result in future disciplinary action, should be communicated in writing to the employee with a copy retained on the employee's personal file. Where an employee's conduct remains unsatisfactory the disciplinary procedure will be invoked.

4. PRINCIPLES

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

5. TRADE UNION REPRESENTATIVES

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

6. CRIMINAL OFFENCES AND POLICE ENQUIRIES

- 6.1 Police enquiries, legal proceedings, convictions, cautions or driving offences relating to a charge shall not be treated as automatic reasons for disciplinary action. Each case must be considered on merit, but employees are under an obligation to inform their Manager or the Director of Human Resources of all criminal proceedings.
- 6.2 The main consideration should be the extent to which the offence, alleged or committed is connected with or is likely to adversely affect, the employee's performance of his/her duties or The Trust reputation.
- 6.3 The employee's manager need not await the outcome of any police action or prosecution before taking action. Such action must however be fair to the employee and reasonable in the circumstances.
- 6.4 The employee's line manager should appoint an Investigating Officer as with any other potential disciplinary issue. The Investigating Officer will investigate the facts as far as it is possible in the circumstances and submit a report to the line manager and HR.
- 6.5 The Police cannot be asked to conduct a disciplinary investigation on behalf of the Trust nor should they be asked to present at an internal investigatory or disciplinary hearing or interview. They may however be asked to provide a statement of fact concerning the employee's arrest or conviction.
- 6.6 In some cases the nature of the alleged offence may not justify disciplinary action, for example, off duty conduct which has no bearing on employment. If the employee is not available for work because he/she is in custody or on remand, or serving a period of imprisonment or detention a decision should be taken whether in the light of the needs of The Trust the employee's job can be kept open. In these circumstances the period of absence will be unpaid. If the employee is unable to carry out the full duties within a reasonable timescale, the contract may deemed frustrated (or severed) according to the doctrine of frustration of contract, or some other substantial reason. Advice in such cases should always be taken from the Director of Human Resources. The employee will have the right to appeal by lodging the appeal in writing to the Director of Human Resources within 3 weeks of confirmation of the decision.
- 6.7 When the conduct of an employee is the subject of police enquiries or criminal charges and the alleged offence may affect, or is connected with the employee's work, based on advice from the Director of Human Resources the appropriate manager may where necessary either:
 - Immediately suspend the employee from duty and postpone disciplinary action until the outcome of police enquiries or legal proceedings is known. A distinction should be drawn between the police's need to prove beyond reasonable doubt as against The Trust's need to establish that a reasonable belief is held that an offence has been committed.

OR

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

7. STATUTORY REPORTING

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

8. SUSPENSION

- 8.1 Suspension from duty is a neutral act and is not regarded as a disciplinary sanction. It is imperative that exclusion from work is not seen as the only course of action and alternative ways of managing risk should be considered e.g. close supervision, restricted duties or a temporary move to another area.
- 8.2 However there may be occasions when it is considered appropriate to suspend an employee from duty on full contractual pay and one of the following criteria must be identified as justification:
- The gravity of the allegations potentially constitute gross misconduct which could result in dismissal
 - If the individual remaining at work would hinder the investigation
 - If allowing the employee to remain at work would present too great a risk to patients, other employees or themselves.
- 8.3 If suspension is deemed appropriate, the appropriate Director, authorised Deputy or delegated senior manager on duty will normally take this decision in consultation with Human Resources. A nurse should not be suspended without discussion with the Chief Nurse. Suspension will be with full pay which will mean the pay that reflects the usual working pattern for the full duration of the suspension period.
- 8.4 However circumstances may arise for example on night duty, at weekends or periods of leave when the authorised manager is not available. In these cases the Senior 'On Call' manager should make the decision and report it to the authorised manager and Human Resources at the earliest opportunity.
- 8.5 Suspensions should normally take place at a personal interview unless the employee fails or refuses to attend in which case the suspension will be notified in writing. An employee may be accompanied by their representative at an interview where suspension is being considered but where this is not practicable, the employee's staff representative will be informed as soon as possible.
- 8.6 If the employee becomes ill whilst suspended they must follow the usual protocols regarding sickness notification, certification and sick pay although they will remain suspended until informed otherwise.
- 8.7 An employee may not be on annual leave whilst suspended from duty unless formally approved and should be available for immediate recall to duty in accordance with their normal working roster. Employees should be available for interview and discussion during normal working hours as part of any investigation.

