

# DISCIPLINARY (CONDUCT) PROCEDURE

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<b>PROCEDURE SUMMARY</b>
This procedure sets out the framework for the Trust's approach to the management of conduct, behaviour and practice concerns and the process to be followed in dealing with disciplinary (conduct or negligence) matters. Where issues of concern relate to capability (performance) these should be dealt with in accordance with the Trust's Capability Performance Policy and related procedure. This procedure should be read in conjunction with the Disciplinary (Conduct) Policy.
<b>The Trust monitors the implementation of and compliance with this procedure in the following ways;</b>
This procedure is subject to monitoring and review as set out in the Disciplinary (Conduct) Policy and through review and agreement with the Trust's Partnership Committee.

Services	Applicable	Comments
Trustwide	✓	

**The Director responsible for monitoring and reviewing this procedure is the Executive Director of Corporate Governance and Strategy**

**ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST**

**DISCIPLINARY (CONDUCT) PROCEDURAL GUIDELINE**

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**ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST**

**DISCIPLINARY (CONDUCT) PROCEDURE GUIDELINE**

**ASSURANCE STATEMENT**

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

The procedure sets out the Trust’s principles in approaching disciplinary issues relating to conduct and performance, ensuring they are dealt with in a timely, fair, reasonable and consistent manner, within the legislative framework and in accordance with the ACAS Code of Practice and Guidance.

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

- Open
- Compassionate
- Empowering

In doing so support the achievement of its strategic priorities to:

- Continuously improve patient safety, experience and outcomes, and reduce clinical variations
- Attract, develop and enable high performing individuals and teams
- Enable service improvement plans with system partners
- Achieve top 25% performance for operational, financial and productivity measures

**1.0 INTRODUCTION**

1.1 This procedure introduces the Trust’s principles in relation to resolving disciplinary matters. Disciplinary rules and procedures are necessary for promoting positive employee relations and for safeguarding of patients.

1.2 The Trust recognises that disciplinary issues can relate to conduct (complying with Trust policy, rules and procedures), including negligence. The disciplinary procedure will be invoked by management in circumstances where it is alleged that conduct has fallen below the required standards.

1.3 Consideration should be given at an early stage as to whether any such issues relate to the individual’s conduct (or negligence) or capability (performance). Advice should be sought from HR to best determine the application of the appropriate procedure.

1.4 Unless otherwise stated, this procedure does not form part of an employee’s terms and conditions of employment but is a statement of the Trust’s current practice and may be changed from time to time.

- 1.5 The Trust recognises its responsibility in ensuring that all employees are aware of their obligations whilst at work and the behaviour and conduct expected of them. Employees also have a responsibility to familiarise themselves with the general rules and procedures referred to in their conditions of service and as related to their specific area of work and as required of them by their professional code(s) of conduct and NHS Constitution.
- 1.6 It is recognised that instances may arise however in which managers (or others) may be dissatisfied with the conduct or behaviour of an employee. There is therefore need for formal procedures, through which the issues can be identified and appropriate action, within given timescales, can be taken in a consistent, fair and reasonable manner.
- 1.7 This procedure applies to all employees of the Trust with the following provision:
  - a. Medical and Dental staff – this policy does not apply to issues concerning professional conduct and / or competence of Medical and Dental staff who are subject to the provisions of the Maintaining High Professional Standards Policy.
  - b. Temporary staff (including bank workers) – temporary workers are required to maintain the Trust's expected standards of conduct, behaviour and practice. Any issues of conduct will be addressed using the relevant temporary workers procedure.
  - c. Trades Union Officials – such staff are subject to the provisions of this procedure. However, in most cases no formal action will be taken until a senior trade unions representative or full time official has been informed.
- 1.8 Where the disciplinary process is implemented due to suspected fraud, corruption or bribery this will be reported to the Local Counterfraud Specialist in conjunction with the Executive Chief Finance and Resources Officer. Where the disciplinary process is implemented due to suspected theft this will be reported to the Local Security Management Specialist in conjunction with the Executive Chief Finance and Resources Officer.

