

Disciplinary Policy & Procedure



'Delivering Excellence in Healthcare through Innovation and Collaboration'

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1 Introduction / Purpose

1.1 This document sets out Trust Policy and Procedure when an employee's conduct is considered to be unsatisfactory. The Trust expects all employees to meet high standards of behaviour. It is important, therefore, that employees understand their obligations and rights regarding this aspect of employment. Required standards of conduct and behaviour are set out in this document and also Trust and departmental policies and procedures.

This policy has been developed in consultation with managers, Human Resources and the Joint Consultation and Negotiation Committee.

This policy does not form part of the contract of employment.

1.2 This Policy and Procedure provides a framework to enable effective management of unsatisfactory conduct. It applies to all Trust employees, including those employed on temporary and fixed term contracts and also includes members of the executive team and Medical and Dental staff where a matter of personal conduct is concerned. Separate arrangements apply to Medical and Dental staff in cases of alleged professional misconduct (see the Trusts Handling Concerns about the Conduct, Performance and Health of Medical Staff Policy).

1.3 Bank workers are expected to abide by codes of conduct and standards of behaviour as set out by the Trust. Any misconduct could lead to removal from the Bank register and a referral being made to the relevant professional body or Disclosure and Barring Service where appropriate. Where a bank worker holds a substantive post with the Trust, normal disciplinary procedures will apply. See Appendix H.

1.4 Employees of 'student' or 'trainee' status, individuals employed by agencies and other contractors will be expected to adhere to the standards of conduct required in this policy. Any conduct issues which arise in respect of such individuals whilst working within the Trust will be referred to the appropriate employer.

Where staff are on a secondment agreement at the Trust and employed by another Trust, they will be subject to their substantive posts/Trust disciplinary procedure. Seconded staff are expected to abide by codes of conduct and standards of behaviour as set out by the Trust.

This procedure is concerned only with misconduct. It is not appropriate for using cases where an individual's performance or attendance falls below required standards (see the Trusts Capability Policy and Absence Management Policy as appropriate), unless this is deliberate or by neglect.

It is the policy of the Trust that no one will be discriminated against on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. The Trust will provide interpretation services or documentation in other mediums as requested and necessary to ensure natural justice and equality of access.

2 General Document Principles

2.1 Acceptable standards

It is important that all employees should clearly understand the standards of conduct and behaviour expected of them whilst employed by MCHFT. The following are indicators of these and are additional to standards and rules which may be set by individual departments.

All Trust employees are expected and required to: -

- Treat all fellow employees with dignity and respect
- Attend for work promptly
- Avoid swearing and sexually explicit jokes or comments at all times whilst at work
- Ensure complete financial integrity as outlined in the Corporate Governance Manual at all times and ensure compliance with standing orders
- Act with honesty and integrity at all times
- Abide by all Trust policies and procedures and take steps to ensure awareness of any such procedures which impact upon any aspect of their work.
- Act in a way which is likely to enhance the reputation of the Trust and present it in a favourable light at all times, both in and outside work
- Ensure the highest level of respect is given to all patients and visitors to the Trust, as well as to fellow employees of all levels
- If responsible for others, act in a way which encourages, supports and guides the individual whilst taking appropriate corrective action when necessary
- Acting in a co-operative and reasonable way at all times
- Formally reporting the facts and outcome of any criminal charges not related to work (except minor motoring offences e.g. speeding or parking tickets) to their Manager
- Exercising appropriate care in the performance of their duties
- Keep abreast of and abide by all professional codes of conduct ie NHS managers code of conduct, NMC code of conduct, medical codes of conduct etc.
- Abide by Trust policies in relation to the receipt of gifts or hospitality from suppliers or patients

2.2 Examples of Actions likely to result in disciplinary action being taken

Listed below are examples of offences of misconduct which may result in disciplinary action in the light of the circumstances of each case. This is not an exhaustive list.

- Breaches of the above examples of acceptable conduct or any other local rules or professional codes relating to particular departments/disciplines
- Failure to maintain professional registration where applicable
- Disobeying instructions or omitting or neglecting to carry out a lawful and reasonable oral or written instruction
- Insubordination, rudeness or abusive behaviour towards others
- Continuing to behave towards another in a particular way when it has been made clear that that behaviour is unwelcome
- Abuse of status or position when dealing with fellow employees or members of the public
- Unauthorised absence from work without adequate explanation or reason
- Mis-use of Trust time, for example for private recreational or private work purposes
- Failure to follow prescribed procedures in relation to absence from work and maintaining contact with the manager
- Failure to report any matter that should be reported
- Failure to account for or to make a prompt and true return of, any money or property that comes into their possession in the course of their duties
- Engaging in outside employment or activities which cause detriment to the individual's work within the Trust

- Knowingly or neglectfully making any false, misleading or inaccurate oral or written statement
- Deliberately tampering with, altering, erasing, or destroying any official document for personal or financial gain
- Failure to give due regard to Trust requirements, policies, procedures or targets as required by the individual's job role
- Reporting in sick, when actually sufficiently fit to engage in other sports, work or other activities
- Causing damage or loss to (or potential damage or loss to), or waste of, Trust property either deliberately or neglectfully
- Causing harm (or potentially causing harm) to a patient or any other person on Trust premises or in the course of Trust business either deliberately or neglectfully
- Attending work whilst under the influence of drink or illegal drugs
- Persistent lateness or leaving work early without permission
- Sleeping or the taking of unauthorised rests, whilst on duty
- The disclosure of privileged or confidential information relating to patients or other Trust business
- Accessing records of patients or colleagues which are not required during the course of Trust business or where the individual is not directly involved in patient care or patient administration
- Dangerous horseplay
- Knowingly being an accessory to a disciplinary offence
- Acts of discrimination towards others on grounds of sex, sexual orientation, race, religion, age or disability
- Bribery, giving (or offering) or receiving (or requesting) 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, as detailed in the Bribery Act 2010

Stages of the procedure

Every effort should be made to avoid issues of poor or unsatisfactory conduct arising, through good day to day communication and regular discussions with individuals about what is expected of them in terms of their conduct.

However, where conduct issues do arise, managers should follow the stages of this procedure.

Normal disciplinary standards and procedures should apply to the conduct of Trade Union Representatives. Where concerns are raised regarding the conduct of a Trade Union Representative there should be prior notification to the appropriate Regional Officer of the union before any of the steps outlined in this procedure are invoked. The matter should be discussed between the Regional Officer and appropriate member of the HR Workforce Business Partner Team.

In cases of allegation of abuse involving vulnerable adults or children, the issue should be reported immediately to the senior manager on duty, who will then report issues in accordance with the Safeguarding process.

2.3 Informal Disciplinary Action (Counselling)

Cases of misconduct will wherever possible, be managed informally, with the aim being to resolve problems quickly and confidentially. Prior to any formal action taking place, any employee whose conduct or behaviour is falling below acceptable standards (see above) and

is causing concern should have this informally drawn to their attention. At the same time, the manager should ensure the individual is aware of the required standards of conduct and behaviour, and inform the person that if their unsatisfactory conduct or behaviour continues, then this would probably result in more formal action being taken. The manager should clearly explain the improvement that is required. The aim of such informal discussions is to avoid the need for formal action wherever possible by resolving the problem at an early stage. Appropriate guidance, training or close supervision should be considered and offered.

It would not normally be appropriate for the individual to be accompanied at the discussion although it is recognised that there may be circumstances where the presence of a Trade Union Representative or a workplace colleague may be helpful.

Such informal action does not form part of the formal disciplinary procedure. Dealing with minor disciplinary breaches through the formal stages of the procedure should only be considered if misconduct continues.

If during an informal discussion meeting it becomes clear that the matter is more serious, the discussion may be adjourned and pursued under the formal disciplinary procedure.

Where an informal discussion does not lead to improved conduct, the formal disciplinary procedure should be followed.

