

# Title: Disciplinary Policy and Procedure

<b>Classification :</b>	Policy		
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<b>Authors Division:</b>	Corporate		
<b>Departments/Group this Document applies to:</b>	All employees		
<b>Approval Group:</b>  JCNC Management Board	<b>Date of Approval:</b>	May 2017	
	<b>Last Review:</b>	Sep 2020	
	<b>Review Date:</b>	Sep 2023	
<b>Unique Identifier:</b> HR/GL/1	<b>Status:</b> Approved	<b>Version No:</b> 5	
<b>Policy to be followed by (target staff):</b>			
<b>To be read in conjunction with the following documents:</b>			
<p>Grievance Policy and Procedure                  Maintaining High Professional Standards at MKUH (MHPS) Policy and Procedure                  Corporate Induction and Mandatory Training Policy and Procedure                  Speaking Up Policy and Procedure                  Equality and Diversity Policy and Procedure                  Appeals Policy and Procedure</p>			
<b>CQC Fundamental standards:</b>			
<p>Regulation 10 – dignity and respect                  Regulation 12 – Safe care and treatment                  Regulation 13 – Safeguarding service users from abuse and improper treatment                  Regulation 16 – Receiving and acting on complaints                  Regulation 17 – Good governance                  Regulation 18 – Staffing                  Regulation 19 – Fit and proper</p>			

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## Policy Statement

This procedure supports and promotes the Trust values and the strategic aim to deliver these values through the MK Way programme.

This procedure sets out the Trust's expectation that both managers and employees maintain acceptable standards of conduct and attendance at all times. The Trust is committed to supporting and encouraging its employees in achieving this.

Trust standards set through the MK Way programme are led by its core values:

- We Care
- We Communicate
- We Collaborate
- We Contribute

As part of day-to-day interaction between manager and employee and through individual staff appraisal, employees should be made aware of the standard of their conduct and any problems should be highlighted and resolved as soon as they occur. This policy should normally only be invoked if attempts to deal with the issues informally have not been successful. Advice should be sought from Human Resources before invoking this procedure.

Where an issue is considered to be one of both inadequate performance and misconduct, then the matter will be dealt with under this procedure and the employee informed accordingly.

The Trust is committed to ensuring the confidentiality of information gathered through this procedure and employees are expected to respect this. Employees who do not maintain confidentiality may be subject to disciplinary action.

## Purpose and Scope

The purpose of this procedure is to ensure that:

- Disciplinary cases are managed consistently across the Trust and in line with current legislation and employment case law.
- There is a non-discriminatory, fair and timely process for the management of disciplinary matters.

This procedure applies to all employees of Milton Keynes University Hospital NHS Foundation Trust on substantive or fixed term contracts.

Those employed on medical and dental contracts should be managed under the Maintaining High Professional Standards (MHPS) at MKUH policy in the first instance. The matter may subsequently be managed under this procedure.

## Definitions

The terms in use in this procedure:

**Suspension** from duty is a neutral, non-punitive act which is used to deal with potentially difficult or inflammatory situations or where an investigation may be compromised. For Medical and Dental employees the term used for suspension is "exclusion" and this is covered under the Trust's MHPS Policy and Procedure.

**Investigation** is the process by which information is gathered to determine whether there is a disciplinary case to answer.

A **statement** is the signed and dated written evidence of a party who is interviewed as part of an investigation.

A **disciplinary fast track process** is where a disciplinary warning (up to and including a final written warning) is given to an employee without having a disciplinary hearing. The disciplinary fast track process will only be appropriate following the completion of an investigation where the employee has taken full responsibility for their actions and accepted the allegations against

them/findings of the investigation. All cases where dismissal is a potential outcome should be referred to a disciplinary hearing to be heard.

A **formal hearing** is used where misconduct is repeated, the member of staff has a live final written warning or it becomes clear that an informal approach is not bringing about the desired improvement or in cases of serious or gross misconduct. A formal hearing will also be appropriate where an individual requests a formal hearing and/or they dispute the findings of the investigation.

**Misconduct** includes poor behaviour such as lateness or timekeeping and does not usually result in dismissal unless a pattern of non-improvement is shown.

**Serious Misconduct** is unacceptable behaviour that has had or may have the potential to have a serious or harmful impact on the organisation, service, patient, colleague or member of the public, but falls short of Gross Misconduct.

**Gross misconduct** is misconduct of such a serious nature that it fundamentally breaches and destroys the contractual relationship between employer and employee. It is an act (or an omission), which makes any further working relationship and mutual trust impossible. If on completion of a disciplinary process it is concluded that gross misconduct has taken place, the result may be dismissal without notice (i.e. summary dismissal). Gross misconduct does not always automatically mean summary dismissal, but will be one of the range of options to be considered, taking into account any mitigating factors.

**Mediation** is a process which helps employees to resolve problems, disputes or disagreements to help prevent a reoccurrence of the issue. It is a process during which two or more people are brought together in the presence of an impartial third party, called a mediator.