Where appropriate the Trust will refer cases identified to the Local Counterfraud specialist (LCFS) or Local Security Management Specialist (LSMS) prior to the Trust investigating or taking action.
- 1.9 Where potential conduct involves Safeguarding issues for a patient(s) it is important that, where appropriate to do so, a co-ordinated approach takes place to ensure the Safeguarding investigation and conduct process run in parallel in conjunction with the relevant local Safeguarding Boards.
  - a. A Safeguarding case may be concluded whilst the conduct process continues.
  - b. The Safeguarding Team must be informed by Human Resources [HR] of the outcome of conduct investigations.

- c. The relevant adult and children safeguarding policies and procedure [SETSAF] should be adhered to.

## **2.0 GUIDING PRINCIPLES**

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

## **3.0 INFORMAL ACTION & RESOLUTION**

- 3.1 It is important that managers do not see the formal disciplinary procedure as the only way to deal with an employee whose standard of behaviour or conduct is unacceptable, there is likely to be less recourse to the formal procedure if deficiencies in an employee's conduct, including standards of performance are brought to their attention at the earliest possible opportunity by the line manager in the course of the employee's normal duties.
- 3.2 An informal discussion should never turn into a disciplinary interview/meeting/hearing. Any informal discussion should be terminated immediately if it becomes obvious that formal disciplinary procedures might be required; in such cases the individual should be advised accordingly, for example as part of the management supervision process.

- 3.3 Informal action may include counselling; a verbal caution, written 'management advice'; standard and/or objective setting or retraining. Where any informal action of this nature is taken it is imperative that the individual is in no doubt that their conduct and/or behaviour has to improve or change, how it has to improve or change and where applicable, of the support available to them to help them do so.
- 3.4 An appropriate record should be kept of any informal cautions and actions that occur and the content of any discussion as to expectations of standards of behaviour and / or conduct for future reference. A copy of this record will be sent to the employee within five days of the discussion taking place.
- 3.5 This does not form part of an individual's disciplinary record, but will serve to demonstrate what support has been provided to assist the individual to meet the required standards.

#### **4.0 SUSPENSION**

- 4.1 An employee may be suspended from duty on full pay whilst an investigation is carried out into any suspected misconduct in the following circumstances:
- i. when it is necessary for the support of the employee;
  - ii. where the employee's continued presence will or could interfere with, hinder or compromise the investigation;
  - iii. where management are of the opinion that there is, or may be, a risk to client/patient safety, or there is, or may be a risk to the health and safety of others;
- 4.2 During the period of suspension the employee will receive their full contractual pay. Full pay will be calculated on the basis of average earnings for the preceding three months (excluding bank work), and will continue for the duration of the suspension. No further payments, contractual or otherwise, will be made to an employee in the event of an appeal where he/she is summarily dismissed.
- 4.3 Such suspensions will be carried out by the appropriate person, working with responsibility and authority at the relevant time. Should suspension occur out of office hours, this should be in consultation with the on call manager, and with HR having been informed at the earliest possible opportunity. All suspensions will be subject to written confirmation by the appropriate senior manager within 24 hours.
- 4.4 Suspension is not a disciplinary sanction or punitive in nature and therefore does not imply guilt or blame. Suspension should only be invoked as a last resort when all other options have been considered. The Trust will consider alternatives to suspension where this is appropriate, which may include:
- A period of special leave whilst a preliminary investigation is undertaken, this would normally be for no longer than 24 hours.
  - Temporary redeployment (subject to mutual agreement) to an alternative area of work for which the employee is suitably skilled and qualified.

