

## Disciplinary Policy and Procedure

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Purpose:	To provide clear policy, process and guidance to address situations where satisfactory standards of conduct have not been met or maintained
Consultation:	This policy has been developed in consultation with staff side employees via the JNCF
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Impact assessments:	This policy has been equality impact assessed using the Trust's agreed process, and the assessment has not identified any significant adverse impact on people with one or more protected characteristic

### Version History

Version	Date	Reason for change
1	August 2019	Creation of a harmonised policy for the 2gether and Gloucestershire Care Services NHS Trusts

## PART 1

### SUMMARY

This document sets out the Trust's policy and procedure in relation to employee conduct. The Trust expects all employees to maintain good standards of behaviour and to uphold the Trust values, relevant legislation, professional bodies' codes of conduct/practice, NHS codes, the NHS Constitution and the Trust's policies, procedures and practices. It is important that employees understand their obligations and rights regarding this aspect of employment.

The aims of this policy and procedure are:

- To promote high standards of behaviour and conduct for all employees and to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct;
- To use the just culture approach in the case of an incident or adverse event to establish what was responsible before determining the appropriate course of action;
- To ensure a fair and consistent process is followed to address situations where satisfactory standards of conduct have not been maintained and determine what actions need to happen next.

The procedure requires that action is taken to establish the facts to give employees the opportunity to respond before formal action is taken. Wherever possible issues of minor misconduct will be dealt with informally rather than through formal stages of this procedure.

The Trust wants to ensure that when something happens that was not as expected that a process is followed to decide what actions need to happen next and to encourage improvement where necessary. The disciplinary process is not intended to be punitive in nature. The procedure therefore describes the steps to be taken to deal with each situation reasonably and, wherever possible, to help the person concerned to improve their standards of conduct of behaviour to reach acceptable standards.

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## **PART 2**

### **1 INTRODUCTION**

- 1.1 The Trust is committed to ensuring that acceptable standards of conduct and behaviour are consistently maintained. This is in order to ensure the safety and welfare of service users, staff and relatives and carers, and to achieve the Trust's organisational objectives.
- 1.2 The Trust's Disciplinary Policy is designed to help and encourage all employees to achieve and maintain required standards of conduct and to act in accordance with the Trust's values. The aim is to ensure consistent, fair and compassionate treatment for all.

### **2 PURPOSE**

- 2.1 This policy and procedure has been developed, taking into account the current ACAS Code of Practice on disciplinary and grievance procedures, to provide a fair, objective, effective and confidential way of dealing with matters relating to conduct which may lead to an accelerated process meeting or a disciplinary hearing and possible disciplinary action. This policy will be applied sensitively with a true sense of natural justice, equality and consistency, using the principles of the just culture approach.

### **3 SCOPE**

- 3.1 This policy applies to all staff employed in the Trust, including those on fixed-term contracts. This includes all medical and dental staff in relation to their personal conduct. However, please see the Trust's Maintaining High Professional Standards – Medical Staff Policy for dealing with matters relating to professional conduct, competence and performance of medical and dental staff employed by the Trust.
- 3.2 This policy does not apply to individuals engaged solely through the Trust's staff bank, agency workers, individuals employed by another organisation seconded to the Trust, students on placement or contractors.
- 3.3 The principles and practices as set out in this policy may also be used in circumstances which fall within the definition of some other substantial reason of a kind so as to justify dismissal (SOSR) or where an employee cannot continue to work in their position without contravention (either on their part or the Trust's) of a duty or restriction imposed by or under an enactment ('Statutory Illegality') as set out in the Employment Rights Act 1996. In these circumstances the Trust reserves the right to adjust the policy as necessary and appropriate according to the specific circumstances. The allegations will still be shared with the employee.
- 3.4 This policy does not form part of an employee's contract of employment and may be amended at any time.