## 1.0 Roles and Responsibilities:

### 1.1. Chief Executive

The **Chief Executive** has overall responsibility for the values and behaviours of the Trust.

### 1.2. Director of Workforce

The **Director of Workforce** has delegated responsibility for this procedure. They or their Deputy will also be responsible for countersigning suspension checklists.

### 1.3. Managers

**Managers** are responsible for:

- Exhibiting behaviour which meets the Trust's standards at all times and which is also in line with the Trust values.
- Ensuring that their employees are aware of this procedure. Each employee should be informed of the standard of conduct expected in their job.
- Referring new employees to this document as part of their local induction and encouraging them to familiarise themselves with the document.
- Ensuring that this procedure is applied fairly and consistently.

### 1.4. Human Resources

The **Human Resources Department** is responsible for:

- Providing advice and guidance on the application of this procedure.
- Monitoring the application of the formal stages of this procedure to ensure that it is being applied in a non-discriminatory manner.

## 1.5. Employees

**Employees** are individually responsible for:

- Maintaining appropriate standards of conduct, acting within their level of competence, and seeking advice from their line manager if they are unsure of what to do in a certain situation.
- Acting in accordance with Trust policies and procedures, and familiarising themselves with this document.
- Attending disciplinary meetings and appeal hearings when required, unless there are extenuating circumstances which would prevent attendance. These circumstances must be reported to the appropriate manager.

## 2.0 Implementation and dissemination of document

This policy will be disseminated via the CEO Newsletter and stored with the Disciplinary Tool Kit on the Intranet. Line Managers will receive training on how to utilise the policy effectively.

## 3.0 Processes and procedures

### 3.1. Informal Stage

When a potential disciplinary matter arises or there are ongoing issues, the facts must be established promptly through preliminary fact-finding. Statements do not need to be taken at this stage in order to make a decision on how to proceed. Having gathered the relevant facts, the line manager will decide how to proceed. This may result in informal measures being adopted or may result in the matter being dealt with formally under this disciplinary procedure and a formal investigation being invoked.

The informal stage is not part of the formal disciplinary procedure. However, where this stage is used a note will be made which should be retained on the individual's personal file locally to record the discussion and any action taken.

At this stage, it is not necessary to involve the individual's union representative or a member of the Human Resources team.

During discussions at the informal stage, employees should be made aware that if the issues discussed persist or reoccur, formal disciplinary action may be taken. They may also be offered support from the Trust in order to improve, where appropriate. The outcome of these discussions must be put in writing to the employee and a copy kept locally on the individual's personal file and can be referred to for a period of six months.

### 3.2. The Right to Suspend Immediately

In some circumstances where no alternative is deemed appropriate by the most senior manager available in the Division at the time, namely Divisional Associate Director of Operations, Head of Nursing or Divisional Director, the member of staff may be suspended with pay immediately to

allow preliminary consideration of the matters for a maximum of 3 days or 72 hours. Advice must be sought from the HR Business Partner before immediate suspension occurs.

For medical and dental employees, the process for exclusion from work is outlined within the Trust's Maintaining High Professional Standards at MKUH Policy and Procedure.

### 3.3. Suspension from Work

Suspension with pay should be considered by exception and for as short a time as possible, where:

- the misconduct being investigated is serious enough that, if substantiated, it may warrant summary dismissal on the grounds of gross misconduct;
- the investigation may be hindered by the presence of the person under investigation;
- there is a concern about patient safety, the safety of staff or the safety of the employee;
- the conduct of the employee is the subject of criminal proceedings and the alleged offences are connected with or may affect the employee's duties or their suitability for their job;
- an employee's registration with their professional body has been suspended or is subject to conditions of practice.

Before taking the decision to suspend an employee, a suspension checklist must be completed by the relevant management team which considers other action short of suspension, for example, restricting duties or temporary redeployment to another role or department. Suspension should take place in an appropriate environment and will only be considered as a last resort; the list above is not exhaustive but provides examples where it may be appropriate. The suspension checklist is available as part of the toolkit.

Suspension (or 'Exclusion') of a Doctor or Dentist must be approved by the Medical Director and be in line with the Maintaining High Professional Standards framework (MHPS at MKUH). Where there are concerns about the conduct of a doctor or dentist in training, the Deanery should be involved at the earliest opportunity.

The authority to request suspension (via the suspension checklist) rests with the most senior manager available in the Division at the time of suspension, namely Divisional Associate Director of Operations, Head of Nursing or Divisional Director. Advice must be sought from the HR Business Partner before requesting to suspend. All suspension checklists must then be escalated to the relevant Executive Director, or Deputy, by the Division, and the Director of Workforce or Deputy for authorisation purposes and to ensure professional alignment.

Once an employee has been placed on suspension, restricted duties or temporary redeployment, the employee will be issued with a letter no later than seven calendar days after the start of this to confirm the reasons and the conditions relating to it. The decision to suspend must be reviewed at a minimum of every four weeks. The employee must be informed in writing if the decision is to keep suspension in place up until the date of a formal hearing.