- Restricted scope of duty or adjusted duties.
  - Increased supervision.
- 4.5 When considering the suspension of clinical staff managers may use a tool to inform decision making which must then be recorded. Any decisions made must have patient safety at the forefront in the assessment of risk.
- 4.6 If an employee is suspended, wherever possible he or she will be informed of this in a face to face meeting with the relevant manager, along with the reasons for it. Where a face to face meeting is not possible and suspension is necessary the employee will be informed verbally by a manager with relevant authority to suspend.
- 4.7 The fact of suspension and the reasons for it will also be confirmed to the employee in writing usually within five working days of the suspension taking effect.
- 4.8 At the suspension meeting the following points should be explained to the affected individual(s). Written confirmation of these points will be provided usually within five working days of the suspension taking effect:
- Wherever possible the specific reason for the suspension and matters for investigation.
  - The terms of the suspension
  - The date that suspension takes effect.
  - That suspension does not imply guilt or blame and does not imply pre-judgement of the outcome of investigation.
  - Right to representation during investigation process.
  - Details of the investigating officer (where known).
  - Support available during investigations.
  - Provided with a copy of the Trust's Disciplinary (Conduct) Policy & related procedure.
- 4.9 The Trust will aim to ensure that suspension is for as short a period as possible. Where suspension continues for more than a short period, for example due to the complexity of the investigation, then the suspension will be subject to regular review and the Trust will endeavour to keep the employee informed of the progress of the investigation.
- 4.10 An employee may make a request to be accompanied at a meeting at which suspension is to be confirmed by a recognised Trade Union representative or current work colleague but the meeting will not be delayed if a chosen representative is unable to attend at the given time.
- 4.11 Periods of suspension should be kept to a minimum. Suspension will usually be subject to the following reviews:
- i. First review after two weeks after which the suspension will either be lifted or continued. If it is to be continued a full written explanation must be provided to the employee.
  - ii. Second review after four weeks.
  - iii. Third review after eight weeks.

- iv. At the fourth review after twelve weeks the Commissioning Manager will be involved. The employee and their representative will be able to make written representations. If it is to be continued a full explanation must be provided to the employee and confirmed in writing.
  - v. Further regular reviews as set out by the Commissioning Manager (if deemed appropriate).
- 4.12 Where an employee falls sick during a period of suspension, the normal contractual sick pay entitlements will apply in accordance with the occupational sick pay scheme.
- 4.13 Where an employee wishes to take annual leave during a period of suspension, the normal arrangements for the authorisation and taking of annual leave will apply.
- 4.14 Employees who are suspended are required to be available to attend investigatory meetings during normal working hours which are considered to be Monday – Friday 9am to 5pm.
- 4.15 If during the course of investigation it becomes clear that the evidence gathered does not warrant continued suspension, it will be discontinued with immediate effect.

## **5.0 PRELIMINARY INVESTIGATION**

- 5.1 Where an incident or concern comes to light, the manager will need to consider whether an initial preliminary investigation is warranted, or if the facts of the matter are clear and established, whether a decision can be made to proceed immediately to a more formal investigation as detailed in Section 7 below, HR Advice should be sought as necessary.
- 5.2 If it is the former, this requires either the manager or the most senior person on duty at the time of the incident, to undertake some initial fact finding – e.g. what happened, when it happened, who saw the incident in question etc. and what was done.
- 5.3 Having communicated with the main witness(es), the fact finder, in consultation with HR, would then come to a conclusion as to whether a more full and thorough investigation is necessary in keeping with the relevant policy (i.e. performance or conduct) and refer to the relevant Commissioning Manager, or whether it is something that can be managed more informally, locally.
- 5.4 It does not require any statements to be taken at this stage, or all of the witnesses to be spoken to, and should normally be completed within a maximum period of 72 hours.
- 5.5 This is an opportunity to utilise the 'agreed outcome' framework (see Section 8) where an individual accepts and admits they have acted inappropriately.