### **4 DUTIES**

- 4.1 The **Trust Board** is responsible for:

- Ensuring there is a robust system in place to effectively and fairly manage conduct issues. Assurance is given via quarterly workforce reports.

4.2 The **Director of Organisational Development and Human Resources** is responsible for:

- Ensuring the policy is implemented appropriately, that disciplinary and appeals outcomes are monitored to ensure that there is no bias, and that reports on activity are provided to the relevant Board Committee;
- Ensuring training is available on managing conduct issues.

4.3 **Executive directors/Directorate managers** are responsible for:

- Ensuring the policy requirements are enacted within their area of responsibility;
- Monitoring disciplinary outcomes within their area of responsibility to ensure a consistent and fair approach;
- Ensuring line managers receive any appropriate training deemed necessary to discharge their responsibilities appropriately under this policy.

4.4 **Line managers** are responsible for:

- Ensuring the employees for whom they are accountable know the standards of work and conduct required;
- Ensuring each employee has received the appropriate induction and has been given adequate training and regular feedback to equip them to carry out their duties;
- Ensuring systems are in place to minimise the need for the use of this policy, e.g. effective communication, compliance with workplace rules and procedures, performance appraisal;
- Reviewing an incident, error or allegation and speaking to a HR representative to determine the next steps, including determining if informal resolution can be undertaken;
- Providing support for any employee subject to a disciplinary investigation and/or process, including signposting to a Freedom to Speak Up Guardian, making referrals to occupational health and maintaining contact with the employee if they are placed on alternative duties, suspended or absent from work during the process;
- Keeping a log of all contact with the employee, including date, time, details of discussion/ message left;
- Participating in any Trust training deemed necessary to ensure that they have the necessary skills to undertake their responsibilities appropriately;
- Ensuring their staff are made aware of this policy, its requirements and the standards expected of them by the Trust.

4.5 The **HR Operations team** are responsible for:

- Providing appropriate support and guidance to line managers when dealing with an adverse event and /or disciplinary process;
- Providing appropriate support and guidance to the commissioning manager, investigating officer and the chair in disciplinary hearings;
- Providing appropriate support and guidance to the investigating officer during an investigation and at a disciplinary hearings;
- Monitoring and reviewing disciplinary and appeal outcomes to ensure that there is no discrimination or bias, and escalate where appropriate;
- Liaising with professional leads and local counter fraud specialists as required in individual cases;
- Ensuring accurate records of cases are kept and information is available in a timely fashion for reporting.

#### 4.6 **Commissioning managers** are responsible for:

- Commissioning an investigation of the allegation(s) if required, including setting the terms of reference with support from a HR representative;
- Determining if it is appropriate to place the employee on amended duties, alternative duties or suspension; this decision must be agreed by the relevant Service Director/ Head of Service and the Deputy HR Director;
- Meeting with the employee to advise them of the allegations and where appropriate alternative duties or suspension;
- Appointing the investigating officer;
- Seeking regular updates from the investigating officer in relation to the investigation and timescales;
- Ensuring the employee being investigated is kept up to date on the progress of the investigation;
- Reviewing the Checklist for Amended Duties, Suspension and Accelerated Process as appropriate based on updates from the investigating officer;
- Receiving the completed investigation report and deciding if a disciplinary hearing is required;
- Overseeing the arrangements for the disciplinary hearing if one is required, ensuring that it is arranged in a timely manner. The commissioning manager will not form part of the disciplinary panel;
- Conducting the accelerated process meeting if this process is used and determining the outcome of the meeting, including any appropriate sanctions;
- The commissioning manager will be an appropriate senior manager in the relevant directorate (Band 8 and above) who has been advised of the allegations against the employee.