It should be made clear to the employee that suspension is not a disciplinary sanction nor is it a presumption of guilt, but a means of facilitating proper investigation, preventing further misconduct allegations and/or removing the employee from a difficult situation.

During any period of suspension, the employee is not permitted to enter Trust premises without permission except for the purpose of attending a disciplinary hearing, meeting with the Union representative, seeking medical treatment, attending an Occupational Health appointment or accompanying a member of their family who requires health care. In any of those circumstances,

the employee is required to notify the Trust in advance that he or she intends to visit the Trust and the reason for the visit (unless the nature of the visit is an emergency).

The employee should not contact other employees to discuss the disciplinary allegations or any related matter, except for with their representative. The Trust recognises that it is difficult to prevent the employee from engaging in ordinary social contact with colleagues outside working hours.

The manager must not discuss the reason for the employee's absence with the employee's work colleagues. They should be informed that the person will not be at work for the foreseeable future.

### 3.4. Investigation

Investigations are carried out to establish the facts of the case in a timely way and usually completed within 10 weeks of appointment of the investigating officer. There may be exceptions with particularly complex cases and delays in timescales will be communicated to the relevant employee.

An employee who is the subject of any allegation will be formally notified in writing of the allegation within seven calendar days of verbal notification, of the allegation against them. They will be informed that they are required to participate in a formal investigation and the nature of the investigation will be outlined.

The purpose of an investigation is to gather relevant information and to determine if there is a potential disciplinary case to answer. It is not the purpose of an investigation to decide if a disciplinary offence has occurred, or what sanction may be appropriate, the investigating manager may report the facts as they appear to them at that stage.

If there is no disagreement concerning the facts because the employee admits the misconduct, or the manager witnessed all the events and is not otherwise involved, a full investigation may not be necessary before a hearing is arranged. This must be agreed by both the employee and Case manager. In cases of gross misconduct, a full investigation must be carried out, even if the employee admits the misconduct.

In cases where the misconduct is not admitted or if there are conflicting views and/or evidence, then a full investigation will be appropriate.

An investigating manager will be appointed and will normally be the line manager. In cases of potential gross misconduct, the line manager may appoint an investigating officer to investigate on their behalf, usually where specialist clinical or field knowledge is key to the investigation. In these circumstances the line manager becomes the Case Manager and writes a Terms of Reference for investigation for the Investigating Officer.

Investigations should only be conducted in consultation with HR. Investigations of potential disciplinary matters will be carried out without unreasonable delay to establish the facts of the case.

As a minimum, the investigating officer should meet with the employee being investigated for a formal investigation meeting. For witnesses, a statement should be sought however, it may not be necessary to invite each witness to an formal investigation meeting as their statement may be sufficiently informative.

At an investigatory interview, the manager conducting the investigation will remind employees that the interview itself is not of a disciplinary nature. However, a disciplinary hearing may result from the information obtained, the statements made may form part of the management case and they may be called to give evidence as a witness at any subsequent disciplinary hearing.

Upon completion of an investigation, the manager conducting the investigation will produce a management report and will decide whether the case is one which should be taken forward to a disciplinary fast track meeting or a disciplinary hearing. Where an Investigating Officer is appointed, the decision to proceed to hearing rests with the Case Manager. The Case Manager is responsible for presenting his/her management report at the formal hearing and will call the Investigating Officer as a witness. In some circumstances, specifically it may be appropriate for the Investigating Officer to present the case, specifically when the availability of the Case Manager may lead to unnecessary delays or when the specifics of the case are of a particularly complex or technical nature.

In the event that the Case Manager decides that a disciplinary hearing is not required, they must confirm this in writing to the employee outlining any recommendations for improvement they have in addition to notifying the employee of expectations going forward. In many cases, this may be an informal note that remains on the employee's file. This must be done within five working days of the decision being made.

The Case Manager is responsible for calling witnesses to the management case and the employee and his/her representative are responsible for calling witnesses to the employee response to the management case (letter available as part of the toolkit).

A copy of the investigation report will be made available each to the employee and their union representative as part of the hearing documentation. This is not necessary for a disciplinary fast track meeting. This will usually be provided at the same time as the invitation to hearing, 14 calendar days prior to the hearing.

### **3.5. Confidentiality**

The Trust will use reasonable endeavors to keep statements, letters and other communications confidential. However this may be overridden by the requirements of fairness and the need to disclose the information to the employee who is subject to the allegation(s) being investigated and any subsequent disciplinary and/or appeal panel.

### **3.6. Dealing with Anonymous Information**

Allegations made anonymously, against an employee must be investigated carefully to find out whether or not that employee has a case to answer through the Trust's disciplinary procedure as per paragraph 6.1 above. Where the information is received from an anonymous source or where the informant is known but wants their identity kept secret, advice should be sought from HR. Where an issue is raised as a concern or a whistleblowing issue, reference should be made to the Trust Speaking Up Policy and/or the Freedom to Speak Up Guardian, as appropriate.