- 8.8 All suspensions will be confirmed in writing as soon as is practicable but within 3 working days of the decision being taken. The letter will give the reasons for the suspension and the possible date or timing of return. With the agreement of the employee a copy of the letter shall be sent to the appropriate staff representative.
- 8.9 In all cases every effort should be made to minimise the period of suspension. Cases will be reviewed weekly by the manager to allow for consideration of any new developments and in order that the employee can be kept informed of progress. The outcome of this review should be communicated to the employee and their representative via pre-booked contact arrangements at the time of the suspension. Staff who are suspended should be offered support such as counselling services to reduce the feeling of isolation experienced during this time.
- 8.10 During the period of suspension, the employee must not enter the workplace or other Trust premises without the permission of their manager. In addition the employee must not undertake any additional alternative employment (paid or unpaid) whilst suspended without the Trust's written consent.
- 8.11 Once investigations are complete the employee will receive in writing confirmation that they may either return to work or that a disciplinary hearing will be convened.

9. HEALTH AND SAFETY AT WORK

- 9.1 The Trust has responsibilities under legislation to maintain a safe and healthy working environment. In addition, the Health and Safety at Work Act also places onus on employees (staff) to consistently demonstrate a duty of care whilst undertaking duties. In this context The Trust expects all managers and staff to:
- Ensure attendance at all mandatory training sessions respecting recommended frequency.
 - Adhere conscientiously to safe working practices based upon training undertaken.
 - Report to management any evidence of negligent practice. It is accepted that genuine and unintentional mistakes will occur from time to time. However, it should be noted that negligent or reckless actions, which put at risk either personal health or the health of others would be dealt with under this procedure.

10. PRINCIPLES OF INVESTIGATIONS

- 10.1 All incidences of suspected fraud must be referred to the Local Counter Fraud Specialist or the Director of Finance before any investigation takes place. Normally notification will be the responsibility of the senior member of the HR Department. The Local Counter Fraud Specialist will agree with the Director of Finance and the Senior Member of the HR Department the method of approach to the investigation of the allegation.
- 10.2 Where a manager receives information that necessitates enquiries being made amongst their staff but which does not clearly indicate that a disciplinary problem is inevitable; these enquiries constitute an informal investigation and as such are part of the normal communication between manager and employee and should not normally include union representation at this stage.
- 10.3 Where enquiries or an investigation point to the matter being one of capability (see section 1 Policy Statement for further details) rather than conduct, then the matter should be progressed under the Trust Capability Policy.

- 10.4 Where a manager suspects that an individual's physical or mental health may be a cause of the alleged misconduct, then the individual should be referred to Occupational Health for assessment. Following this assessment the manager should decide with support from HR whether to proceed with disciplinary action or to pursue other policies as appropriate e.g. for issues of substance misuse.
- 10.5.1 Where an informal investigation demonstrates grounds for believing that misconduct has occurred that is more serious than can be dealt with by means of counselling, a full and formal investigation of all the relevant facts must be undertaken. The Line manager with the support of their Head of Department must take practical steps to identify a manager who has previously not been involved in the issue to conduct the investigation.
- 10.5.2 Those undertaking investigations should ensure they are fully conversant with the operation of the disciplinary procedures. During formal investigatory interviews, the employee will have the right to be accompanied by a "companion" e.g. their union representative, colleague or person not likely to prejudice the outcome or acting in a legal capacity. The manager leading the investigation must ensure employees are made aware of their rights of representation (see Appendix IV for template letter....)

The aims of the investigation are as follows:

- Ascertain the facts
 - Assess the facts
 - Determine whether a prima facie case for disciplinary action exists
 - Recommend whether a disciplinary hearing should be convened
 - Make any other recommendations as appropriate such as change to systems, processes etc
- 10.6 The manager leading the investigation shall ensure the facts and recommendations are properly documented and statements are signed by witnesses / interviewees as an accurate record. Copies of these statements shall be made available to interviewees (witnesses should only see their own witness statement not those of other witnesses) and as part of the overall report, to the employee under investigation.
- 10.7.1 No disciplinary action shall be taken against an employee until the case has been fully investigated as detailed above. Where the outcome of the investigation is the convening of a disciplinary hearing, the employee should be formally notified as detailed below under the Disciplinary Procedure.
- 10.7.2 Investigations will be carried out without unreasonable delay and in any case the timescales of each individual case should be kept under review by the Manager who authorised the investigation.

11. RIGHTS OF REPRESENTATION

- 11.1.1 The Trust adheres to the Employment Relations Act 1999, follows the principles laid out in the ACAS Code of Practice on Disciplinary and Grievance procedures and is mindful of case law developments. It therefore allows employees statutory rights to be accompanied at meetings where a disciplinary meeting could result in a formal warning at Stages 1, 2, 3 or 4 in this Policy.
- 11.1.2 Also, an employee may be accompanied at Investigatory Meetings or where the Trust is taking some other disciplinary action; or, confirming a warning or some other disciplinary action including Appeal Hearings.