#### 4.7 **Investigating officers** are responsible for:

- Investigating and establishing the facts in relation to the allegations;

- Ensuring they carry out the investigation as quickly as possible, adhering to any timescales;
- Keeping the commissioning manager, and if appropriate the employee, up to date with the progress of the investigation on a regular basis;
- Talking to staff and, where appropriate, service users concerned with the incident as appropriate to obtain statements to establish the full facts;
- Comparing statements and notes and attempting to resolve any discrepancies;
- Seeking supporting evidence when required;
- Advising the commissioning manager if anything additional comes to light during the investigation that could mean the terms of reference and/or the Checklist for Amended Duties, Suspension and Accelerated Process need to be reviewed;
- Presenting their findings of the investigation in a report that will be submitted to the commissioning manager and where appropriate shared as part of a disciplinary hearing, including with the employee;
- Within the report advising whether or not there is evidence to support the allegations, and if the allegations need amending or further allegations should be considered;
- Attending the disciplinary hearing to present evidence and answer questions as required;
- Being thorough and fair throughout the investigation, remaining impartial and objective and not making assumptions;
- Considering if there are any mitigating circumstances;
- Maintaining confidentiality as appropriate;
- Attending any appeal hearing as a witness, where required.

#### 4.8 **Employees** are responsible for:

- Promptly and efficiently reporting incidents which have any impact on staff, service users or Trust property and resources;
- Raising concerns in an honest and transparent manner;
- Being open and honest throughout the process;
- Providing a written statement if requested;
- Participating in meetings and investigation interviews;
- Maintaining confidentiality and not discussing the details of any investigation and/or disciplinary proceedings they are aware of;
- Maintaining any keep in touch arrangements in place during a period of suspension, alternative duties or absence from work;
- Being aware that malicious assertions or those made for personal gain will be viewed extremely seriously, and disciplinary action may be taken.

## 5 **ROLE OF TRADE UNION REPRESENTATIVES**

- 5.1 At any of the formal stages of this policy an employee has a right to be accompanied by a trade union representative or work colleague who is an employee of the Trust. A trade union representative who is not an employed official must have been certified by their union as being trained to accompany the employee.
- 5.2 The trade union representative/supporting colleague should be allowed to address the meeting to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the meeting.
- 5.3 The trade union representative/supporting colleague does not have the right to answer questions on the employee's behalf; questions must be answered by the employee. In addition, they do not have the right to address the meeting if the employee does not wish it or prevent the employer from explaining their case.
- 5.4 Reasonable adjustments will be made for an employee with a disability and for their trade union representative/supporting colleague if they are disabled.
- 5.5 Trade union representatives/colleagues do not have to accept a request to accompany an employee and they should not be pressurised to do so.

## **6 PRINCIPLES**

### **6.1 Just and Learning Culture Principles**

- 6.1.1 A 'just and learning culture' puts equal emphasis on learning and balanced accountability for both individuals and the Trust.
- 6.1.2 In the case of an incident or adverse event it is an approach that instinctively asks what was responsible, not who was responsible, but it is not the same as an uncritical anything goes culture. However, there will be some situations where the disciplinary procedure as set out in this policy will clearly be appropriate and this will be determined by the Trust on an individual case basis.
- 6.1.3 In all other circumstances the principles of a just and learning culture provide an alternative and supportive mechanism by:
  - Recognising that every employee has a valuable role to play and a unique contribution to make that will ensure the highest possible standards of care are delivered and sustained;
  - Providing a supportive approach to improving and changing behaviour and practice within the Trust;
  - Creating a culture of openness and increased reporting of incidents where equal emphasis is placed on accountability and learning;
  - Encompassing a more proactive approach to acting on improvements either at a personal or organisational level in order to learn from experience and prevent or reduce mistakes or risk;
  - Creating a culture of openness with an emphasis on improvements leads to the establishment of trust between staff and managers;