Managers receiving anonymous information by telephone should:

- Record all details of the call.
- Ask for details and encourage the caller to put the complaint in writing, seeking an explanation if they decline.



- Ask how the caller knows the information, whether it is direct knowledge or hearsay, whether they know the employee personally and whether anyone else knows about the information.
- Exercise caution before relying on the information for disciplinary proceedings. A preliminary fact-finding investigation should be carried out to establish the basic facts and whether there are grounds for formal investigation.

Where a manager receives an anonymous letter they should:

- Exercise caution before relying on the information for disciplinary proceedings. A preliminary fact-finding investigation should be carried out to establish the basic facts and whether there are grounds for formal investigation.
- Launch an investigation, during the course of which firm evidence may be unearthed about the allegation.
- Make efforts to establish the identity of anonymous correspondence, such as through a postmark, handwriting, style and spelling. A check should be made to establish whether anyone has recently had any type of complaint against the employee named in the letter.

Where allegations are not upheld, the relevant paperwork will be destroyed.

### 3.7. Conduct Outside Employment

Disciplinary proceedings may be invoked where conduct outside of employment:

- seriously impairs an employee's ability to undertake their duties.
- calls into question their integrity or suitability to carry out their duties.
- is likely to bring the Trust into disrepute.

The fact that an employee has been charged with an offence should not be regarded as an indication of guilt. Conviction of an offence, however, is likely to provide sufficient proof that an offence has been committed. The Trust should still investigate the allegations themselves as far as they are able, to decide if the offence has been committed and whether it would amount to misconduct, serious misconduct and or gross misconduct and the appropriate sanction. If criminal proceedings are ongoing, an interim option available to the manager is suspension on full pay.

The manager does not have to wait until the matter has been brought before the courts before proceeding with a disciplinary hearing. It is possible to consider alleged breaches under the contract of employment and find these proven before a court has decided whether the employee is guilty of a criminal offence. Advice should be sought from the HR Business Partner.

The test to be used in determining whether disciplinary action is appropriate in employment terms is the "balance of probabilities" and not "beyond all reasonable doubt".

### 3.8. Fraud Allegations

Where fraudulent activity is suspected, the matter will be immediately referred to the Trust's Local Counter Fraud Specialist for investigation:

Where an employee is a victim of an incident of fraud or an allegation of fraud is reported to them, they should contact their line manager in the first instance. If their line manager is not available they should report the incident to the next most senior person. The employee should complete an incident report form if appropriate.

This policy does not detract from the right of an employee to invoke the Speaking Up Policy.

### 3.9. Witness Statements

Statements should be taken in accordance with the following guidance:

- Assume that the reader knows nothing about the facts of the matter.
- State the name and job title of the witness and, if appropriate, their qualifications and experience.
- Deal with events in the order in which they occurred, giving precise dates and times if known.
- Give full names and job titles.
- Use plain English and avoid jargon where possible.
- Explain any technical or complex issues in plain English.
- If protocols or procedures were not followed, first explain what the agreed or usual procedure is and then describe the nature of the departure from this.
- Statements should be signed and dated. Where agreement of content cannot be reached, both statements will be tabled at the hearing.
- Ensure the statement contains a declaration that the contents of the statement are true.

### 3.10. Involvement of Other Agencies

Occasionally a manager may be approached by another agency such as the Police, Local Authority Representative for Child Protection Issues or the NHS Counter Fraud Service with concerns about the conduct of an employee. In such instances it may be necessary to put the internal disciplinary process on hold pending an external investigation, in order to prevent a loss of evidence. This may contribute to delays in the investigation process.

Close liaison with the other agency will be required, which may require the coordination of arrangements to place the employee concerned on special leave (this may include suspension). However, the fact that an external investigation is taking place will not in itself prevent the Trust from taking forward proceedings under this procedure. Advice should always be sought from Human Resources. For safeguarding issues see the Trust's Safeguarding Procedure.

Where the allegations involve criminal activity the police may need to become involved.

### 3.11. Right to be Accompanied

At any investigation meeting, disciplinary fast track meeting, disciplinary or appeal hearing under this procedure, any employee has the right to be accompanied by a trade union representative or work colleague. In cases where an employee is an accredited trade union representative, the full-time officer may be involved as the employee's representative. For the avoidance of doubt, the companion will not be permitted to act in a legal capacity.

Medical practitioners may have additional rights of representation set out in the MHPS Policy and Procedure.

The employee's representative may address the hearing in order to put the employee's case, sum up the employee's case and respond on the employee's behalf to any view expressed at the hearing. They may also confer with the employee during the hearing, but may not answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the Trust from explaining its case.

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In certain circumstances the Trust may permit employees to be accompanied by a friend or partner but this companion will not be allowed to represent the employee in any way.