## **6.0 INVESTIGATING OFFICER**

- 6.1 Where an employee's conduct or standard of performance warrants formal investigation, an investigating officer will be appointed by the Commissioning Manager.
- 6.2 The Commissioning Manager will be the appropriate senior manager within the service that the employee works and with the authority to act.
- 6.3 The Commissioning Manager will write to the employee (where not previously suspended) to confirm they are subject to disciplinary investigation, the letter will include:
- Wherever possible the specific reason for the investigation and details of the allegation(s).
  - Wherever possible the Terms of Reference for the investigation
  - Right to representation during investigation process.
  - Details of the investigating officer.
  - Support available during investigations.
  - Provided with a copy of the Trust's Disciplinary Policy & Procedure.
- 6.4 When appointing an appropriate investigating officer, the commissioning manager will need to be satisfied that the investigation can be undertaken without unnecessary delay. The commissioning manager will therefore need to consider the investigating officer's current workload and how this can be managed whilst the investigation is being undertaken.
- Wherever possible the investigating officer will not be a person within the direct line management structure of the employee subject of investigation.
- 6.5 At a disciplinary hearing, the investigating officer will be required to be available to attend as a witness, but will not be involved in making any decisions as to the final outcome. The investigating officer will respond to questions from the employee, their representative and the hearing panel.
- 6.6 In some, exceptional, circumstances the Trust may consider bringing in external consultants to both carry out the investigation and present their findings as a witness at any subsequent Disciplinary Hearing. In these cases the investigation will be overseen by a Trust manager and the Trust will retain responsibility for any inappropriate or discriminatory behaviour. Any external consultant appointed by the Trust to undertake an investigation will follow the Trust's Disciplinary Policy and Procedure and deal with the case fairly in accordance with the ACAS Code of Practice.

**7.0 CONDUCTING AN INVESTIGATION**

- 7.1 The purpose of an investigation is to gather information in order to determine whether or not there is a case to answer by way of formal disciplinary proceedings.
- 7.2 If so, it is for the investigating officer to present this information as a witness at any subsequent Disciplinary Hearing and to respond to questions related to the investigation.
- 7.3 HR will assist the investigating officer with all investigations to ensure a fair, reasonable and consistent process and to advise on matters of procedure.
- 7.4 The Trust will endeavour to ensure that the investigation is undertaken in a timely and sensitive fashion. In doing so the investigator will be provided with clear terms of reference for their investigation in order to ensure they remain focussed and avoid unnecessary delay. Any preliminary report that is produced as part of an initial fact finding investigation will provide the basis for the terms of reference.
- 7.5 Investigations need to be undertaken without unreasonable delay. It is important that the investigation is undertaken promptly before memories fade.
- 7.6 The investigation should ideally take no longer than six weeks to conclude, however the Trust recognises that it is of key importance to ensure an investigation is completed thoroughly. If the investigation cannot be completed within this timescale, the commissioning manager will confirm in writing to the employee and their representative, the reasons for any delays and the expected completion date. If the employee is suspended from work a review of the terms of suspension will also be undertaken at this time.
- 7.7 The reporting and any involvement of any incident(s) or event(s) involving the police or other statutory body should not normally preclude the carrying out of an internal investigation by the Trust. However in all instances where this occurs, advice should be sought from HR.

The investigation will include:

- An investigation meeting with the employee
  - Obtaining statements from all relevant witnesses
  - Reviewing all appropriate policies, procedures and codes of practice / conduct
  - Reviewing all written records and documentation
- 7.8 In exceptional circumstances it may be necessary to interview members of the public, current or former patients. Advice should be sought from HR in all instances where this is considered necessary.
- 7.9 As part of the investigation, unless in exceptional circumstances, the investigating officer will interview the employee who is subject of the allegations. In such circumstances, the employee will be informed of the allegations which are being investigated and the purpose of the interview. If

the employee either refuses to attend an investigation meeting or provide a written statement the investigation will be concluded based on information collated.