- 11.1.3 The chosen "companion" may be a Trade Union Representative, a fellow worker or another person or whose presence would 'not prejudice' the meeting / hearing.
- 11.1.4 The request to be accompanied must be 'reasonable' and it would not normally be reasonable for an employee to ask to be represented at informal meetings or where counselling is being undertaken by the Manager
- 11.1.5 It would not normally be appropriate for the employee to be represented by someone whose availability is limited and/or who would unduly hold up the process; particularly where someone suitable and willing is available either on site or local to the Trust.
- 11.1.6 The statutory right to be accompanied does not extend to legal representation. However, an employee should be allowed to be accompanied by a lawyer at a disciplinary hearing in circumstances where Article.6 of the European Convention on Human Rights is engaged; which gives individuals the right to a fair and public hearing.
- 11.1.7 Article.6 would likely be engaged where the employee is facing charges that are of such severity or gravity that, in the event they are proven, he or she will effectively be barred from employment in the NHS. Also, for example, in circumstances where a consequence of the hearing could be the addition of his (or her) name to the register of individuals deemed unsuitable to work with children. In cases of less severity Article.6 might not be engaged. Managers should always discuss requests for legal representation with HR before agreeing to the request.

12. WITNESSES

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

13. USE OF DISCIPLINARY SANCTIONS

- 13.1.1 The full range of disciplinary action outlined in this procedure may not be applicable in every case and will entirely depend upon the circumstances and seriousness of the case. Accordingly the procedure may be implemented at any stage if the employee's alleged misconduct or performance warrants such action. Also the Foundation Trust may initiate 're-training' where appropriate as a possible remedy. This could be in addition to or instead of a warning within this Policy.

Retraining might be deemed appropriate, for example, where an employee has made drug errors; where there has been an error in the procedure set out in the collection of blood products; or, where there has been Information Governance (IG) related misconduct.

- 13.1.2 An accumulation warnings issued via the disciplinary process may result in dismissal.
- 13.1.3 However, 'management advice' or 'Formal Notices' issued under the Capability Policy or Managing Attendance Policy would not normally be cumulative in nature in conjunction with disciplinary warnings/sanctions.
- 13.1.4 An employee committing gross misconduct (see Appendix 1) should expect to be summarily dismissed, without notice, following due process including a thorough investigation.
- 13.2 Otherwise, where notice is issued upon dismissal and normally paid in lieu of the individual remaining at work in accordance with the employee's employment contract and current statutory legislation i.e. number of weeks based on completed years of service up to a maximum of 12 weeks.
- 13.3 In certain circumstances alternatives to dismissal may be considered such as downgrading without protection, redeployment or transfer out of department. Advice from Human Resources should be sought prior to taking any of these actions since steps such as these have contractual implications. All of these actions will be invoked as a penalty alternative to dismissal and should be seen in this context. Alternative actions such as these should always be linked to a final written warning.

14. RECORD KEEPING

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

15. LEVELS OF AUTHORITY

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

16. GRIEVANCES

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

THE DISCIPLINARY PROCESS (PARAGRAPHS 17 TO 19)

17. INFORMAL COUNSELLING BY MANAGER

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

The purpose of counselling is to explore and establish:

- Areas of concern
 - Standards required
 - Contributory factors or additional problems facing the employee
 - Support and training to achieve the required standards
 - A time bound process for review and resolution
- 17.2 An agreed account of any counselling including an indication of the above and the final outcomes should be provided to the employee and the manager should retain a copy until the matter has been resolved.
- 17.3 The employee should be informed that continued failure to meet the standards of conduct or performance might result in formal action being taken under the disciplinary procedure. All of the documentation at the counselling stage may form part of the disciplinary investigation at a later stage.

18. ARRANGING AND CONDUCTING FORMAL DISCIPLINARY HEARINGS

Before the hearing

- 18.1 The employee will be advised in writing of the allegations to be discussed and given at least 5 working days or 7 calendar days notice. Hearings may be arranged with less than 5 days notice with the agreement of all parties. Time scales can be altered if both parties agree (i.e. shortened or extended) All relevant documentation including copies of the investigation report, statements and supplementary evidence being referred to, will be provided to the employee with the letter.
- 18.2 No other documents or statements should be used or referred to at the hearing if they have not been presented to the employee or management beforehand unless agreed by management, the employee and their trade union representative at the hearing. In such circumstances management, the employee and their representative will be given appropriate time to consider any additional documents. Where the employee is not at work or suspended from duty the letter should be sent by recorded delivery.
- 18.3 The employee will be informed who will be hearing the case and who is /are presenting the case and any witnesses that will be called by management.
- 18.4 The letter will state that the hearing may result in disciplinary action and advice will be included regarding the right to be accompanied by a "companion" a trade union official, colleague or person whose presence would not prejudice the hearing and not acting in a

legal capacity and the right to call witnesses. The employee will have to ensure their witnesses attend and should advise the panel of this in advance.