It is the responsibility of the employee to contact their chosen companion and ensure that they are willing to attend a hearing. Correspondence will be copied to the rep once they have been identified. The employee must also inform the Investigating Officer that they will be accompanied at the hearing, and must provide the name of the companion at least five calendar days before the date of hearing.

It is not reasonable for an employee to insist on being accompanied by a person whose presence would prejudice the hearing, who might have a conflict of interest or who is disruptive to the process during the hearing. The Trust reserves the right to refuse the attendance of such a person and may ask them to leave the hearing once it has already commenced.

Employees will always be allowed adequate time, a minimum of seven calendar days, to arrange for a companion and employees and their work colleagues should make every effort to attend hearings on the date set. If a representative or colleague is unavailable on the date of a formal hearing, the manager will make every effort to rearrange the meeting to a suitable date, provided that this is within a reasonable timescale.

Under no circumstances will employees be unreasonably refused the right to be accompanied.

In cases where English is not the employee's first language, it may be necessary to involve the services of an interpreter. It is the employee's responsibility to notify the Trust that such services are required within five calendar days of the date of the hearing.

Where an employee may have a disability which could affect their understanding of the process, guidance should be sought from HR.

### **3.12 Disciplinary Fast Track**

Following the completion of the investigation process, if the employee has accepted the allegations the investigation manager is able to use the disciplinary fast track process. The investigation manager should seek advice and support from their HR Adviser/Business Partner before the process is initiated.

#### **Disciplinary Fast Track Process**

If it is decided that the disciplinary fast track process is the appropriate route, the process to follow is outlined below:

- Prior to any discussion with the employee, the investigation manager and the HR Advisor/HR Business Partner will determine the appropriate sanction and the length of the warning. The sanction will need to be approved by the relevant HR Business Partner.
- The investigation manager and the HR Advisor/Business Partner will speak to the employee and/or their trade union representative (if they are represented) to seek agreement of the use of the fast track process and the proposed sanction. The discussion will be followed up in writing. In order to allow the employee to make an informed decision, the investigation report should be shared with them.
- The employee and their trade union representative will be asked to advise of their decision in writing within five working days.
- If the employee accepts the sanction, they will be receive a letter confirming this. The letter will be sent within seven working days outlining a synopsis of the case, the sanction, length of the sanction and any recommendations. As the sanction has been agreed and accepted,

there will be no right of appeal however, the employee will be given a five-day grace period starting from the date they receive the letter whereby they can retract their agreement of the sanction.

- If the employee does not accept using the fast track process or subsequently advises that they do not wish to accept the sanction, the case will automatically be referred to a formal disciplinary hearing.

### 3.13. Disciplinary Hearing

The employee must be notified by the investigating manager of the outcome of the investigation.

If a formal hearing is to take place, the employee must be advised of the date, time and place of the hearing, the nature of the allegations, the names of the persons in the panel hearing the case and any witnesses. **Appendix 1** gives information on panel composition. The employee will also be advised of the right to be accompanied and the right to call witnesses in support of their case. In cases involving allegations of gross misconduct the employee must be advised that if gross misconduct is found this may lead to dismissal.

The employee must be given at least fourteen calendar days' notice of the hearing date and all associated documents, with copies to the Union Representative. Letters to the employee should be sent by recorded delivery, or can be emailed upon request.

If an employee is absent from work due to sickness (or if an employee who has been suspended would be absent due to sickness if it were not for the suspension) at the time of the hearing, and states they are no fit to attend then advice will be sought from Occupational Health about the employee's fitness to attend a formal hearing. If the employee is deemed not fit to attend a hearing within a reasonable time frame, then they may be invited to provide written submissions and the hearing may proceed in their absence.

Prior to the date of the hearing the employee must notify their line manager if they will not be attending and explain the reasons for their non-attendance. Failure to do this may result in the hearing proceeding in their absence. Where the employee fails to attend a hearing without good reason, the hearing may proceed in their absence. If the employee cannot attend the hearing because their representative is unavailable on the date given, one attempt will be made to rearrange the hearing within seven calendar days. If this is not possible to achieve within the timescale, the employee must seek alternative representation or the hearing will go ahead.

Any documentary evidence, response to the management case or witness statements that the employee wishes to rely on must be provided to the Chair of the Disciplinary Hearing (Chair) at least five calendar days before the hearing. If the employee wishes to call witnesses to the hearing then they are responsible for ensuring their written statement is submitted and that they are in attendance at the hearing, a template letter is available in the toolkit. The employee must also notify the Trust of the witnesses which will be in attendance at the hearing.

Witness statements must be relevant to the allegation(s) being heard.

Where witness statements are submitted as part of the documentary evidence for the hearing, that witness should be called to the hearing to allow for cross-questioning. In exceptional circumstances, where the statement is factual and not being challenged, the Case Manager may seek agreement from the employee and their representative, in advance of the hearing, for the witness statement to remain as part of the case papers without calling the witness to be present.