- 7.10 Employees will normally have the opportunity to be accompanied at the investigatory meeting by a recognised Trades Union representative, or alternatively a current work colleague of their choice.
- 7.11 The employee should provide the name of their representative at the earliest opportunity.
- 7.12 Employees do not have a statutory entitlement to be accompanied at investigatory meetings, therefore should there be a delay in arranging representation which the Trust considers to be unreasonable, the investigation will proceed in any event.
- 7.13 Whilst it is desirable to meet with the employee as part of the investigation process, this is not a requirement under the ACAS code of practice. In order to ensure that the Trust is able to demonstrate its duty to deal with the matter fairly and without undue delay, it may therefore be decided that the employee will not be interviewed. Instead the individual will be given the opportunity to respond to questions/state their case at a disciplinary hearing, should it proceed to one. This may also apply where the individual is off sick and having sought advice from Occupational Health.
- 7.14 Statements should be obtained as necessary from any potential witnesses at the earliest opportunity. The status of any written statements is important and can be obtained as:
- An account, written independently by, and in the witnesses own words of the incident(s) or action(s) taken as soon as possible after the date of the event and signed and dated accordingly.
  - An investigatory meeting which is recorded and the notes transcribed. If employees do not wish for the meeting to be recorded and transcribed they should contact the HR service at least five working days prior to the meeting in order for a minute taker to be arranged.
- 7.15 The investigating officer will request statements from all witnesses, only in circumstances where the investigating officer identifies gaps in the statement(s) or where further information needs clarification will investigatory meetings be required.
- 7.16 If further evidence arises during the course of the investigation the Commissioning Manager will review the initial allegations and consider whether these need updating, revision or addition. Any revised allegations should be communicated in writing to the employee under investigation by the Commissioning Manager so that he/she has an opportunity to respond. The employee will be given ample opportunity to state his or her case, including any mitigation they see as appropriate.

7.17 Once the investigation is completed the investigating officer will prepare a report for the commissioning manager within 15 days, unless there are exceptional circumstances. The report will include:

- Background
- Purpose of the investigation (allegations & terms of reference)
- Summary of employee statement
- Summary of witness statement(s)
- Summary of documentary evidence
- Findings and conclusion
- Appendices to include all witness statements and documents (including policies) referred to in the report

7.18 It will be for the investigating officer to conclude whether, or not, there is a case to answer at a Disciplinary Hearing. It will be for the Commissioning Manager to decide whether the matter should proceed to a disciplinary hearing (or agreed outcome meeting) and will write to the employee with confirmation that a Disciplinary Hearing will be convened.

7.19 Where the decision of the Commissioning Manager differs to the recommendation of the Investigating Officer the reasons for this should be communicated to the employee. In these circumstances the Commissioning Manager should also be available to attend a Disciplinary Hearing as a witness, where required.

7.20 At such point as it becomes likely the matter(s) will proceed to a disciplinary hearing without prejudice to any subsequent proceedings a provisional date will also be set for a disciplinary hearing. Wherever possible the availability of any known representative will be ascertained. This does not indicate prejudgement of any facts or outcome of the case; rather it is the purpose to reserve dates and to avoid subsequent delays if a hearing is necessary. This decision will be made by the commissioning manager in consultation with the investigating officer and HR, none of whom will form any part of the disciplinary panel.

## **8.0 PRE-HEARING SETTLEMENTS/AGREED OUTCOMES**

8.1 It is recognised that lengthy conduct proceedings can create anxiety for individuals. It is further recognised that lengthy processes, whilst often necessary, can create additional pressure on service delivery.

8.2 It is in no-one's interest to proceed to a disciplinary hearing where both parties are in agreement not to do so. Where an employee admits an allegation and the facts are not in dispute, it may not be necessary for the investigating officer to carry out a lengthy investigation.

8.3 Where there is agreement in respect of issues of a case, the culpability of the employee and the possible sanction, a pre-hearing negotiated settlement may be the best way forward.