2.3.1 Recording informal action

A note must be made to record the content of the informal discussion. Particular note should be made of the main points of the meeting and the individual's response to the concern. The note should be dated. The note may be referred to in the future if there is cause to raise further concerns about the individual's conduct. File notes should concentrate upon known facts, and not hearsay. They should also reflect the discussion that has taken place about the incident, and the agreed actions, rather than solely detailing the incident itself.

It may be appropriate for the manager to write to the individual to confirm the content of the discussion.

2.4 Fast-track Process

In cases of alleged misconduct where dismissal is not expected to be an outcome, and where the individual does not contest the allegations, the case may be dealt with via a fast-track route. This can be requested or suggested by the individual, the commissioning or line manager or anyone involved in the case. Fast tracking cases allows for speedy resolution, avoiding the need for a lengthy investigation. Cases can only be fast-tracked with the relevant member of staff's agreement that they do not wish to proceed with a full investigation and disciplinary hearing.

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

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

If the fast-track process is agreed, the formal disciplinary hearing will be replaced with a 'fast-track hearing' unless counselling (informal discussion) is agreed to. If counselling (informal action) is decided upon it will be conducted in the usual manner (see 2.3 above).

2.4.1 Deciding upon whether the fast-track process is appropriate

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

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

2.4.2 Fast track disciplinary hearing

Where it is decided that the fast track process will be adopted, it may be decided to progress the case to a fast track disciplinary hearing. The employee is able to request support from a Trade Union Representative or a workplace colleague. The hearing will proceed as follows:- HR Workforce Business Partner Team.

- a) The case will be heard by one presiding officer instead of a full panel. This will normally be the line manager or a more senior manager from the department
- b) An representative from the HR workforce Business Partner Team will attend to support the presiding officer
- c) Since there has been no formal investigation, there is no need for an investigating officer to attend
- d) A short summary report of the incident will be prepared by the supervisor/line manager. Support if required will be available from the HR Advisor
- e) No witnesses will be called
- f) A formal meeting will take place
- g) At the outset of the meeting, the presiding officer should check the individual's understanding of, and agreement to, the fast tracked process
- h) The individual will be given the opportunity to present any mitigating circumstances to the presiding officer who will consider this together with the evidence
- i) Brief hand written notes of the meeting will be kept by the HR representative

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

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

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

2.4.4 Appeal

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

2.5 Deciding upon formal disciplinary action

2.5.1 Initial enquiries

Before a decision is taken to launch a formal disciplinary investigation, initial enquiries should be carried out into the complaint or allegation. The purpose of this fact finding is for the manager to establish the facts and ascertain the potential seriousness of the issue and

whether informal action would be sufficient. Formal action should only be considered if informal action has already taken place in respect of similar act of misconduct or if the alleged misconduct is sufficiently serious as to warrant immediate formal action. The manager, in conjunction with HR, will decide if it is appropriate to launch a formal investigation.

2.5.2 Consideration of Suspension

In cases where the allegations potentially amount to gross misconduct then consideration may be given to the suspension of the individual. Alternatives to suspension should always be explored for example, temporary removal from clinical duties to administration duties or a temporary move to work in another department.

Suspended employees will receive full pay and this should be regarded only as a holding action pending the completion of enquiries. During periods of suspension on full pay employees who normally receive work enhancements are still entitled to this payment. Enhancements will be calculated on the average of the preceding three months.

Suspension is not a sanction in itself, and it does not imply that any decision has been taken in respect of a disciplinary outcome. For further details on the process of suspension, see Appendix D.

2.5.3 Investigation

In the case of repeated minor instances of misconduct, or in the case of a first offence which is more serious, the formal disciplinary procedure will be invoked. Prior to any formal disciplinary hearings being held, a full and impartial investigation into the circumstances and facts relating to the alleged misconduct will take place. Whilst the length and depth of an investigation will vary with each individual case, the investigation will need to be appropriate and proportionate so that all facts can be established and considered before a final decision on what further action, disciplinary or otherwise, needs to take place.

To set up the investigation, the appropriate senior manager (the commissioning manager) within the division concerned should appoint an investigating officer as soon as possible and consult with the HR department. The investigating officer must not have previously been involved in the issues being investigated. The investigating officer will receive a brief of the issue to be investigated and will be supported as required during the investigation by a member of the HR Department. The Commissioning Manager would be required to complete the terms of reference for the investigation (see appendix G), with final approval from the appropriate member of the HR Workforce Business Partner Team before submitting to the investigating officer.

It is important that the investigation is set up as soon as possible after the conduct issues have arisen so that the recollections are still fresh in the minds of the individuals and witnesses.

The purpose of the investigation will be to establish all the relevant facts so that an informed decision can be made as to whether or not there is a case to answer and therefore, whether or not a disciplinary hearing needs to be held.

The individual under investigation will be informed of this as soon as possible, and this should be followed up in writing. The individual will be given details of the allegation of misconduct.

It will be necessary for the investigating officer to interview the individual against whom the allegations of poor conduct have been made, Prior to interview the individual should be

advised in writing clear details of the allegations being made against them and of their right to be accompanied at the interview by their trade union representative or work colleague not acting in a legal capacity. They must also be given adequate time and opportunity to consider the matter and to arrange to be represented should they wish at the investigation interview.

Trust employees are required to co-operate with Trust investigations. Only in exceptional circumstances will the identity of a witness be withheld. In such circumstances, management will consider whether, if the hearing proceeds, the requirements of natural justice could still be met. Advice must be taken from Human Resources on such matters.

During the investigation interview the individual should be given every opportunity to respond to the allegations, to give their account of events and to provide any mitigation. The individual may be asked to provide a written statement before the investigatory interview. The employee is able to request support at all stages from a Trade Union Representative or a workplace colleague

Where it is necessary to interview other members of staff as part of the investigation, those employees should be told in advance of the nature and reason for the investigation. There is no requirement for a witness to be “represented” at an investigatory meeting as they are not the subject of the complaint but they can request to be accompanied if they so wish by a Trade Union representative or work colleague who has not been involved in the issue. They should also be told that the information that they have given may later be used at a disciplinary hearing and that it is possible that they will be asked to attend the hearing to give their evidence. They will also be reminded of the requirement for confidentiality.

Witnesses will be asked to provide a statement of their understanding of the events either before or during the investigatory interview. In either case the statement should be signed by the employee as a correct record of the information that they have given. All witnesses will be provided with a copy of their statement and asked for a signed copy to be returned to the investigation team. Any statements not returned within the time specified will be assumed as accurate.

Both the member of staff under investigation and any witnesses may be recalled for further statements to be taken in the light of new evidence.

The investigation interview may be audio recorded for information and to ensure accuracy.

The Investigating Officer must ensure throughout the investigation that they remain objective and non-judgemental. The investigation should explore all aspects of the situation and should not focus only on those areas that might support one particular view point. Wherever possible the Investigating Officer should check the information that they have been given by each interviewee against the other information that they have collected so that evidence can be cross-checked and corroborated

CCTV recordings, car park barrier access records and door access records will be accessed, where available and appropriate, to support investigations and any subsequent action i.e. hearings and appeal hearings. Any such footage will be shared with the member(s) of staff involved, and their representative. Line Managers should alert Security to the need to access a recording within 24 hours of an incident to ensure that it is retained or as soon as is practically possible.

2.5.4 Deciding upon a disciplinary hearing

Once the investigation is completed, the investigating officer will prepare a report to be submitted to the commissioning manager. The completed investigation report should contain full details of all employees interviewed as part of the investigation together with copies of their statements plus any other relevant information considered with a conclusion and recommendation. Having received the report, the commissioning manager should decide whether on the balance of probabilities there is no case to answer, deal with it informally or arrange for it to be handled formally via a disciplinary hearing. Human Resources should be consulted at this point.