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The formal outcome will be retained on the personal file and at the end of the duration of the warning indefinitely, but ceases to be 'live'.

### 3.14. Decision

In each case, an adjournment will take place before reaching a decision.

The Chair must come to a view on the facts. If the facts have been disputed, the Chair must decide on the version of events they believe to be correct on the balance of probabilities.

In reaching a decision as to any penalty to be imposed, the Chair should:

- consider the employee's representations;
- consider the gravity of the offence;
- act in a manner consistent with similar previous cases;
- consider the individual's previous disciplinary record and general service;
- consider any mitigating circumstances.

When deciding whether a particular sanction is reasonable, the Chair may take into account previous written warnings issued to the employee that have since expired. This is applicable in circumstances where the previous sanction referred to a similar allegation, can be reasonably linked or demonstrate a pattern of behaviour. An expired warning may not be relied upon for the principal reason for dismissal.

### 3.15. Outcome

After the presentation of the evidence and an adjournment, the hearing will be reconvened to inform the individual of the outcome and of any sanction to be imposed. In exceptional circumstances, the decision may be communicated in writing only.

In the case of warnings, the Chair will explain what improvement or conduct is expected, what training and support may be provided to achieve improvement, how long the warning will remain on file and the consequences of a failure to improve.

The employee will be informed of the consequences of further misconduct, for example dismissal or demotion/removal of seniority.

If an employee's first misconduct is sufficiently serious then it may be necessary to move directly to a final written warning. This would be appropriate where the employee's actions have had, or are liable to have had, a serious or harmful impact on the Trust or its service users.

Misconduct, such as lateness and timekeeping, will usually be dealt with through a first written warning initially and if there are no improvements, will move through to a final written warning before dismissal is considered.

Serious misconduct may be given a first and final written warning in the first instance

As an alternative to dismissal, and where in the circumstances of the case it is appropriate to do so, the Chair should consider downgrading/demotion of the employee. Such downgrading would not attract protected pay.

A letter confirming the outcome of the hearing and any sanction imposed will be sent to the employee by the Chair, normally within seven calendar days of the hearing.

A record of the warning will be considered live for the following periods, subject to satisfactory conduct:

First Written Warning	Up to 12 months subject to satisfactory conduct
Final Written Warning	Up to 24 months subject to satisfactory conduct

### 3.16. Dismissal

Any decision to dismiss shall be confirmed in writing within seven calendar days and shall:

- clearly state the reason for the dismissal;
- state the date on which the employment will terminate;
- specify whether the dismissal is with or without notice/pay in lieu of notice;
- remind the employee of their right of appeal and how it might be exercised.

### 3.17. Overlapping Disciplinary and Grievance Procedures

Where an employee raises a grievance during a disciplinary process and where the grievance and disciplinary cases are related, both cases will normally be dealt with concurrently. Where the grievance is raised during the investigation, the line manager will decide on how to proceed and HR advice must be sought.

In exceptional cases, and where the outcome of the grievance may have an impact on the outcome of the disciplinary hearing, the disciplinary process may be suspended pending the conclusion of the grievance process.

In cases of discrimination, the disciplinary process may be placed on hold to allow for the claims to be concluded.

Where it is not appropriate to deal with both issues concurrently, the disciplinary process may be temporarily suspended in order to deal with the grievance first.

If the disciplinary process is temporarily suspended then the chair and grievance panel will need to be mindful of the need to avoid unnecessary delays.

### 3.18. Appeal

Employees have a right to appeal against the outcome of a disciplinary hearing and this must be done in line with the Trust Appeals Procedure.

### 3.19. Non-attendance

Employees are expected to attend all meetings covered by this procedure. Non-attendance may be dealt with as failure to comply with reasonable management instruction.

If an employee does not attend a disciplinary meeting without good reason the meeting may proceed in their absence. However, the meeting should first be adjourned to enable contact to be made with the employee to ascertain the cause of the absence, unless the meeting has previously been adjourned due to the employee being absent without good reason.

Where an employee is not able to attend a meeting without good reason on two occasions the Chair may proceed and make a decision on the evidence available after the second occasion.

### 3.20. Training

There is no mandatory training associated with this procedure. Ad hoc training sessions based on an individual's training needs will be defined within their annual appraisal or job plan. Training on the procedure will be available to line managers through HR.

## 4.0 Statement of Evidence/References

### References:

ACAS website – [www.acas.org.uk](http://www.acas.org.uk)

NHS Employers – [www.nhsemployers.org](http://www.nhsemployers.org)

Gov.UK – [www.gov.uk](http://www.gov.uk)

CIPD website – [www.cipd.co.uk](http://www.cipd.co.uk)

Agenda for Change Terms and Conditions Handbook

Maintaining High Professional Standards in the Modern NHS for Doctors and Dentists.