- 8.4 Pre-hearing negotiated settlements, more commonly known as “agreed outcomes” therefore provide an opportunity to with the matter as sensitively as possible.
- 8.5 Agreed outcomes cannot be used in any cases of potential gross misconduct where dismissal is a possible outcome unless in exceptional circumstances and where the employee has expressed admission of the alleged offence(s) and contrition for them.
- 8.6 Where an employee is already subject to a current warning for similar or related mis-conduct the agreed outcome process will not be followed or where it may conflict with, or compromise, “due process” e.g. audit or reports to a regulatory body.
- 8.7 Although not part of the Trust’s formal disciplinary procedure it is part of the disciplinary process and therefore the same principles and rules in respect of natural justice must be applied.
- 8.8 The employee will be invited to attend a meeting, as set out below, at which he or she should be given the opportunity to put forward his or her side of the story, along with any other points which he or she wishes to make. The meeting should only take place after the employee has had a reasonable period of time to consider the issues to be discussed at the meeting.
- 8.9 The employee should be informed in writing of the basis on which proposed disciplinary action is contemplated and the issues which the Trust would like to discuss with him or her and informed of their right to be accompanied by a Trades Union representative or work colleague of their choice.
- 8.10 The meeting will be conducted by a senior manager; this will usually be the investigation commissioning manager with the authority to act. The meeting will not be conducted by the investigating officer, an HR will also be in attendance.
- Prior to the meeting all available relevant information will be available to those attending.
- 8.11 Where an employee and/or their representative are unhappy with such a meeting, quite clearly it should not proceed along this route or where agreement is not reached during the meeting on matters of fact, evidence or accountability. In these circumstances a disciplinary hearing will be convened.
- 8.12 On conclusion of the meeting the relevant manager should consider whether, in the light of what has been said at the meeting, a disciplinary sanction should be imposed and, if so, what the sanction should be. The employee should then be informed of the outcome and confirmed in writing within seven working days.
- 8.13 The employee will be required to provide either written acceptance of their misconduct and the proposed disciplinary sanction, or written confirmation that they do not agree to the outcome. This is not an appeal. This must be received within 10 working days of the notice of the action.

- 8.14 In the event that an employee does not agree to the outcome, a disciplinary hearing will be convened. No one involved in any decisions at an agreed outcome meeting will form part of the disciplinary hearing panel.
- 8.15 Once the employee has been informed of the outcome, he or she should be asked to sign a written notification. This notification confirms acceptance of his/her misconduct and the relevant disciplinary sanction proposed. Once accepted there is no right of appeal.

## **9.0 DISCIPLINARY HEARINGS – EMPLOYEES' RIGHTS**

- 9.1 In all stages of the formal procedure, the employee has the following rights:
- i. The circumstances regarding an allegation concerning conduct shall be investigated.
  - ii. The employee will be given a reasonable period of time to prepare and state his or her case which is not less than 10 working days prior to the date of the hearing.
  - iii. Before any disciplinary hearing the employee shall be advised of the details of any allegation in writing along with the basis for the allegations
  - iv. The employee shall be informed of his/her right to be accompanied at any disciplinary hearing.
  - v. The employee will be informed of their right of appeal where formal disciplinary action results (See Section 11).
- 9.2 Employees are entitled to be accompanied by either an existing work colleague or a Trade Union representative at a disciplinary hearing or appeal hearing. The trade union representatives must have been certified in writing by their union as having experience of, or having received training in, acting as a worker's companion at disciplinary hearings. The Trust does not permit legal representation at any stage during the disciplinary process.
- 9.3 To exercise the right to be accompanied workers must make a reasonable request to the relevant manager. It would not normally be reasonable for a worker to insist on being accompanied by a person whose presence may prejudice the hearing or to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site, or from closer vicinity.
- 9.4 The chosen representative or work colleague will be allowed to address the hearing to put and sum up the workers case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. They do not, however, have the right to answer questions on the workers behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

## 10.0 DISCIPLINARY HEARINGS

- 10.1 The purpose of a disciplinary hearing is to consider all facts and enable the employee an opportunity to answer the case against them and provide any justification or mitigating circumstances that should be considered before a decision is made on what, if any, action should be taken.
- 10.2 If the Commissioning Manager has decided that there is a case to answer, a disciplinary hearing will usually be held as soon as possible. The hearing will normally take place within 30 working days of this decision being made.
- 10.3 An employee required to attend a disciplinary hearing will receive not less than 10 working days' notice of the hearing. Employees, and where known their representative, will be provided with full written details outlining the grounds for the hearing and setting out the allegations and confirming:
- i. the date, time and venue of the hearing;
  - ii. the nature and details of the alleged misconduct;
  - iii. an indication of the possible disciplinary sanction which may be imposed if the employee does not provide a satisfactory explanation;
  - iv. the name and status of the manager hearing the case and disciplinary panel;
  - v. the names of any witnesses to be called, which will include the investigating officer
  - vi. their right to be accompanied
- and will be supplied with:
- i. copies of all statements and documentation which the disciplinary panel will be relying upon;
  - ii. a copy of the Trust's Disciplinary Policy in force at the time.
- No later than three working days prior to the hearing the employee will:
- i. Submit their written statement of case and any other documentation on which he/she intends to rely;
  - ii. confirm the name and status of any representative and details of any witnesses he/she intends to call.
- 10.4 If the employee or employee's representative is unable to attend on the given date, the employee has a right to propose an alternative date, which must be not later than five working days after the original hearing date.
- 10.5 A Disciplinary Hearing or Appeal can be re-arranged a maximum of two times, where an employee or their representative is unable or unwilling to attend a disciplinary hearing or appeal on two occasions, the Trust will consider all the facts and come to a reasonable decision on how to proceed, which could include convening the disciplinary hearing in the employee's absence. Where this is the case the employee will be given the opportunity to state their case in writing or send a (recognised) representative on their behalf, any such evidence must be submitted to the hearing officer no later than three working days prior to the disciplinary hearing.