- Enabling employees to feel confidence in the organisation, be able to see their involvement/contribution recognised and making a difference in the service provided.
- 6.1.4 In line with the principles of a just and learning culture the Trust will seek to gather the initial facts to gain understanding of a situation that has occurred before making any decision on how to proceed and if alternative duties or suspension is required. This will include considering:
- Details of the issue from the employee's perspective;
  - The knock on effects (where applicable) of the incident/issue/practice;
  - The behaviours/actions of employees during the situation.
- 6.2 The policy applies to all employees and is concerned with misconduct, gross misconduct and breakdown of working relationships (the latter needs to be considered alongside the Trust's Promoting Dignity at Work Policy). Issues relating to poor performance and sickness absence are covered by the Trust's separate Improving Performance and Supporting Attendance policies.
- 6.3 Confidentiality will be observed at all stages of the procedure by all parties, including witnesses.
- 6.4 An initial fact find should be carried out to consider what happened. This will then determine how to proceed. It is recognised that in some circumstances an incident could amount to both misconduct and poor performance. The Trust will in its absolute discretion determine which policy should apply in any given case.
- 6.5 At every stage in the disciplinary process the employee will be advised of the nature of the allegations and will be given the opportunity to state their case before any decision is made. The opportunity to state their case may take different formats at different stages.
- 6.6 No formal disciplinary action will be taken until a matter has been investigated, unless it has been concluded that the 'accelerated process' will apply as set out in section 7.3.
- 6.7 For the avoidance of doubt, the Trust has the right to digitally record/tape investigatory meetings and hearings.
- 6.8 When deciding whether a disciplinary penalty is appropriate and what form it should take the Trust will bear in mind the need to act reasonably in all the circumstances.
- 6.9 An employee will be given an explanation for any disciplinary action and will have the right to appeal against any disciplinary penalty imposed as a result of a disciplinary hearing. In the event that disciplinary action is taken the employee will be informed, depending upon the circumstances of the case, of:
- The reason for the action;
  - The standards of conduct expected, the timescale for any improvement to be made and details of any support that will be put in place to assist them;

- The consequences of failing to improve;
- The period for which any warning will be for;
- Details of the appeal procedure.

6.10 It is important that employees are clear about the standards of conduct expected by the Trust. The lists provided at Appendix 1 provide examples of offences that are regarded as misconduct and gross misconduct and may lead to formal action. The lists are not intended to be exhaustive and other acts of misconduct not detailed may also give rise to formal action.

## **7 PROCEDURE**

### **7.1 Informal Action for Minor Issues**

- 7.1.1 Minor conduct issues can often be dealt with effectively by way of a structured discussion between the line manager and the employee, which enables a swift resolution outside of the formal disciplinary procedure. The discussion should outline the standards expected of the employee, the desired required improvement in their conduct and the possible outcomes in the event that the expected improvements are not achieved.
- 7.1.2 The line manager will confirm the discussions in writing to the employee and a copy will be placed on the personal file for future reference.
- 7.1.3 If following the informal action the employee's conduct fails to improve the line manager should seek advice from a HR representative about the matter to being dealt with under the formal disciplinary policy.

### **7.2 Initial Fact Find for Serious Concerns or Persistent Issues**

- 7.2.1 Following an incident, adverse event or receipt of a concern that involves an employee, all relevant facts should be collected in the form of written statements within 24 hours or as soon as possible thereafter, before memories fade. This should include a statement from the employee concerned, statements from witnesses and any appropriate documentary evidence or information available.
- 7.2.2 As soon as management are made aware of an adverse event there should be a review of the whole of the event to establish the initial facts to then enable decision makers to decide upon the next steps. For example, was it a system or process that led to the event rather than an individual's conduct which will determine whether or not the matter requires progression to a formal investigation; the information from the fact find will assist with this decision.
- 7.2.3 If the initial fact find indicates further action is required a commissioning manager should be appointed. With the support of a HR representative, the commissioning manager should then consider the immediate appropriate next steps, which could be:
- Dealing with the matter under the 'accelerated process' process as set out in section 7.3;

- Commissioning a full disciplinary investigation as set out in section 7.5.