- 18.5 The letter will also contain a statement that at the meeting the employee will have the right to fully state their case. It may also be useful to state that should a disciplinary penalty be given at the disciplinary meeting the employee will have the right to appeal in line with the appeals procedure.
- 18.6 When a disciplinary hearing is to be initiated, the line manager will liaise with their Head of Department or Division over the panel members. The panel members should be Band 7 or above where allowable within the departmental structure and should not previously have been involved in the case or investigation. Where it is deemed inappropriate for a line manager to consider a disciplinary hearing, the Trust will determine an appropriate senior manager to hear the disciplinary. This decision should be taken in conjunction with Human Resources.

At the hearing

- 18.7 The composition of a panel at the disciplinary hearing is outlined at Appendix II and will always include a senior member of the HR Department who will advise the panel on points of process or relevant employment law.
- 18.8 Hearings should be conducted and structured as per the guidance in Appendix VII.
- 18.9 The Investigating Officer (IO) will present a summary of the case including findings of any investigation. The IO may choose to bring any witnesses as part of his/her presentation.
- 18.10 The employee will be encouraged to give his/her account/version of the incident with support. The representative can speak i.e. present the case for the employee if desired but not answer questions on behalf of the employee
- 18.11 The employee can be questioned by either the panel members or the manager presenting the management case during the hearing.
- 18.12 At the disciplinary hearing the IO presenting the management case and the employee and representative, will withdraw at the end of the hearing so leaving the manager and HR representative hearing the case, to deliberate independently on the outcome.
- 18.13 Witnesses called by either the presenting manager and the employees can be questioned and cross-examined by all concerned at the hearing.

After the hearing

- 18.14 A letter confirming or advising the employee of the disciplinary decision will be sent within 5 working days or 7 calendar days of the hearing. It will include the following:
Who was present and in what capacity.
- 18.15 A clear statement of the allegations.
- 18.16 Paragraphs covering the main points of the hearing and findings for and against the employee.
- 18.17 The sanction imposed and the reason for this.
- 18.18 Details of any action/improvement required by the employee within a specified timescale.

- 18.19 A statement that failure to improve could result in further action (including dismissal where appropriate).
- 18.20 Details of the right of appeal when appropriate and how to exercise that right.
- 18.21 Any other points of action to be taken on behalf of the Trust.

19. STAGES OF THE FORMAL DISCIPLINARY PROCEDURE

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

First Stage – Formal Verbal Warning

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

Second Stage - Written warning

- 19.8 A second stage written warning may be given to an employee where after a formal disciplinary hearing, conduct has failed to improve after a verbal warning or where the

conduct is of a more serious nature, or where a series of line manager counsellings have failed to achieve the required result.

- 19.9 The warning should be given formally in writing by the manager who issued the warning within 5 working days or 7 calendar days and this should be kept on the personal file. Such warnings remain operative for a minimum period of 12 months after which subject to satisfactory conduct, it will be considered spent for the purposes of further disciplinary action.
- 19.10 The warning will confirm what the issues are, what improvements are required and within what time frame, the duration of the warning and the likelihood of further action under Stage 3 if there is no improvement within the defined period.
- 19.11 The warning letter will also confirm the right of appeal identifying which manager to whom to address the Appeal. The individual should appeal in writing on an appeal notification form (see Appendix IX) to the next line manager within 2 weeks of receipt of the letter confirming the warning. Appeals will normally be arranged within 4 working weeks subject to the availability of all parties. Both parties may agree a shorter or longer period of time.
- 19.12 A Senior member of the HR Department will accompany the manager at any hearing.

Third stage - Final written warning

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

Fourth Stage – Dismissal or Alternative Formal Disciplinary Measure

- 19.16 An employee may be considered for dismissal if conduct continues to be unsatisfactory and the employee fails to reach a satisfactory standard whilst the final written warning is in force; where the employee is found to be guilty of gross misconduct and there are insufficient or no mitigating circumstances to be considered.
- 19.17 A senior member of the HR Department will accompany the manager at any hearing. On completion of the hearing the employee will be told of the decision to dismiss immediately or if this is not possible, within 24 hours.