### Appendices:

Appendix 1 – Composition of the Hearing Panel

Appendix 2 – Behaviours the Trust Considers to be Misconduct

Appendix 3 – Behaviours the Trust Considers to be Serious Misconduct

Appendix 4 – Behaviours the Trust Considers to be Gross Misconduct

## 5.0 Governance

### 5.1 Document review history

Version number	Review date	Reviewed by	Changes made
3	Apr-08		Amendments and due for review
4	May-17	Louise Clayton	Re-write due to changes in best practice and employment law
4.2	Aug-19	Louise Clayton	Addition of the fast track process and revision of suspension process
5	May-20	Thomas Dunckley	General review

### 5.2 Consultation History

Stakeholders Name/Board	Area of Expertise	Date Sent	Date Received	Comments	Endorsed Yes/No
PRG	Staff Side	Jun-20	Jun-20	Received and responded to	Yes
JCNC	Staff Side	Jul-20	Jul-20	Approved	Yes
Management Board	Executive	Sep-20	Sep-20	Approved	Yes

### 5.3 Audit and monitoring

Audit/Monitoring Criteria	Tool	Audit Lead	Frequency of Audit	Responsible Committee/Board
Number/type of formal disciplinary cases	Internal audit – employee relations tracker	HR Business Partners	Number/type of formal disciplinary cases	Internal audit – employee relations tracker
Number/type of formal disciplinary cases	Internal audit and trend analysis	Deputy Director of Workforce	Number/type of formal disciplinary cases	Internal audit and trend analysis
Protected characteristics of employees subject to formal action	Internal audit	Workforce Equality & Diversity Lead	Protected characteristics of employees subject to formal action	Internal audit

### 5.4. Never Event

Where a person who is the subject of an investigation or disciplinary procedure suffers any form of serious harm, whether physical or mental, this should be treated as a 'never event' which therefore is the subject of an immediate independent investigation commissioned and received by the board. Further, prompt action should be taken in response to the identified harm and its causes.



## 5.4 Equality Impact Assessment

As part of its development, this policy and its impact on equality has been reviewed. The purpose of the assessment is to minimise and if possible remove any disproportionate impact on the grounds of race, gender, disability, age, sexual orientation, religion or belief, pregnancy and maternity, gender reassignment or marriage and civil partnership. No detriment was identified.

Equality Impact Assessment			
<b>Division</b>	Corporate	<b>Department</b>	Workforce
<b>Person completing the EqIA</b>	Thomas Dunckley	<b>Contact No.</b>	Ext. 86165
<b>Others involved:</b>	None	<b>Date of assessment:</b>	Aug 2020
<b>Existing policy/service</b>	Yes	<b>New policy/service</b>	No
<b>Will patients, carers, the public or staff be affected by the policy/service?</b>	Employees		
<b>If staff, how many/which groups will be effected?</b>	All employees		
Protected characteristic	Any impact?	Comments	
Age	NO		
Disability	NO	Those that advise they have a disability will be offered appropriate adjustments and consideration to ensure accessibility, engagement and understanding at each stage of the process.	
Gender reassignment	NO		
Marriage and civil partnership	NO		
Pregnancy and maternity	NO		
Race	NO		
Religion or belief	NO		
Sex	NO		
Sexual orientation	NO		
<b>What consultation method(s) have you carried out?</b>	PRG, JCNC		
<b>How are the changes/amendments to the policies/services communicated?</b>	Through the senior management team – to be filtered down through divisional triumvirates and HR Advisors		
What future actions need to be taken to overcome any barriers or discrimination?			
Who will lead this?	Who will lead this?	Who will lead this?	Who will lead this?
N/A	N/A	N/A	N/A
<b>Review date of EqIA</b>	<b>August 2023</b>		

## Appendix 1 – Composition of the Hearing Panel

The panel to hear the evidence at a formal disciplinary hearing will consist of:

- the Chair (manager hearing the case);
- a Human Resources representative;
- a manager with relevant experience to advise the Chair, if the matter relates to a professional issue;
- a Non-Executive Director only where the hearing concerns staff directly accountable to the Chief Executive.

Any member of the panel may ask questions throughout the disciplinary hearing.

The Trust views a decision to dismiss an employee as being exceptional. In cases where the hearing outcome may potentially result in dismissal, the role of the Chair will be restricted to those with the authority to act as dismissing officer. These are as follows:

- The Chief Executive
- The Director/Deputy of Clinical Services
- The Director/Deputy of Workforce.
- The Chief Nurse/Deputy/Associate Chief Nurse
- The Director of Planning and Information or next management at a level comparative to a deputy in seniority
- The Medical Director/Deputy Medical Director
- The Director/Deputy of Finance and Procurement
- The Director of Development and the Estate or next management at a level comparative to a deputy in seniority
- The Director/Deputy of Assurance
- Divisional Director
- Divisional Head of Nursing
- Associate Director of Operations

If a hearing might be postponed as a result of a dismissing officer not being available to attend a hearing, the dismissing officer may ask a manager with an appropriate level of seniority to chair the hearing as a delegated authority. Should the Chair decide that dismissal is the appropriate action, this decision must be ratified by the dismissing officer.