7.2.4 The fact find should be completed as quickly as possible. As a guideline this should not take any longer than 3 days, however this is not a strict timeframe as it will depend on the specific circumstances. On rare occasions it may be necessary for other action to be implemented before the fact find is completed, for example suspension/ a move/ alternative duties may have to commence for the protection of service users or preservation of evidence. In such situations it will be clearly communicated to the employee that this is taking place prior to the fact find being completed. Once the fact find has been completed and a decision made about any further action the employee will be informed.

### 7.3 **Disciplinary Accelerated Process**

7.3.1 An accelerated process enables a faster resolution and closure of a disciplinary matter for the employee. A disciplinary accelerated process meeting can only be offered to an employee in cases where:

- The employee has accepted all the allegations against them;
- The employee is not already subject to a final written warning;
- The allegations are not considered to involve a significant potential risk to service users or staff;
- The allegations are not considered to constitute gross misconduct;
- The Service Director / Head of Service and Deputy HR Director have confirmed using the process is appropriate.

7.3.2 At an accelerated process meeting the disciplinary sanction will be determined by the commissioning manager and offered to the employee for them to accept. If the employee accepts the sanction they do not have the right of appeal against the sanction.

7.3.3 This option will not be available where, in the commissioning manager's view, there is sufficient evidence to present the case to a disciplinary hearing on the grounds of gross misconduct and in cases where dismissal is a potential outcome. In such instances advice must be sought from a HR representative prior to any communication being made to the employee.

7.3.4 The option to use the accelerated process, if appropriate, may be implemented following the fact find, during the investigation or once the investigation is complete.

7.3.5 The accelerated process meeting usually will be arranged with very little notice, diaries permitting, as it is recognised that all parties will want to conclude the matter as quickly as possible.

7.3.6 Where possible the employee may still be invited formally in writing to the meeting and advised of the nature of the allegations, the likely outcome from the meeting, the right to be accompanied at the meeting and the option to withdraw acceptance of the accelerated process and proceed to the next appropriate stage of the formal process.

- 7.3.7 An accelerated process meeting would be less formal meeting than a disciplinary hearing, consisting of an appropriate level senior manager (band 8a and above, usually the commissioning manager), a HR representative, the employee and their representative (where applicable).
- 7.3.8 At the meeting the manager will feedback the outcome of the initial fact find and any recommendations. The employee will have the opportunity to give a response to the allegations and to raise any mitigation. If no further issues are identified and the senior manager remains satisfied that the accelerated process route is appropriate, the senior manager will issue a disciplinary warning up to and including a final written warning.
- 7.3.9 Where the employee accepts the warning imposed, this will be confirmed in writing within 7 calendar days, with a copy placed on the employee's personal file. If the employee does not accept the sanction the case will proceed to the next stage of the formal disciplinary process.

#### **7.4 Suspension and Amended Duties**

- 7.4.1 On occasions it may be necessary to consider suspending an employee (on full basic pay) from duty, assign the employee to amended duties, or temporarily redeploy them to an alternative work base or role during the course of the investigation process; for example in cases where the employee, other staff or service users may be at risk, where relationships have broken down or where it is considered there are risks to the Trust's property. Suspension will also be considered in other circumstances if it is reasonably believed that the suspension of the employee will enable a fair investigation to be completed.
- 7.4.2 This will be determined by completing the Checklist for Amended Duties, Suspension and Accelerated Process at the point the incident/concern is raised/becomes known.
- 7.4.3 Suspension is a neutral act which does not constitute disciplinary action and which does not imply guilt. All other options will be considered before taking the action of suspending the employee.
- 7.4.4 The employee will normally be notified of any decision to suspend in person and this will then be confirmed in writing. It should be ensured that the employee is aware that suspension is not a disciplinary action.
- 7.4.5 During a period of suspension the employee may be refused access to any of the Trust's premises without the prior consent of the Trust and subject to such conditions as the Trust may impose.
- 7.4.6 Any suspension/alternative duties should be reviewed as appropriate during the course of an investigation when new facts comes to light to ensure that the suspension/alternative duties are not unnecessarily protracted.
- 7.4.7 The Trust has the power to suspend without pay where the employee is on remand in prison or their bail conditions prevent them from undertaking their duties and/or attending the Trust's premises.