- 19.18 The dismissal letter will detail the complaint, the process undergone and the reasoning for the decision of the panel. It will also confirm the right of appeal and will be documented and despatched within 5 working days or 7 calendar days.
- 19.19 Appeals must be lodged in writing on an appeal notification form (see Appendix IX) to the 'Director of Human Resources and Organisation Development' within 2 weeks of receipt of letter confirming the decision to dismiss. Appeals will normally be arranged within 4 working weeks subject to the availability of all parties. Both parties may agree a shorter or longer period of time
- 19.20 The appeal panel for dismissal will normally consist of one non-executive director of The Trust who will be chair of the panel; an executive director and an appropriate senior manager. Where a non-executive director is unavailable, then an appropriate senior manager will be appointed who has not been previously been involved in the process. The Director of Human Resources or a nominated deputy will attend the appeal and act as professional HR advisor to the panel.
- 19.21 The decision of the panel will be binding and employees should exhaust all rights of appeal under this policy before proceeding to any statutory right of complaint against unfair dismissal (i.e. to an employment tribunal).
- 19.22 Separate arrangements will be made where the dismissal of an executive director is a subject of appeal. In these circumstances, please contact a senior member of the HR department

20 SIGNIFICANT PERFORMANCE WEAKNESSES

Where either a written or final written warning has been issued to a member of staff as an outcome from the disciplinary process - operative for a minimum of 12 and a maximum of 24 months - consideration should be given to treating the conduct under the heading of 'significant performance weakness' (as defined under Agenda for change Section 6.26 and Section 6.27 below) and therefore treating this a valid and justified reason for suppression of increment points for the duration of the warning.

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

Definition of 'significant performance weaknesses'

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

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

Technically, absence managed under the Disciplinary policy (where there is no underlying medical cause or disability) which has resulted in a written or final written warning could meet the criteria laid out in 6.27 in that failure to attend could be demonstrated as

preventing a staff member to continue to apply knowledge and skills consistently. However the Trust's Total Reward strategy 2009 – 2014 identifies the intention once we are an FT to evaluate in partnership with staff side representation a number of initiatives which might build our capacity to manage attendance. As those approaches are likely to require detailed discussion and consultation, suppression of increments due to non attendance is not included within this policy currently.

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

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

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

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

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

Right of appeal. - The decision to suppress a member of staff's increment increase following a disciplinary process can be subject to appeal by the member of staff via the disciplinary appeal process.

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

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

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

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

22. PREVIOUS EMPLOYMENT HISTORY AND SPENT DISCIPLINARY WARNINGS

- 22.1 In accordance with ACAS guidance, an employee's overall employment record should be considered in the light of potential disciplinary action. This would include trends involving previous allegations for similar offences that were investigated at the time they occurred. Although no formal action may have been taken it does not rule out that an offence may or may not have been committed. A trend or previous allegation of the same offence does, in the interest of maintaining a duty of care to clients intensify management's fair and reasonable concerns, especially in cases where care could be compromised as a result of not taking previous allegations into account.
- 22.2 Where a previous warning has expired the employee will not be warned about that offence a second time. Also in respect of 22.1 above, the expired warning is not automatically referred to or taken into account during any part of subsequent disciplinary issues except where there is a justifiable need to refer to it.

23. REVIEW OF POLICY

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

24. COUNTER FRAUD AND CORRUPTION:

- 24.1 The Fraud Act 2006 states that a person is guilty of fraud if he/she is in breach of the sections listed below:
- Fraud by false representation
 - Fraud by failing to disclose information, and

- Fraud by abuse of position.

The Trust has an accredited Local Counter Fraud Specialist (LCFS) who is responsible for investigating all suspected cases of fraud. If you wish to contact the Trust's LCFS, please contact the LCFS by phone on ext 3945 or e-mail; julian.church@nhs.net

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

25 EQUALITY IMPACT ASSESSMENT

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

26 REFERENCES

- 26.1 This policy was developed in line with best practice and up to date research with reference to the sources of information listed below:
- Agenda for Change NHS Terms and Conditions of Service
 - ACAS Code of Practice – Disciplinary and Grievance Procedures (April 2009)
 - Employment Rights Act 1996
 - The Fraud Act 2006
 - Employment Relations Act 1999 and 2004

27 ASSOCIATED POLICIES

- 27.1 This policy should be read in conjunction with the following policies and documents:
- The Queen Elizabeth Hospital NHS Foundation Trust Capability Policy
 - The Queen Elizabeth Hospital NHS Foundation Trust Grievance Policy
 - The Queen Elizabeth Hospital NHS Foundation Trust Managing Attendance Policy
 - The Queen Elizabeth Hospital NHS Foundation Trust Mutual Respect Policy
 - The Queen Elizabeth Hospital NHS Foundation Trust Single Equality Scheme

MISCONDUCT AND GROSS MISCONDUCT - EXAMPLES

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

Misconduct

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

Gross Misconduct.