If at this stage it is decided not to pursue the matter formally then appropriate informal action should take place. This should be noted in writing to the individual as soon as possible and, preferably, within 5 working days.

2.5.5 Employee Resignation during an Investigation

Where an employee leaves before or during an investigation, the investigation will continue and conclude as necessary, including a hearing to consider the information if appropriate. If for any reason it is not possible to determine whether the case should proceed to a disciplinary hearing, 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. Advice should be sought from a member of the HR Workforce Business Partner Team in these circumstances.

2.5.6 Trade Union Representation

At all stages of the formal procedure (including investigations) individuals are entitled to be accompanied by a trade union representative or other work colleague. If the individual who is the subject of the possible disciplinary action is a trade union representative, then he or she may be represented by a full time official for all stages of the formal procedure.

If a representative cannot attend on the proposed date, the employee can suggest an alternative time and date as long as it is reasonable and not unduly delayed. The Trust will aim to notify the employee of a rescheduled hearing date within 5 working days.

The same standards of conduct and behaviour are expected from trade union representatives as from any other Trust employee. However, in cases where disciplinary action is contemplated in relation to an accredited trade union representative, then the proposed action should first be discussed with the full time official of the union concerned. Exceptionally, where there is no full time officer, a senior trade union representative will be involved.

2.6 Formal Disciplinary Action

2.6.1 Arranging a Disciplinary Hearing

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. The scheme of delegated authority (appendix E) shows who needs to be involved and this depends upon the level of seriousness of the alleged misconduct together with the seniority of the individual involved. Where the matter is so serious that the outcome of the disciplinary hearing may be dismissal, then the manager hearing the case must be someone who has authority to dismiss.

Disciplinary hearings should be held as early as possible. As a general guide, the hearing should take place within 3 months of the commencement of the investigation wherever possible.

In order to avoid delay, the manager hearing the case should try to agree a mutually convenient time and date for the hearing with the individual and their trade union or workplace representative. Where a trade union representative cannot attend on the date proposed, the individual can request that an alternative time and date be arranged on one occasion. This will be accommodated where reasonably practicable.

Where an employee requests the postponement of a disciplinary hearing this will be considered on its own merits. If there is a good reason for non-attendance the meeting will be re-arranged. If the employee does not attend the second meeting there is no obligation on the Trust to rearrange it again and the manager may decide to proceed with the hearing in the absence of the employee. The letter confirming the rearranged meeting should include a warning to the effect that the matter may be dealt with in their absence.

Where an employee leaves the employment of the Trust prior to the completion of an investigation, a formal hearing may be arranged regardless. The ex-employee will be invited to attend, and advised that if they do not attend the hearing will take place in their absence and that a decision with regard to disciplinary action will be made and the outcome noted on their personnel file. Where it seems likely that the ex-employee may not attend, the Trust will ask the Staff Side Secretary of the Joint Consultation and Negotiation Committee if they would nominate a staff representative to observe proceedings.

2.6.2 Preparation for the Disciplinary Hearing

A letter containing details of the complaint/allegation and setting out details of the date, time and venue 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. The letter should also include who will be present at the hearing and details of any witnesses who will be called by the management side (investigating officer).

Should the staff member be unable to attend the hearing for an acceptable reason, e.g. union representation availability or medical appointment the hearing may be rescheduled on that occasion. Additional requests to reschedule would not usually be granted and the hearing may go ahead in the absence of the staff member.

If the disciplinary hearing could result in dismissal, the individual should be made aware of this in the letter.

The employee should 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, no later than five working days prior to the hearing.

Failure by either party to disclose written material in accordance with the above guidelines may result in this information being inadmissible at the disciplinary hearing. The manager hearing the case will decide on this.

2.6.3 Conduct of Disciplinary Hearings

The Manager hearing the case at the disciplinary hearing should not normally have had any prior involvement in the formal investigation.

At the hearing the complaint against the employee and associated evidence will be presented first, normally by the investigating officer. This will then be followed by submissions from the employee. It is important to note that a representative will be allowed (subject to the individual's agreement) to present the case for the individual and/or to support the individual in making the presentation. However, the representative will not be allowed to answer questions which are put specifically to the individual or his/her witnesses. Both sides are entitled to call witnesses and each will be given the opportunity to question the witnesses or raise points about the information provided by them. The Trust may audio record the hearing for information and to ensure accuracy.

If, at any point, evidence arises which, in the opinion of the chair, needs further investigation then the hearing will be adjourned to allow this and be convened at a later date.

After all the submissions have been made and the questioning has been completed, both sides will be given the opportunity to summarise the main points of the case. The presiding manager or the panel will then adjourn to fully consider the information heard and come to a decision.

Decisions relating to the level of disciplinary action to be taken, if any, will be a matter of judgement for the manager(s) who has listened to the information presented during the 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
- the employee's previous employment record including any current or previous warnings or any previous informal expressions of concern
- whether any training, additional support or adjustments to the work are necessary

Once the decision has been made, the Chair should reconvene the hearing and explain to the individual the decision that has been reached, the reasons for that decision and the action that will be taken next, including any disciplinary penalty.

After the conclusion of the disciplinary hearing, the outcome should be confirmed by the chair of the panel in writing. The letter should include the precise nature of the misconduct that has been upheld, an explanation of the disciplinary penalty that they are being given and how long this penalty will remain on their file, details of the right of appeal and details of any referral required to an appropriate professional body. If the decision of the chair/panel has been that no formal sanction is to be issued, then this should be confirmed in writing, along with any other associated recommendations.

2.6.4 Criminal Offences

If an employee is arrested on any charge or served with a summons on criminal charges, whether or not these arise out their employment, the manager will need to consider whether

or not the alleged offence has any implications for the duties of the individual or for the organisation as a whole. The matter will need to be discussed with the HR.

Depending on the circumstances, a decision may be made to suspend the individual pending the outcome of any police investigation or criminal proceedings. This suspension will be on full pay and the suspending manager will need to follow the suspension process.

Where the police investigations are the result of the organisation asking the police to become involved in an issue of gross misconduct, the internal investigation into the issue may proceed providing this does not interfere with the police investigation. It is not always necessary for the internal investigation to wait for the result of any police investigation as the two investigations will relate to different aspects of the matter. Similarly it is not necessary to wait for a court to find an individual guilty or not guilty before making an internal decision based on the internal investigation.

For any investigation involving potential fraud, corruption or bribery, advice must be sought from the Trust's nominated Local Counter Fraud Specialist (LCFS), before any disciplinary investigation is started.

The Trust's LCFS's contact details are:

0151 285 4531 or 07721 237352

Confidential reporting lines are available for staff to raise concerns external from their employer as under:-

<https://cfa.nhs.uk/>

National Fraud and Corruption Reporting Line: 0800 028 4060

2.6.5 Disciplinary Sanctions

The formal disciplinary sanctions which may be issued following a disciplinary hearing are as follows:-

First Written Warning

A first written warning may be given in cases of repetitive minor acts of misconduct which have already been the subject of informal counselling. A first written warning may also be appropriate where there is an incident of misconduct which is considered to be sufficiently serious as to warrant a formal warning.

A first written warning will normally remain live for a period of 6 to 12 months. If a further act of misconduct of a similar nature occurs while the warning is live, then further disciplinary action may result following which a final written warning or dismissal (depending upon the seriousness) may follow. After the expiry of the 6 to 12 month period, the warning will be disregarded for cumulative disciplinary purposes but will be retained on file.

Final Written Warning

A final written warning may be given in the following circumstances:-

- Where there is repetition of an act or acts of misconduct already the subject of a first warning
- Where there is a serious first act of misconduct which is considered to be sufficiently serious as to warrant a final warning

- As an alternative to dismissal where it is felt appropriate

A final written warning will normally remain live for a period of 18 to 24 months. If a further act of misconduct of a similar nature occurs while the warning is live, then further disciplinary action may result following which the existing warning may be extended or reissued, or dismissal may follow. After the expiry of the 18 or 24 month period, the warning will be disregarded for cumulative disciplinary purposes but will be retained on file.