7.4.8 Exclusion of medical and dental staff is covered in the principles set out in Maintaining High Professional Standards in the NHS (2003) and the Trust's Disciplinary Procedure for Medical Staff.

## 7.5 **Disciplinary Investigation for Serious Concerns or Persistent Problems**

7.5.1 When it is determined a disciplinary investigation is required the commissioning manager must nominate an investigating officer to undertake the investigation. The investigating officer must be from outside the employee's immediate work team and have had no prior involvement in the issue to ensure impartiality. A HR representative will be assigned to support the investigating officer.

7.5.2 Where it is necessary to undertake an investigation, the employee must be informed in writing that an investigation is taking place and advised of the precise allegations against them. It is recognised that as an investigation develops the nature of the allegations may be clarified, change and/or be added to. Where this happens the employee will be kept informed of the developments in writing.

7.5.3 A decision will also be made as to whether it is necessary to make any referrals to agencies such as the adult protection team, children's services, local counter fraud specialist, LADO or the police (see sections 8 and 9). In such circumstances a joint investigation may be necessary. Parallel investigations are possible but have to be agreed with either the police or other external agency as appropriate. It must be noted, that if the matter is subject to a police or counter fraud investigation this may delay the internal Trust investigation.

7.5.4 Where the police are involved, guidance needs to be sought from them as to when, where and how formal internal interviews can be conducted. This does not stop staff from being asked to record what they know of the event in the form of a written document. Where it is deemed that a parallel investigation is appropriate all staff will be expected to cooperate fully with the investigation.

7.5.5 The investigating officer will endeavour to establish the facts and, where appropriate, interview the relevant witnesses. The investigation will normally include an investigatory interview with the employee. The investigation will be conducted in accordance with the Investigating Allegations Guidance.

7.5.6 The process will be dealt with as swiftly as is reasonably practicable in the circumstances, which will depend upon the nature and complexity of the allegations being investigated. If there are delays in the process the employee will be notified of the reasons for the delay.

7.5.7 Regular contact with the employee under investigation should be maintained by the commissioning manager. The format of this contact should be agreed at the outset of the investigation.

7.5.8 Once the matter has been investigated and an investigation report completed the commissioning manager will decide whether there is a case to be answered.

7.5.9 If it is concluded that there is no case to answer a meeting will be arranged by the commissioning manager with the employee to advise of this outcome and any other

measures, such as training, that need to be arranged. This conversation will be confirmed in writing to the employee and a letter placed on their personal file.