All of the above as determined by the seriousness of the offence which could be considered gross misconduct plus

Examples of offences, which would normally be regarded as gross misconduct and would be considered serious disciplinary offences, which could result in summary dismissal, are:

- Failure (where necessary) to hold statutory registration
- Physical violence and assault
- Theft or Embezzlement or Fraud including any breach of Trust Standing Financial Instructions
- Racial or sexual abuse, harassment, bullying or mistreatment of staff or patients
Discrimination, harassment or bullying of staff or patients on grounds of any of the protected characteristics (see the Equality and Diversity Policy)
- Serious breach of confidentiality (this applies to all breaches of confidentiality involving the release of patient and staff information without consent or proper cause)
- Abuse of position or release of information including either personal information about a patient or employee, which could harm the business interests and image of The Trust. This also includes information gleaned from any source including IT systems and resulting from abuse of privileged position.
- Gross insubordination

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

TABLE INDICATING LEVELS OF AUTHORITY TO TAKE ACTION

	Action Taken by	Appeals Panel	Comments
Counselling	Line manager/team leader/supervisor	None	If feel aggrieved – may use grievance policy
Suspension	<input type="checkbox"/> Senior On Call manager for out of hours decisions <input type="checkbox"/> Divisional Manager /Head of Department <input type="checkbox"/> Senior Manager (Band 7 and above)	None	If feel aggrieved – may use grievance policy All suspensions of Staff should be discussed with HR and Clinical leads where possible before being implemented.
Initiate Investigation	<input type="checkbox"/> Senior Manager (Band 7 and above where available and appropriate) <input type="checkbox"/> Divisional Manager /Head Of Department	None	If feel aggrieved – may use grievance policy.
Reporting to Professional /Statutory Bodies	Chief Nurse or Clinical Lead for the professional discipline of the employee.	None	
Disciplinary Meetings Stages 1.2 and 3 (& suppression of Increment)	Line Manager provided Band 7 where available/appropriate or above plus Senior member of HR Department. Additional professional leads or senior specialists may be Co-opted to the panel as necessary.	2 nd Line Manager Provided Band 7 or above e.g Head of Department / Divisional manager plus Senior Member of HR Department not previously involved	Line manager and original Senior member of the HR Department to be available as witnesses.
Disciplinary Meetings Stage 4	Line Manager provided Band 7 or above plus Senior Member of HR Department. Additional professional leads or senior specialists may be Co-opted to the panel as necessary.	HR Director who will Arrange the panel.	Line manager and 2 nd Line manager, Senior Member of the HR Department to be available as witnesses.

FORMAT OF THE REPORT OF THE INVESTIGATION INTO THE ALLEGATIONS

Report date :

Investigation by:

1. SUMMARY

Summarise the whole of the report in short form

2. BACKGROUND

This investigation was undertaken to explore the allegation that.....

3. INVESTIGATION REMIT

The investigation officers were asked to :

- a. Gather the facts
- b. Assess the facts
- c. Identify the allegations as displayed by the facts
- d. Ascertain a reasonable belief based on the information gathered
- e. Determine whether there was a prima facie case for disciplinary action
- f. Determine whether a disciplinary meeting should be convened
- g. Produce documented evidence and present the facts
- h. Make any other recommendations
- i. The investigating officer does not have to have proof beyond reasonable doubt.
This applies in criminal matters, not employment matters

4. METHOD OF INVESTIGATION

As a minimum, the investigation should include:

- Ideally one trained investigator at each interview with one note taker
- The investigator will contact all relevant witnesses and arrange to interview them.
- It should be noted that there is no requirement to formally agree the notes of the meetings but the interviewee will be given sight of the notes and allowed to attach comments if they choose.
- Representation (TU representative or work colleague of choice) will be offered as a support through any investigative interview. If the witness does not want representation this should be respected but the investigator should make a note to that effect in the notes of the meeting.
- The investigator will make it plain to witnesses that their anonymity cannot be preserved unless there is strong evidence to suggest that revealing their identity may put them at risk.
- An explanation that the investigation interview is serious and should be conducted formally
- An exploration of the circumstances surrounding the suspected or alleged offence
- Rigorous checking of the facts, e.g. exactly how many times has the employee said/done what has been alleged and over what period
- Assessing the information objectively and without prejudice towards an individual
- Exploring any mitigating factors should the allegation be founded
- Complete the investigations without undue delay

5. MAIN POINTS

Evidence and findings should be in date order and referenced to appendices

6. SUMMARY

The following view of the allegations emerged from the evidence presented to the IO...