10.6 If an employee chooses to resign following notification of a conduct investigation or disciplinary hearing, a decision will be made by the commissioning manager in consultation with HR on how to proceed. A decision will be made as to whether any further action, including referral to statutory and / professional bodies is required and notified in writing.

10.7 The disciplinary hearing panel will comprise:

- 'hearing officer', a designated senior manager to conduct the proceedings and determine and sanction formal action.
- an 'HR adviser', a representative of HR to advise the hearing officer on employment matters;
- In allegations regarding professional misconduct where the hearing officer does not have the relevant professional background or knowledge, a professional adviser will attend to give advice in relation to that profession.

NB: in cases where the formal action may be considered a 'senior' manager is deemed as being normally not less than the equivalent of a band 8a.

10.8 The Disciplinary Hearing (and Agreed Outcome Meeting) will be recorded and the notes transcribed. If employees do not wish for the hearing to be recorded and transcribed they should contact the HR service at least 5 working days prior to the hearing in order for a minute taker to be arranged.

Additional attendees may be permitted by mutual consent for training purposes.

The members of the panel shall not include anyone who has been involved in the decision to suspend (if relevant), the investigation nor as a witness.

10.9 Everyone involved in the hearing is responsible for maintaining the confidentiality of the information shared during the proceedings.

10.10 All parties should give careful consideration to who they call as witnesses, limiting the numbers to the minimum necessary to support their case and establish a finding of fact.

10.11 It is expected that the Commissioning Manager will attend as a witness where the manager has chosen to proceed to a disciplinary hearing where the findings of the Investigating Officer, is that there is 'no case to answer' at a disciplinary hearing.

10.12 It is the responsibility of the employee, or their representative, to arrange attendance of the witnesses being called to support their defence of the case.

10.13 Witnesses, including the investigating officer, will only be in attendance whilst they are giving evidence. Where possible witnesses will be provided with an approximate time of attendance so as to ensure minimum disruption to service provision.

- 10.14 Disciplinary hearings will be conducted in accordance with the procedure attached at Appendix One.
- 10.15 Variations to the disciplinary hearing procedure detailed above (including Appendices) can be made with the mutual agreement of the employee and / or their representative and the Hearing Officer.
- 10.16 The hearing will be adjourned while the relevant matters are considered by the disciplinary hearing panel. Once the disciplinary hearing panel has considered all matters, the hearing will usually be reconvened so that the Hearing Officer may give their decision.
- 10.17 The Hearing Officer will consider the allegations made as they relate to the Trust's disciplinary 'rules' (see Appendix Two). These rules are not exhaustive and serve only as a guide, although do form part of the terms and conditions of employment.
- 10.18 Once a decision that allegations have, on the balance of probability, been proven the Hearing Officer will be informed of any 'live' disciplinary sanctions or previous related warnings which may need to be considered in the determination of sanction.
- 10.19 In all cases following a disciplinary hearing, all relevant parties will be notified of the outcome in writing usually within five working days. The employee will be notified of their right of appeal.
- 10.20 On conclusion of the Disciplinary Hearing the Hearing Officer will make a decision regarding whether a referral to the relevant professional and / or regulatory body should be made.