The dismissing officer should not be the employee's immediate manager.

## Appendix 2 – Behaviours the Trust Considers to be Misconduct

Misconduct is unacceptable and improper behaviour which may breach the Trust's policies but does not normally warrant dismissal unless repeated after due warning.

Examples of misconduct could include:

- Refusing or failing to carry out a reasonable management instruction.
- Unsatisfactory attendance at work, e.g. unauthorised absenteeism, lateness, leaving work without permission, overstaying breaks.
- Conduct which disrupts the work of others.
- Failure to observe the Trust's procedures for recording of working time and attendance, reporting of sickness and time off work.
- Failure to take reasonable care of Trust property.
- Failure to comply with the Trust's no smoking policy.
- Misuse of the internet, email, or other Trust facilities.

The above are examples and are not exclusive or exhaustive.

Dependent upon the degree and circumstances of any of these examples, they might also constitute serious or gross misconduct.

## Appendix 3 – Behaviours the Trust Considers to be Serious Misconduct

Serious Misconduct is unacceptable behaviour that has had or has the potential to have a serious or harmful impact on the organisation, service, patient, colleague or member of the public, but falls short of Gross Misconduct (see **appendix 4** for a definition of Gross Misconduct).

The possible outcomes for Serious Misconduct are a First or Final Written Warning. If the conduct is sufficiently 'serious' then the panel may deem it appropriate to move directly to a Final Written Warning. If the serious conduct is recurrent or accumulative and there is no sufficient improvement in an individual's conduct, a higher sanction such as Final Written Warning or Dismissal may be considered.

Examples of serious misconduct includes:

- Refusing or failing to carry out a reasonable management instruction which as a result could potentially harm the organisation, service, colleague, patient or member of the public.
- Failure to conform to agreed working practices which as a result could potentially harm the organisation, service, colleague, patient or member of the public.
- Using Trust property, equipment or transport for private use without authorisation.
- Failure to comply with any other Trust policy which as a result could potentially harm the organisation, service, colleague, patient or member of the public.
- Misuse of the internet, email, or other Trust facilities which harms the Trust's reputation
- Breach of Health and Safety Procedures which as a result could potentially harm the organisation, service, colleague, patient or member of the public.
- Breach of confidentiality.
- Undertaking recordings covertly.

The above are examples and are not exclusive or exhaustive.

Dependent upon the degree and circumstances of any of these examples, they might also constitute gross misconduct.

## Appendix 4 – Behaviours the Trust considers to be gross misconduct

Gross misconduct is misconduct of such a serious nature that it fundamentally breaches and destroys the contractual relationship between an employer and an employee. It is an act (or an omission) which makes any further working relationship and mutual trust impossible. If on completion of a disciplinary process, it is concluded gross misconduct has taken place, the result will normally be dismissal without notice (i.e. summary dismissal). Gross misconduct does not always automatically mean summary dismissal, but will be one of a range of options to be considered taking into account any mitigating factors.

If an employee is believed to have committed an act of gross misconduct, advice should be sought immediately from HR.

Examples of gross misconduct include:

- A serious neglect of duty and responsibility.
- Harassment or bullying or use of threatening or abusive language or conduct, or language of a discriminatory nature.
- Acts of dishonesty, including but not limited to, theft or unauthorised removal of property belonging to the Trust, patients or other members of the general public.
- Bringing the Trust into disrepute.
- Fraudulently obtaining money, property, confidential information or material advantage from the Trust.
- Unauthorised entry into computer records.
- Malicious and vexatious claims of bullying and harassment.
- Malicious and vexatious claims under the Speaking Up Policy.
- Deliberate falsification of official records.
- The submission of sick notes not genuinely issued by a General Practitioner (repayment of sick pay may also be sought and/or referral to the local Anti Fraud Specialist for investigation).
- Sharing of smart cards, network log-in details or passwords with another individual where not permitted by Trust policy or procedure.
- Deliberate falsification of claims for earnings and expenses.
- Assault or attempted assault or physical violence.
- Abusive behaviour towards patients, visitors or colleagues.
- Falsification of timesheets and other pay-related documents.
- Malicious damage to Trust property.
- Failure to comply with departmental rules or professional codes of conduct.
- Serious breaches of confidentiality.
- Taking photos of patients in any setting, without obtaining prior informed consent, gained through completing a patient consent form.
- Inability to work due to being under the influence of alcohol and/or illegal substances.
- Negligence.
- Serious breach of health and safety rules and procedures.
- Fraudulent misuse of the Trust's name or property.
- Serious failure to comply with any Trust procedure or policy.
- Entrapment through covert recording (or the intention to entrap through covert recording)

The above examples are not exclusive or exhaustive and offences of a similar nature will be dealt with accordingly. Where appropriate, disciplinary outcomes will be notified to the appropriate professional body which may consider action in relation to its own professional code of conduct.