7. CONCLUSIONS

The IO has reached the following conclusions..... State the conclusion of the Investigating Officer, e.g. the opinion formed from the evidence displayed (case to answer, no case to answer and why etc)

8. RECOMMENDATIONS

The IO has reached the following recommendations.... [Make recommendations about the next step (possibly disciplinary action, modification to processes, procedures, systems, rules, any management action to take etc.)]

9. APPENDICES – Witness statements, reports, documentary evidence, results of observation or technical investigations etc

Date

Dear

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

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

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

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

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

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

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

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

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

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

Yours faithfully,
Investigating Officer

Invitation to Investigatory Meeting

Date

Dear.....,

Further to my letter dated [date] and our telephone conversation/s on[date/s] I write to confirm that an investigatory meeting has been arranged on [time/date/place]. This meeting will be held in accordance with the Trust's Disciplinary policy. You have the right to be accompanied by a "companion" normally a Trade Union representative, colleague or person whose presence would not prejudice the meeting.

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

- [give exact details i.e dates, specific incidents etc]

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

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

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

Yours sincerely

Manager

Invitation to Disciplinary Hearing

Date

Dear.....,

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

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

□ [insert allegation/s and breached disciplinary rule]

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

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

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

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

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

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

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

Yours sincerely

Manager

CC: Trade Union Representative, HR

Letter Confirming Outcome of Disciplinary Hearing/Appeal Hearing

Date

Dear.....,

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

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

- Details of allegations – exact times, specific incidents etc

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

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

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

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

PROTOCOLS FOR HEARINGS AND APPEALS (DISCIPLINARY PROCEDURE)

INTRODUCTION

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

B. PRESENTATION OF MANAGEMENT CASE

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

C. PRESENTATION OF EMPLOYEES CASE

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

D. SUMMING UP

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

E. ADJOURNMENT FOR CONSIDERATION

1. Recall of IO/management and employee/staff side when ready

F. DECISION OF PANEL

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

G. RULES OF ENGAGEMENT

Behavioural standards expected of all parties present:

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

DISCIPLINARY APPEAL NOTIFICATION FORM

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

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

NAME:

JOB TITLE:

DEPARTMENT:

WORK TELEPHONE NUMBER:

TRADE UNION/STAFF REPRESENTATIVE:

DATE OF HEARING:

SANCTION ISSUED VERBAL/FIRST/FINAL/DISMISSAL

MANAGER/S AT HEARING

BASIS OF THE APPEAL

Procedural irregularities

Sanction too severe in circumstances

Other

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

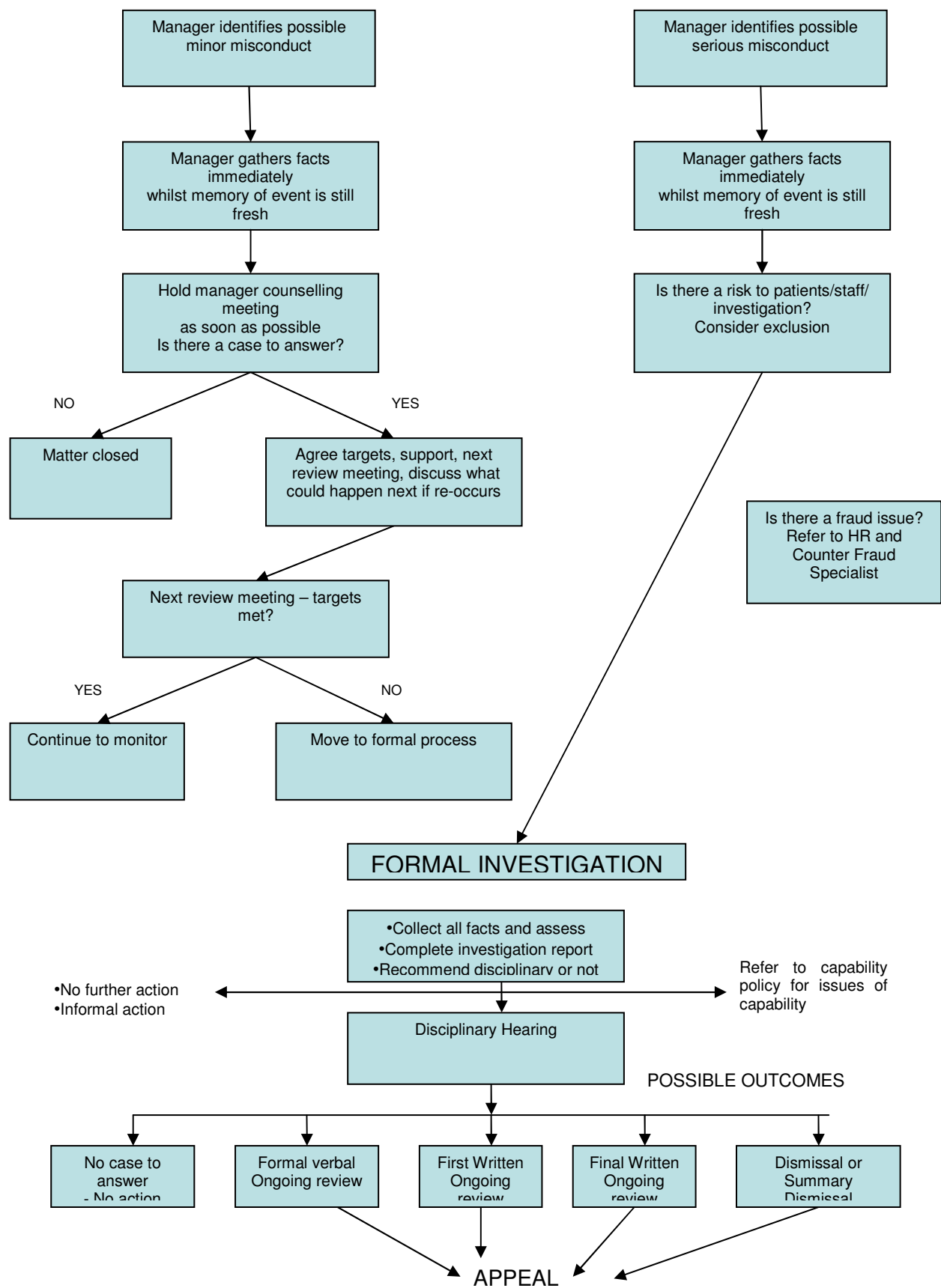
NAME (BLOCK CAPITALS) _____

SIGNATURE _____ DATE _____

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

MANAGERS GOOD PRACTICE GUIDE – on intranet

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

DISCIPLINARY FLOWCHART

STAGE 1 – SCREENING

APPENDIX 12

Name & Job Title of Assessor: Colin Fleet	Date of screening: March 2011
Policy or Function to be assessed: Disciplinary Policy and Procedure	

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

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

Signature of Assessor: Colin Fleet, HR Business Partner
Signature of Line Manager: Ian Vince, Deputy Director of OD and HR

Date: March 2011
Date: March 2011

DISCIPLINARY POLICY – KEY CHANGES

1. **Other Policies.** In the Policy Statements reference is made using similar terminology that in other policies; particularly the Sickness Absence Policy and the Capability Policy.
2. **Representation.** A change of wording re a 'companion' and making sure no representatives external to the Foundation Trust can 'prejudice' internal meetings. Plus in lieu of recent casework on Article 6 of the Human Rights Act to allow legal representation in certain circumstances
3. **Accumulation of Warnings.** There would be a change to current practice in that 'cautions' (Formal Review Notices) under the Capability Policy and now also the revised Sickness Absence Policy would not normally be cumulative in nature in conjunction with disciplinary warnings/sanctions.
4. **Notes at Formal Meetings.** It is now expected that full notes of any meeting in which dismissal is a potential outcome should be taken by a Note taker.
5. **Procedure for EDs.** To include a signpost for arrangements for discipline / dismissal of an executive director.
6. **Significant Performance Weaknesses.** The agreed section on this has been included.
7. **Previous Warnings.** Where a previous warning has expired the employee will not be warned about that offence a second time and the expired warning is not automatically referred to or taken into account during any part of subsequent disciplinary issues except where there is a 'justifiable need' to refer to it.
8. **Dismissal.** Making sure the Foundation Trust has considered all of the necessary issues and followed the procedure before deciding on a 'conduct' dismissal and therefore minimising the risk at Employment Tribunal.
9. **Fraud.** The Trust Local Counter Fraud Specialist (LCFS) has changed and the contact details included e.g. e-mail; julian.church@nhs.net
10. **Equality Impact Assessment.** Has been undertaken and is included.
11. **List of Misconduct or Gross Misconduct. Offences.** These have changes and there are more examples e.g. face book blogging.