Incremental Progression

An employee issued with a disciplinary warning at any level will not be eligible to receive a pay increment as per the Pay Progression Policy. An employee must be informed that an incremental pay award will be withheld at the time the warning is issued. Pay increments will be withheld for the period of time that the warning is live.

To illustrate this in practice:

- Employee X's increment date is the 3rd September.
- On the 9th May, employee X is issued with a first written warning, live for a period of 12 months.
- Employee X's progression would be deferred from 3rd September until the 3rd September the following year

Or:

- Employee X's increment is the 5th February
- On the 15th March, employee X is issued with first written warning, live for a period of 6 months
- Employee X's progression would be deferred from 5th February until 5th August

Transfer, Demotion or downgrading

In **exceptional** cases, it may be appropriate to consider the following options as an alternative to dismissal:-

- a transfer to another available post within the Trust
- demotion to another available post within the Trust
- downgrading

These sanctions would not attract any form of pay protection and would be accompanied with a final written warning. Any new manager of the employee will be made aware of the final written warning and will monitor the employee's conduct. The proposal to transfer the employee to another available post within the division when demotion or downgrading is involved must be with the full agreement of the employee. The Manager cannot impose this decision on the employee. Where the employee does not wish to consider an alternative sanction to dismissal then the manager hearing the case must confirm the dismissal decision. The right of appeal against the disciplinary action taken are not affected.

Dismissal with notice

Dismissal with notice may be appropriate where there is repetition of an act of misconduct already the subject of a final warning.

Summary Dismissal (without notice)

Dismissal without notice will only be appropriate in cases which are so serious as to be deemed as gross misconduct (see section 2.7 below). Payment for any annual leave accrued up to the date of dismissal will be arranged (based on completed month's service). A referral will be made to the relevant professional body or to the Disclosure and Barring Service (DBS) where appropriate. (see appendix F)

2.7 Gross Misconduct

In cases where gross misconduct is suspected to have taken place then the procedures are slightly different. Gross misconduct is conduct that is considered by the Trust to be so serious as to make any further relationship between the Trust and the employee impossible. For this reason, following the usual investigation and disciplinary hearing processes, if an employee is deemed to have committed gross misconduct they may be dismissed without any previous warning and without notice.

Because of the very serious nature of gross misconduct, an individual who is suspected of having committed such an offence may be suspended from duty pending the investigation (see below).

The list below, which is not exhaustive, gives examples of the types of offences regarded as gross misconduct by the Trust.

- a) Serious cases of any of the examples listed in section 2.2 above
- b) Deliberate or neglectful serious physical, verbal or sexual abuse or causing of physical harm to any person whilst on Trust business. This can include ill treatment or mishandling and shouting or swearing at another person.
- c) Sustained failure to make or allow contact with the Trust whilst absent from work
- d) Theft, or any kind of unauthorised removal of Trust or another person's property with intent to steal
- e) Fraud or the obtaining of money or property belonging to the Trust by deception. This may include the false claiming of sick pay or travel expenses.
- f) Being incapable of working normally due to the influence of alcohol, drugs or other similar substances

- g) Serious disregard of safety rules and/or procedures which causes or is likely to cause harm to other people on Trust premises or on Trust business
- h) Refusal to obey reasonable and lawful instructions from an authorised person
- i) Serious acts of discrimination towards others on grounds of sex, sexual orientation, race, religion, age or disability
- j) Serious cases of harassment or bullying of another person at work
- k) Serious cases of mis-use of Trust time for personal or financial gain
- l) Serious cases of causing damage or loss to (or potential damage or loss to), or waste of, Trust property either deliberately or neglectfully
- m) Serious cases of causing harm (or potentially causing harm) to a patient or any other person on Trust premises or in the course of Trust business either deliberately or neglectfully
- n) Criminal convictions occurring relating to activities outside work but which have a direct bearing on a person's employment and duties with the Trust
- o) serious infringements of statutory regulations eg driving on Trust business without a driving licence
- p) Misrepresentation at any time, including at the time of appointment, or when applying for any post in the Trust, of 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 the Rehabilitation of Offenders Act 1974
- q) Inappropriate access, interference with and/or use of computer, word processing and any other similar electronic equipment which is designed to store and transmit information. (See Trust's IT Policies.)
- r) The copying or distribution, by paper or electronic means, of pornographic, indecent or offensive material
- s) Serious cases of unauthorised use of a Trust property, equipment or resources, including the unauthorised use of a Trust vehicle, or the consumption of food and beverages intended for patients/visitors
- t) Contravention of the Trust Standards of Business Conduct including failure to give notice of financial interest in a contract entered into by the Trust
- u) A failure to exercise a duty of care which adversely affects the safety or wellbeing of patients, staff or visitors; or the perpetration of a hoax, or practical joke, or any other negligent act which results, or could result, in serious disruption of the service
- v) Offences of bribing another person
- w) Any other actions that might be considered as a breach of good conduct and which could bring the Trust and/or the individual's profession into disrepute
- q) Inappropriate comments regarding work matters, colleagues and/or patients on Social Networking sites

2.8 Appeals

Any Individual has the right to appeal against any formal sanction issued under this policy. Anyone wishing to exercise this right should write to the Head of HR within 7 working days after receipt of the letter confirming the sanction issued or notification of the termination. The letter should clearly set out the grounds for the appeal. No one hearing an appeal will have had a direct involvement in the case at an earlier stage. An acknowledgement letter will be issued to the individual to confirm receipt of the appeal.

2.8.1 Conduct of the appeal

The appeal panel will be made up as described in appendix E. The hearing will normally focus on the grounds for the appeal and the chair will normally invite the presenting manager to outline their response to the grounds as stated in the appeal letter or associated documentation. If the employee wishes to rely upon new evidence in support of the appeal which was not put forward at the earlier investigation or disciplinary stage then this must be

stated clearly in advance of the appeal hearing and any new documentary evidence must be produced. New evidence which has not been referred to on the appeal form or documents not produced prior to the appeal hearing will only be considered by the appeal panel at the absolute discretion of the Chair of the appeal hearing. As with the disciplinary hearing, witnesses may be called and each side will be able to ask questions of the other, or of any witnesses attending. After this, both sides will be invited to summarise their submissions. The panel will then withdraw with the HR representative to consider their decision.

For appeals against dismissal, a nominee of the Staff Side of the Joint Consultation and Negotiation Committee may be present to observe the process, subject to the agreement of the appellant.

3 Definitions

List and describe the meaning of the terms used in the context of the document.

'The Trust': Mid Cheshire Hospitals NHS Foundation Trust.

'Employee': anyone employed by Mid Cheshire Hospitals NHS Foundation Trust.

'Trade Union/Staff Association': nationally recognised NHS negotiating body.

'Full Pay': the pay the employee would have received had they been at work, other than for casual overtime i.e. not rostered or contractual.

'Gross misconduct': misconduct that is so serious as to potentially make any further relationship between the Trust and the Employee impossible.

'Summary dismissal': dismissal without notice or pay in lieu of notice.

'Working day': Monday to Friday excluding bank holidays.

'Bribery': An offence for a person to offer, promise or give a financial or other advantage to another person.

4 Associated Documents

This procedure should be read in conjunction with the following documents:

- Capability Policy and Procedure
- Absence Management Policy and Procedure
- Handling Concerns about the Conduct, Performance and Health of Medical Staff Policy
- Alcohol and Substance Misuse Policy
- Pay Progression Policy and Procedure
- Email Acceptable Use Policy
- ICT Acceptable Use Policy
- NHS Code of Conduct and Standards of Business Conduct
- Professional Codes of Conduct
- Grievance, Complaints and Disputes (staff) incorporating Dignity at Work.
- Disciplinary Policy and Procedure for Hospital Medical and Dental Staff

- Child protection/Safeguarding Policies and Procedures
- Adult Protection in Cheshire
- Traumatic Incident Protocol

This procedure is supported by the Trust guide to conducting investigations.