## **11.0 OUTCOMES OF DISCIPLINARY HEARINGS**

The disciplinary hearing may result in any of the following formal actions:

**i. No Action**

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

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

There is no right of appeal on this action.

**ii Further investigation required**

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

There is no right of appeal on this action.

**iii. Verbal Warning**

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

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

**iv. Written Warning**

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

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

**iv. Final Written Warning**

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

A final written warning will be for a period of up to 24 months ( but no less than 12 months) as determined by the hearing officer and will be considered 'spent' after this time.

**v. Dismissal**

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

of notice and will include any accrued, untaken statutory annual leave to which they are entitled.

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

**vi. Summary Dismissal**

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

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

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

**vii. Transfer to an Alternative post (Dismiss & Re-engage)**

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

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

Where in conjunction with a written warning the employee will need to give express consent to the variation of contract and terms and conditions of employment.

**12.0 DISCIPLINARY RECORDS**

12.1 Normally the validity of disciplinary warnings will be considered to have expired after the specified period (see above). This is provided that there has been the desired and sustained improvement conduct and / or behaviour and there have been no further warnings or action taken against the employee during this time.

- 12.2 In these circumstances, previous warnings should generally be disregarded for future disciplinary purposes. In exceptional circumstances it may be permissible to take into account previous spent warnings in relation to subsequent disciplinary action.
- 12.3 These exceptional circumstances are where a clear reason to dismiss has already been established, and past misconduct would evidence that a lesser penalty would not be warranted.
- 12.4 Additionally, such circumstances could relate to where a pattern of behaviour emerges and/or there is evidence of abuse. However the circumstances in which this will be the case are rare and advice should be sought from HR when this is being considered.
- 12.5 All records of disciplinary action will be treated as confidential and be kept no longer than necessary in accordance with the Data Protection Act 2018.
- 12.6 Where an employee is absent during the course of a 'live' warning for a continuous period exceeding four calendar weeks, the warning will normally be extended by the length of the period of absence.

### **13.0 APPEALS**

- 13.1 Employees have the right to appeal against any formal sanction issued under this procedure, with the exception of informal action(s), the decision to suspend and pre-hearing settlements (agreed outcomes).
- 13.2 Appeals will be conducted in accordance with the Appeals Procedure.

### **14.0 SHARING INFORMATION**

- 14.1 Where a potential fitness to practice concern is identified a view will be taken by the appropriate Director whether the conduct, behaviour or practice is such that, on the grounds of public and / or patient safety, the Trust should notify any other organisation that the person is known to work in, or is moving to, of the circumstances concerned.
- 14.2 This will be in accordance with the National Guidance "Sharing Information of Healthcare Workers" 2013.
- 14.3 It will be for the Trust to determine at what stage it considers it appropriate to share information and to whom, normally this will be on the conclusion of any formal investigation, although in exceptional circumstances and on assessment of risk, this may be prior to doing so.
- 14.4 In all cases, the decision and the basis of the decision to share information will be recorded. The employee concerned will normally be advised of the intended communication and specifically what information will be communicated.
- 14.5 External communication will be co-ordinated by the relevant Director who will act as the initial recipient of information from other organisations.

**15.0 SUPPORT**

The Trust recognises that investigations, meetings and hearings can cause anxiety and / or distress to any party involved. Every attempt will be made to ensure that these proceedings are conducted with dignity, courtesy and respect.

Support to employees involved in disciplinary proceedings is available from:

- a. Advice and support will be available from managers, Human Resources, recognised Trade Union representatives and Professional Leads.
- b. Additional advice and counselling will be available through Occupational Health.
- c. Employees can also access confidential support/career advice/counselling through the Trusts' Employee Assistance Programme, workplace options
- d. Any concerns can be raised in confidence with the Guardian Service who will provide information and emotional support in a strictly confidential, non-judgemental manner.

**16.0 VARIATION TO TIMESCALES**

16.1 Time scales regarding the procedural steps indicated in this procedure and within the disciplinary hearing procedure at Appendix One are subject to reasonable variation.

16.2 Any references to 'working days' mean Monday to Friday, excluding weekends and bank holidays.

**END**