5 Duties

Managers, individuals, HR staff and staff representatives all have a key role in ensuring the effective use of corrective action and disciplinary procedures. The specific responsibilities are defined below.

Managers

The ultimate responsibility for ensuring that the conduct of individuals is consistently aligned with Trust values and standards rests with line managers. Key responsibilities include:

- Following the policy and to act on issues of poor conduct in an appropriate and timely manner.
- Considering whether the issued raised would be more appropriately dealt with under the Trust's Absence Management, Capability or Alcohol/Substance Misuse procedures in the first instance.
- Keeping written records and ensuring confidentiality.
- Ensuring that all staff are aware of required departmental standards and rules and the likely consequences if these rules are broken.
- Ensuring that all actions are in accordance with this disciplinary procedure
- Consulting a Human Resources Department before suspending any employee or taking any formal action.
- Support staff, maintaining regular contact with them, whether they are suspended, or not, to ensure any concerns or welfare needs are escalated and addressed.
- Share with staff the People Practise documents (provided by Human Resources) as appropriate.

Investigating Officer

The person conducting the investigation should ensure that this is carried out in accordance with this policy and the Trust investigation guidelines, as well as ensuring complete impartiality and integrity at all times. They may also be required to present the findings of the investigation at any disciplinary hearing that may follow.

Individual employees

All employees of the Trust should ensure that they understand and comply with the Trust and departmental standards relating to conduct and that they carry out their duties in accordance with contractual obligations and with appropriate care

Human Resources

Key responsibilities of the Human Resources team are to:

- Ensure that managers are provided with appropriate advice and guidance on the application of this procedure, including training and coaching.

- Provide overall monitoring of disciplinary matters across the Trust.
- Provide support to managers in managing individual cases where necessary.
- Ensure managers are provided with the People Practice support documents which are to be shared with employees as appropriate.
- Ensure that this Policy complies with legislative requirements and good employment practice.

Staff and trade Union Representatives

Staff Representatives have an important role to play in providing advice and support to their members and to generally work in partnership with managers to ensure optimum levels of staff conduct and behaviour.

Consultation and Communication with Stakeholders

The Policy has been developed in consultation with Joint Consultation and Negotiation Committee.

6 Consultation and Communication with Stakeholders

This policy and procedure has been developed in consultation with the Joint Consultation and Negotiation Committee (JCNC).

7 Implementation

The policy will be implemented through dissemination to managers within the Trust. Communication to all staff on the policy changes will be through Trust internal communication channels. The policy will be distributed by e-mail to all executive and non-executive directors and departmental managers. New starters will receive a copy of the rules with starting documentation.

8 Education and Training

Training will be provided as outlined in the Communication and Training Plan.

Human Resources will provide coaching on a one-to-one basis. In addition to this, on-going skill training and development requirements in terms of informal and formal disciplinary issues will be identified via individual managers' appraisal process and documented on their individual personal development plans.

9 Monitoring and Review

The table below must be completed in the document to demonstrate effective monitoring of all documents.

Standard/process/issue required to be monitored	Monitoring and Audit			
	Process for monitoring e.g. audit	Responsible individual /group	Frequency of monitoring	Responsible committee
General review of disciplinary cases including; length of time a case has been open, mitigation if expected timescale for closure has been exceeded, reviewed completion date and number of cases per division.	Ongoing review	Senior Workforce Business Partner.	Monthly	Executive Workforce Assurance Group

10 References / Bibliography

The Employment Rights Act 1996 (as amended)
The Employment Rights Dispute Resolution Act 1998
The Employment Relations Act 1999
ACAS. (2009) Disciplinary and Grievance procedures. Code of Practice 1. London:
Acas
The Bribery Act 2010.

11 Appendices

- A Version Control Document**
- B Communication / Training plan**
- C Equality Impact and Assessment Tool**
- D Suspension guidelines**
- E Scheme of delegated authority**
- F Disclosure and Barring Service (DBS) referral guidance for managers**
- G Request for an investigation to be carried out**
- H Process for bank workers**
- I Guidance on referrals to professional bodies**
- J Process for managing safeguarding/criminal allegations**

APPENDIX A - Control Sheet

This must be completed and form part of the document appendices each time the document is updated and approved.

VERSION CONTROL SHEET			
Date dd/mm/yy	Version	Author	Reason for changes
June 2008	1	John Workman	Review and update
13/10/2010	2	Adriana Roscoe	Review and update
3/8/2012	2.1	Melissa Holley	Updated as per recommendations contained in the Auditor's reports
18/9/2013	2.2	Adriana Roscoe	Updated to include paragraph on CCTV
10/12/13	2.3	Melissa Oldham	Review due to additional guidance from Local Counter Fraud Service guidance.
01/07/14	2.4	Melissa Oldham	Updated contact details for Trust's LCFS's under section 5.6.4 Explanation of Pay Progression Deferment added to Final Written Warning section 5.6.5
04/12/15	3	Kay Ward	Review and update
19/10/2017	4	Natalie Wallace	Review and update
05/10/2018	4.1	Natalie Wallace	Inclusion of appendices on process for safeguarding and criminal allegations and referrals to professional bodies.
18/01/2019	4.2	Natalie Wallace	Update to the monitoring section responsible committee. This has been changed to EWAG
10/09/2020	4.3	Natalie Wallace	Updated made to confirm that where hearings are cancelled, will aim to advise of a new hearing date within 5 working days.
09/12/2020	5.0	Dawn Bradbury	Review and update

APPENDIX B - Training needs analysis

Communication/Training Plan (for all new / reviewed documents)	
Goal/purpose of the communication/training plan	To ensure managers are aware of updated policy and procedure and to support improved management of informal and formal disciplinary issues
Target groups for the communication/training plan	All management and supervisors
Target numbers	As above
Methodology – how will the communication or training be carried out?	Via Trust communications to advise of existence of new policy, followed up by briefing sessions
Communication/training delivery	Internal experts
Funding	None required
Measurement of success. Learning outcomes and/or objectives	Ensure compliance with trust documents and improved informal and formal disciplinary management
Review effectiveness – learning outputs	Evaluation; Review of further communication or training needs
Issue date of Document	Date document published
Start and completion date of communication/training plan	From date of issue
Support from Learning & Development Services	Planning the training; e-mail briefing session dates to all staff; preparing resources; training delivery and review

For assistance in completing the Communication / Training Plan please contact the MCHFT Learning and Development Services

Appendix C

Equality Impact Assessment

Please read the Guide to Equality Impact Assessment before completing this form.
The completed assessment is to form part of the policy/proposal/business case appendices when submitted to governance-policies@mcht.nhs.uk for consideration and approval.

POLICY/DOCUMENT/SERVICE: Disciplinary Policy

SECTION A

A	Does the document, proposal or service affect one group less or more favourably than another on the basis of:	Yes/No	Justification & data sources. Include nature of impact. Also record provisions already in place to mitigate impact.
1	Race, ethnic origins or nationality	Yes	The English language is used for all written communication. There is therefore the potential for indirect discrimination for anyone with English as a second language. All policy and guideline documents are published on the Intranet which may disadvantage some. The Trust has translation facilities if necessary and can produce documents in difference formats where required.
2	Sex	No	No concerns
3	Transgender	No	No concerns
4	Pregnancy or maternity	No	No concerns
5	Marriage or civil partnership	No	No concerns
6	Sexual orientation including lesbian, gay and bisexual people	No	No concerns
7	Religion or belief	No	No concerns
8	Age	No	No concerns
9	Disability - learning disabilities, physical disability, sensory impairment and mental health problems	Yes	Potential for indirect discrimination for anyone with learning disabilities Formal meetings relating to employment issues are held on Trust premises. Potential impact on staff with physical disabilities.
10	Economic/social background	No	No concerns
B	Human Rights – are there any issues which may affect human rights		
1	Right to Life	No	
2	Freedom from Degrading Treatment	No	

3	Right to Privacy or Family Life	No	
4	Other Human Rights (see guidance note)	No	

THIS FORM WILL BE PROVIDED IN ANOTHER LANGUAGE OR FORMAT ON REQUEST

Date 14th December 2020

Signature.....

Name: Dawn Bradbury

Job Title: Deputy Workforce Business Partner

Date

Signature

Name.....

Job Title.....

Where an impact has been identified in Section A, please outline the actions that have been agreed to reduce or eliminate risks in Section B.

If there are no impacts identified in Section A, completion of Section B is not necessary.

SECTION B

Please expand tables below as necessary

SECTION B NUMBER A1-10, B1-4	NATURE OF IMPACT	EVIDENCE	STAKEHOLDER INVOLVEMENT	ACTION	COST	LEAD	TIMESCALE	RISK SCORE
A9	<p>Potential for indirect discrimination for anyone with learning disabilities</p> <p>Formal meetings relating to employment issues are held on Trust premises. Potential impact on staff with physical disabilities.</p>			<p>Individuals are asked if they have specific requirements. Occupational health advice and guidance is sought in individual circumstances.</p> <p>Staff are asked if special requirements are required in advance of meetings.</p>		Appropriate member of the HR Workforce Business Partner Team		
B4	Article 6 – right to a fair trial			This policy is in place, supported by guidance and training for individuals conducting investigations.		Appropriate member of the HR Workforce Business Partner Team		

APPENDIX D – Suspension guidelines

Suspension should only be used where it is absolutely necessary and careful thought should be given to the situation before an individual is suspended.

The decision to suspend should be taken by a relevant Senior Manager/Director and in consultation with a member of the HR Workforce Business Partner Team. Before deciding to suspend, consideration must be given to measures such as amending the duties or working hours of the employee, providing additional supervision or temporarily relocation to another department as an alternative to suspension.

In circumstances warranting suspension, an individual will be suspended from duty on full pay pending a disciplinary investigation. Suspension will only be carried out in one or more of the circumstances set out below:-

- Where a full investigation is necessary and where the presence of the employee at the workplace may impede this process.
- There are no alternatives to suspension
- The individual has an incapacity which renders them incapable or is likely to cause a danger to patients, other staff, the public or themselves.
- Where, because of the need to protect the interests of the Trust, employees, patients or the public, suspension is the only reasonable course of action.

Process of suspension

Where it is agreed with HR that suspension is appropriate, the senior manager will see the employee personally to outline the nature of the situation/allegation and advise the employee of the decision to suspend. Once a decision to suspend has been made, the suspension should take place as soon as possible and preferably the same day. Because of this, it may not always be possible for the individual to be accompanied by a trade union representative or fellow employee. However, if this is specifically requested and arrangements can be made immediately, then it will be accommodated. During the suspension meeting, the suspending manager officer should explain that: -

- It is alleged that an offence has been committed (and outline detail of allegation)
- The person is to be suspended from duty until further notice to allow the Trust to carry out an investigation.
- The individual will be invited to come in for an interview as part of that investigation.
- They should remain contactable during normal working hours
- After the investigation there may be a disciplinary hearing. Dismissal may be an outcome of this, depending upon the findings of the investigation and the judgement of the hearing
- The suspension is on full pay. It is NOT a judgement and no decision will be made until the disciplinary hearing. It is simply a precautionary measure.
- The expected duration of the suspension and the arrangements for notifying them of any extension.
- During the suspension, the individual should not normally attend their place of work. If the person needs to come in as a patient or relative, they should contact the line manager to advise of this.

- During the suspension, the individual should not contact work colleagues or suppliers or contractors where this would influence the investigation.
- Regular contact will be made with the employee during suspension by an agreed manager who will be the point of contact for the employee during the suspension period.
- It is recognised that being suspended may be a difficult and stressful event. Counselling services are available from Health Assured and People Practice support documents should be provided to managers by Human Resources to be shared with the employee.

Upon suspension, all Trust property issued to a suspended employee must be returned to the Trust and the employee may have access removed to Trust premises, computers, laptops and mobile phones. The suspending manager should ensure that they have contact details for the individual. If a period of sickness occurs during a period of suspension, the individual will still be recorded as being absent from work due to sickness and suspension would commence following the period of absence. Any pre booked annual leave will be honoured during the suspension period and will be recorded as annual leave rather than suspension. An employee wishing to take a holiday during the suspension period must agree this with their Line Manager in the usual way.

Where staff are suspended or are required to undertake alternative duties as alternative to suspension, staff will remain in full pay. During periods of suspension on full pay or whilst undertaking alternative duties, employees who normally work enhancements are still entitled to this payment. Enhancements will be calculated on the average of the preceding three months.

APPENDIX E – Scheme of Delegated Authority

Authority to take action, including dismissal, may be delegated as detailed in the table below. Where a specific role is designated to act, or hear an appeal, a designated deputy may step in if unavailability threatens to delay the proceedings. Action including dismissal may be taken at a more senior level than specified. If there is any doubt relating to how the scheme of delegate authority applies in any situation, this should always be checked with the HR Team.

Sanction	Employee level	Authority to act	Authority to hear appeal
first or final warning	Chief Executive	Chairman	2 non-executive directors
	Executive Director	Chief Executive	Chairman
	Associate Medical Director	Medical Director	Chief Executive
	Divisional General Manager/Divisional Director	Executive Director	Chief Executive
	all other staff levels	line manager	Divisional General Manager/Divisional Director/ Head of Nursing/Head of Service
termination of contract	Chief Executive	Chairman	2 non-executive directors
	Executive Director	Chief Executive	Chairman plus non executive director
	Associate Medical Director	Medical Director	Chief Executive plus non executive director
	Associate/Divisional Director	Executive Director	Chief Executive plus non-executive director
	all other staff levels	Divisional General Manager/Deputy Divisional Manager/ Divisional Director/Head of Nursing/Head of Service	2 members of Trust Board (one of whom to be a non-executive director)

APPENDIX F

Disclosure and Barring Service (DBS) referral guidance for managers

The Disclosure and Barring Service (DBS) helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including children.

A referral to DBS should not be made at the point of an allegation being made. A thorough investigation should first be carried out to establish if the allegation has grounds. Any referrals to DBS are to be made following the conclusion of the investigation and subsequent disciplinary hearing, despite any delays in the investigation and hearing concluding since the allegation was made.

Criteria for referral

A referral of an individual must be made to DBS following a disciplinary hearing if:

- They have been dismissed from working in regulated activity
- The individual has harmed someone while at work
- The individual has been dismissed **or** removed from working in regulated activity because they might have harmed someone while at work (i.e. a change of post as an alternative to dismissal)
- You were planning to dismiss the individual for either of these reasons, but the individual resigned first

It is a legal requirement that a referral to DBS is undertaken if any of the above circumstances apply.

There are two main conditions which should be met:

1. You have permanently removed a person from regulated activity through dismissal or permanent transfer from regulated activity (or would have if the person had not left, resigned, retired or been made redundant); and
2. You believe the person has either:
 - a. engaged in relevant conduct
 - b. satisfied the 'harm test' (i.e. no action or inaction occurred, but the present risk that it could was significant)
 - c. received a caution or conviction for a relevant offence (a list of these offences is available on the DBS website www.gov.uk/db , or by calling the helpline on 03000 200 190 for advice)

Referral process

It is the responsibility of the chair of the disciplinary panel to decide whether the above criteria has been met and make a referral to DBS with support from Human Resources. The referral flowchart assists with the decision to refer. The decision to refer to DBS should be considered and made at the disciplinary hearing and communicated to the individual, with confirmation of the disciplinary hearing and decision to refer to DBS and/or any professional body issued in writing.

A referral to DBS still needs to be completed even if you have already raised it with another body, for example, the Local Authority Designated Officer (LADO) or the Nursing and Midwifery Council (NMC).

The referral should be made within 3 working days following the disciplinary hearing and can be completed via the online referral form which can be accessed on the DBS website www.gov.uk/dbs. A paper version of the referral form may also be completed which is available on the DBS website.

The chair of the panel will be responsible (or for delegating responsibility) for ensuring that DBS are in receipt of the referral and for obtaining an updates from DBS as necessary. The DBS will only inform the Trust or manager the outcome of the referral if it can be proven there is a legitimate interest in the person referred. If the referred person has been dismissed and is therefore no longer employed by the Trust, there may not be reason to show a legitimate interest and the Trust will not be advised of the outcome.

DOCUMENT 2

Request for an investigation to be carried out

Investigation detail	
Subject of investigation	
Commissioned by	
Investigating Officer	
HR support to investigation	
Date investigation commissioned	
Report to be submitted by	
Detail of allegation and background	
Is this case considered to be potentially one of gross misconduct/very serious?	
Please tick one of the following:- <div style="display: flex; justify-content: space-around; margin-top: 10px;"> YES No Unsure </div>	
Please use this space to detail any particular areas that you would like the investigation to cover or any particular witnesses that you think should be included	
Attachments	

Appendix H

Process for Bank Workers

- Bank workers are expected to abide by codes of conduct and standards of behaviour as set out by the Trust and by their relevant professional body where applicable.
- Where cases of misconduct come to light the department manager where the issue occurred will explore the circumstances of the matter to determine whether the issue is founded, and consult on the findings with the HR Department.
- Where misconduct is found to have occurred this will lead to removal from the Trust bank register and a referral being made to the relevant professional body or Disclosure and Barring Service where appropriate.
- Where bank workers also hold a substantive post with the Trust, the normal Trust disciplinary procedures will apply.

Appendix I

Guidance on referrals to professional bodies

This process applies to all nurses, midwives and health professionals who are required to register with a statutory body for their role.

Before Making a Referral

Professional bodies are concerned with cases where those holding registration have been involved in a situation or incidents where their fitness to practice is impaired.

Before making a referral, a preliminary investigation should be conducted to determine if the situation concerns fitness to practice, or is bringing the health profession into disrepute. If the preliminary investigation shows that this is not the case then a full investigation should be commenced, in line with the Trust Disciplinary Policy and Procedure.

Where the preliminary case shows that the situation concerns fitness to practice, the case must be referred to the Director of Nursing and Quality immediately. The Director of Nursing and Quality will decide if the case needs to be immediately referred to the relevant statutory body or whether the case can proceed to full investigation and consideration given to referral at a later stage. The Director of Nursing and Quality may discuss the findings in order to reach a decision with another appropriate person e.g. Director of Pharmacy.

Where the Director of Nursing and Quality is unavailable, then the case must be referred to the Deputy Director of Nursing and Quality who will make the decision. Where a referral is required it is the responsibility of the Head of Nursing of the relevant division to ensure that the referral is completed and a copy of the referral is placed on the personal file.

Where the case progresses to a disciplinary investigation and concludes with a disciplinary hearing, the Chair of the disciplinary panel should refer the matter to the Director of Nursing and Quality to discuss any sanctions imposed and whether notification to the professional body is required. The Chair of the panel is responsible for ensuring the referral to the professional body is completed by the appropriate Divisional Head of Nursing.

Making a Referral

Once it has been decided that a referral is required, the Divisional Head of Nursing will be responsible for contacting the relevant professional body and advising them appropriately.

The Statutory Body will require the following information in order to make a judgement on their next steps:

- Name and Job Title of the person referring
- Name of the professional being referred plus PIN number
- Date of the incident(s)
- Where the incident(s) took place
- Detail of the incident(s)
- Witness details
- What action has been taken so far e.g. suspension, disciplinary investigation/hearing

Situations when a Referral must be made

There are certain situations where a referral must always be made. However in all cases authority must be sought from the Director of Nursing and Quality prior to a referral being made. The following are cases where a referral must always be made:

- There has been a serious risk to patient safety
- Suspension or dismissal is being considered
- Criminal Activity has taken place
- Serious or real harm been caused
- The profession is being brought into disrepute

Outcome of referral

Once an outcome from a referral has been received from a professional body, the Director/Deputy Director of Nursing and Quality will discuss the details with a member of the Divisional HR Workforce Business Partner Team to decide what further action, if any, is required and consider the wider impact of such decisions.

Lack of Competence

In the case of lack of competence, then matters should only be referred to the Statutory Body if attempts to address competence via the Trust Capability Policy have failed.

Links and further advice

NMC – Nursing and Midwifery Council

https://www.nmc.org.uk/concerns-nurses-midwives/concerns-complaints-and-referrals/referral_forms/

NMC Employer Link Service

The service gives employers advice on individual referrals and information on NMC's referral criteria and the information we need for a potential investigation.

Employer Link Service can be contacted on employerlinkservice@nmc-uk.org or 020 7462 8850

HCPC – Health and Care Professionals Council <https://www.hcpc-uk.org/concerns/>

Appendix J

Process for managing safeguarding/criminal allegations

Safeguarding allegations

This process provides a framework for managing cases where allegations are made about staff that indicate that children, young people or adults at risk are believed to have suffered, or are likely to suffer, significant harm. Concern may also be raised if the staff member is behaving in a way which demonstrates unsuitability for working with children, young people or adults, in their present position, or in any capacity. The allegation or issue may arise either in the employee's/professionals work or private life.

This process covers allegations made against non-Medical and Dental staff (including bank workers) in the course of their NHS duties and outside of this, including their private life and family home. The decision to instigate disciplinary proceedings will lie with the Trust, and the Trust Disciplinary Policy and Procedure will be followed where it is decided that an investigation will take place.

In all cases, the Divisional General Manager/Deputy Divisional General Manager (or equivalent), Divisional Head of Nursing (or equivalent) along with the Divisional HR Workforce Business Partner Team should hold a strategy meeting to discuss whether an investigation under Trust disciplinary procedures is necessary and if so, whether suspension or alternative duties is appropriate during the period of investigation.

The Director/Deputy Director of Nursing and Quality and Director of Workforce and Organisational Development should be notified; along with either the Named Nurse for Safeguarding Children and / or the Named Nurse for Vulnerable Adults; who may advise and support accordingly. Additional information in order to make this decision may be sought from the Police and or the LADO/ (Local Authority Designated Officer who may also advise on the appropriate action or steps the Trust should undertake.

Where it is agreed that a disciplinary investigation is appropriate, a decision will be made during the strategy meeting discussions who will be nominated as the link person to liaise with the Police and or LADO. This may be a divisional manager, appointed investigating officer or HR. The Director of Nursing and Quality and the Named Nurse for Safeguarding should also be kept fully up to date with the incident and investigation.

The discussion should consider any potential misconduct or gross misconduct on the part of the member of staff and take into account:

- Information provided by the Police and/or Children's Services/Adult Social Care/ LADO
- The outcome of any preliminary investigations or fact finding exercise;
- The different standard of proof in disciplinary and criminal proceedings.

If the staff member is a registered professional, a decision will be made as to whether the criteria is met for a referral to the relevant regulatory body or to the Disclosure and Barring Service (DBS) where appropriate. This may be done at the point of the allegation coming to light or following a disciplinary process concluding with advice sought from the relevant Director, e.g. Director of Nursing and Midwifery

The Line Manager should be asked to provide appropriate support to the individual while the case is on-going and keep them regularly informed. Further support may be considered necessary from Occupational Health or the Trust's Counselling Service.

Criminal allegations

This process covers allegations made against non-Medical and Dental staff (including bank workers) in the course of their NHS duties and outside of this, including their private life and family home. The decision to instigate disciplinary proceedings will lie with the Trust, and the Trust Disciplinary Policy and Procedure will be followed where it is decided that an investigation will take place.

In all cases, the Divisional General Manager/Deputy General Divisional Manager (or equivalent), Divisional Head of Nursing (or equivalent) along with the Divisional HR Workforce Business Partner Team should hold a strategy meeting to discuss whether an investigation under disciplinary procedures is necessary and if so, whether suspension or alternative duties is appropriate during the period of investigation. The Director/Deputy Director of Nursing and Quality and the Director of Workforce and Organisational Development should be notified; along with either the Named Nurse for Safeguarding Children and / or the Named Nurse for Vulnerable Adults; who may advise and support accordingly. Legal advice may also be sought from Hill Dickinson at this point where required.

The discussion should consider:

- The information provided by the police including the allegation and the evidence obtained to date. If detailed information isn't available, the attendees of the strategy group will need to discuss how the information can be obtained and where from (e.g. refer back to how the information was initially made available to the Trust) and who will be the Trust link person to obtain additional information and receive/chase updates from the police and/or other external agencies.
- The different standard of proof in disciplinary and criminal proceedings
- Where staff hold a professional registration, consideration needs to be given as to whether a referral for information purposes need to be made to the relevant regulatory body or to the Disclosure and Barring Service (DBS). The staff member should also personally refer to the relevant professional body in line with their requirements under their code of conduct.

Where the police have advised the Trust not to pursue an internal investigation, or have advised to delay the conclusion of the investigation, the strategy meeting attendees should consider the appropriate next steps and seek further clarity from the police regarding the rationale for the decision. It may be appropriate to seek legal advice in these circumstances. It is important to ensure that the individual is communicated with at all stages.

The strategy meeting will also need to consider who will be nominated as the link person to liaise with the police. The Director/Deputy Director of Nursing and Quality and the Named Nurse for Safeguarding should also be kept fully up to date with the incident and investigation.

A police investigation, criminal charge or conviction related to off-duty conduct is not necessarily a reason for disciplinary action itself. Consideration must be given to what bearing the matter has on the staff members' suitability for the job or their relationship with their colleagues, the Trust and patients.

There is usually no requirement for the Trust to wait for the outcome of criminal proceedings before conducting a disciplinary process. The ACAS guide states that 'where the matter requires prompt

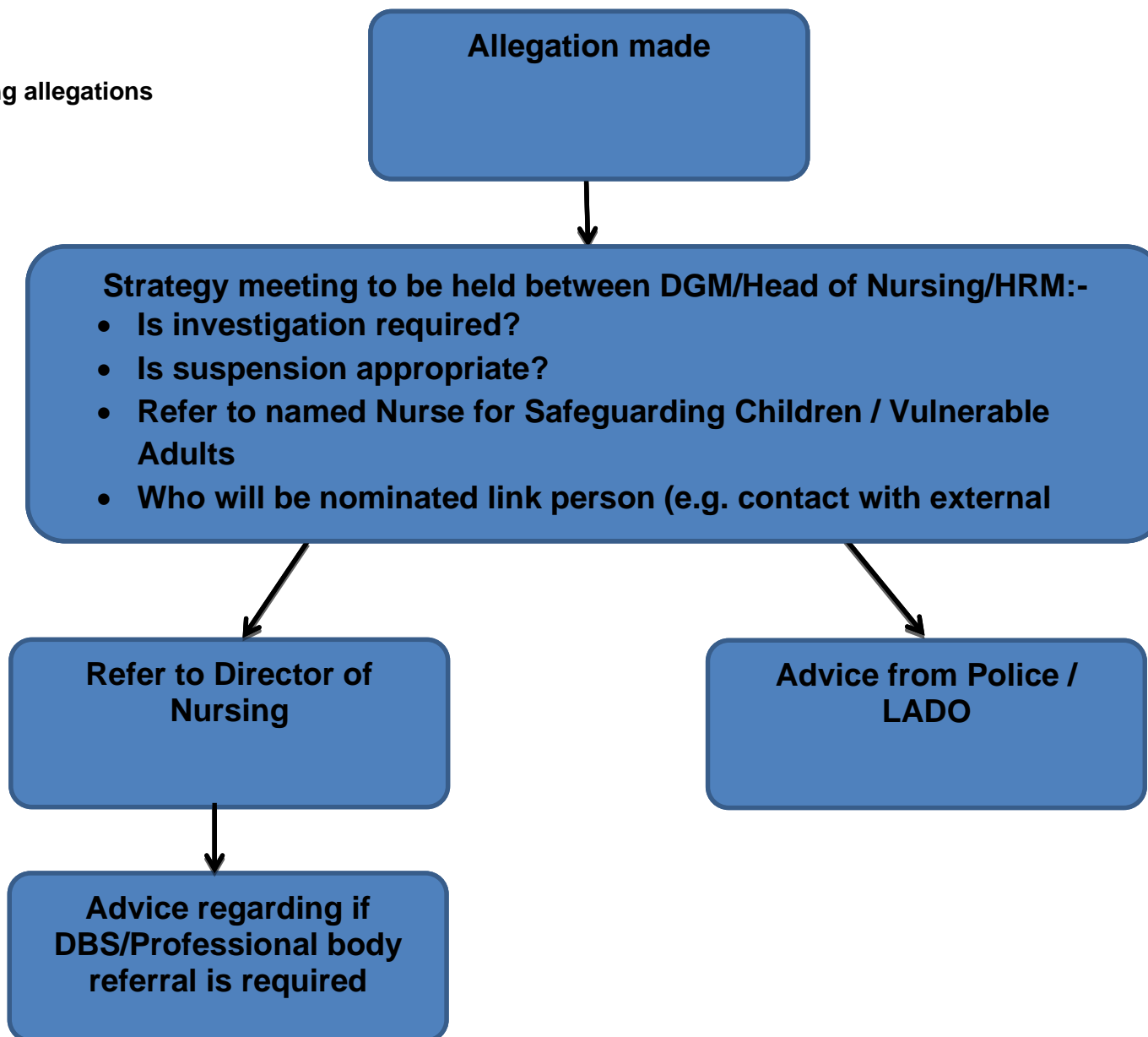
attention the employer need not await the outcome of the prosecution before taking fair and reasonable action.'

The standard of evidence required is not the same as is required for a criminal conviction. The standard of proof required in an investigation is proof on a balance of probabilities. The standard required by the police for conviction is proof beyond a reasonable doubt. Saying something is proven on a balance of probabilities means that it is more likely than not to have occurred. The test as to whether any dismissal or other action is fair would be the same whether or not the police were involved. It is not sufficient to conduct a dismissal based on an individual being charged by the police. An investigation must be conducted. The Trust is however able to rely on any evidence supplied by the police when conducting the disciplinary process but is not bound by the outcome of a police investigation or criminal trial. There will be cases where it is appropriate to continue with an investigation after the police have decided they have no case. An example of this may be where there is evidence of dishonesty which is not sufficient to secure a conviction but is sufficient for the Trust to form a reasonable belief that misconduct occurred.

Where an employee refuses to respond to questions as part of the Trust investigation process on the basis it could prejudice a pending trial or police interview, the employee should be given the opportunity to state their position, even if they chose not to take this opportunity. The individual should be made aware in advance that if they refuse to cooperate, a decision may be made to proceed on the available evidence and without the individual's input. In these circumstances the Trust may seek legal advice.

Flowcharts for safeguarding and criminal allegations

Safeguarding allegations



Criminal allegations