## **7.6 Disciplinary Hearing**

- 7.6.1 If an investigation concludes there is evidence to support the allegations against an employee, before any disciplinary decision is reached or action is taken (except for actions under the accelerated process) there will be a disciplinary hearing at which the employee will have the opportunity to state their case and to answer the allegations that have been made.
- 7.6.2 The commissioning manager will write to the employee to confirm this, including the confirmation of the allegations to be considered and the arrangements for the hearing. This letter, together with a copy the investigation report, will be sent to the employee no less than 7 calendar days prior to the hearing, normally by first class recorded delivery. Where it is expected there may be delays in convening the hearing the commissioning manager will ensure that the employee is advised accordingly.
- 7.6.3 A disciplinary panel will be arranged to hear the disciplinary case and to consider the allegations. A Chair, who has not been involved in the investigation, will be identified to preside on the panel at the hearing. The Chair will be Band 8a or above and will be more senior than the employee. The Chair will be supported by a HR representative who has not previously been involved in the investigation.
- 7.6.4 In some circumstances it will be necessary for a professional adviser to provide advice to the panel; this person will form part of the panel and can therefore participate in the panel's decision-making process.
- 7.6.5 Wherever possible the hearing should be arranged in a timely manner and at a convenient time. The employee should be advised in advance of their right to be accompanied by trade union official or a colleague who is an employee of the Trust (see section 11). The employee will also be provided with details of the allegations against them, the constitution of the disciplinary panel and a copy of the investigation report. However, in cases involving risk to witnesses or if a patient is involved documents may be presented anonymously or by way of a summary of the evidence.
- 7.6.6 Where witness statements have been provided the witnesses can be asked to attend the hearing. However, in cases involving risk to witnesses or if a service user/external witness is involved this may not be possible. In such circumstances the Chair will take such steps as are reasonably practicable to ensure that the panel has the opportunity to hear all of the available evidence.
- 7.6.7 The employee will be contacted regarding the date and time of a hearing. If the employee or their trade union representative/ supporting colleague cannot attend on this date one alternative date will be suggested. Reasonable efforts will be made to accommodate availability but reasonable timescales must be adhered to. If one of the panel is unable to attend the hearing on the revised date an alternative panel member will attend.

- 7.6.8 The employee can submit a written statement of their case for the panel to consider if they wish, although there is no obligation on the employee to do so. Any written statement of case from the employee must be received at least 3 days before the date of the hearing. It is suggested that an employee's statement of case should:
- Include a specific response to the allegation or to each allegation;
  - Be concise;
  - Refer to any supporting documents or statements in the appendices;
  - Number the pages and if appropriate include a contents page at the front;
  - Include the name(s) of any witness(es) that they intend to call in the hearing in support of their case.
- 7.6.9 The disciplinary hearing will be conducted in accordance with format set out in Appendix 2 of this policy.
- 7.6.10 If the employee or their trade union representative/supporting colleague need and adjustments or special requirements it is the employee's responsibility to advise the panel of this at least 5 days before the date of the hearing.
- 7.6.11 It is the responsibility of the employee to arrange for the attendance of any witness attending on their behalf.
- 7.6.12 The employee must make every effort to attend any hearing arranged under this policy. If the employee fails to attend a disciplinary hearing without good reason or fails to attend a rearranged hearing the Chair may proceed with the disciplinary hearing in the employee's absence and take a decision on the evidence available.

## 7.7 Possible Outcomes and Disciplinary Sanctions

- 7.7.1 The outcome of an accelerated process meeting or disciplinary hearing will be confirmed to the employee in writing within 7 calendar days of the meeting/ hearing, with a copy placed on the employee's personal file.
- 7.7.2 The Trust aims to treat employees fairly and consistently, therefore sanctions imposed on other employees for similar misconduct will usually be taken into account but will not be treated as a precedent. Each case will be treated on its own merits.
- 7.7.3 The outcome and any associated sanctions will depend on the details of the case and may be as follows:
- a) **No case to answer.**
  - b) **A case to answer but no formal action** – this may include the requirement for the individual to attend training, for enhanced support or supervision arrangements to be put in place or for the matter to be dealt with under another policy if appropriate. A copy of the outcome letter documenting this will be placed on the employee's personal file.
  - c) **First written warning** – in the case of minor infringements where the informal

process has failed or if conduct does not meet acceptable standards the employee will normally be given a first written warning. The first written warning will give details of the misconduct, the improvement or change in behaviour required, the timescale allowed for this and the right of appeal. The warning will also inform the employee that a final written warning will be considered if there is no sustained satisfactory improvement or change in behaviour. A copy of this first written warning will be kept on the employee's personal file but it will be disregarded for disciplinary purposes after 12 months, subject to satisfactory conduct and performance.

- d) **Final written warning** – if further misconduct of any kind occurs or conduct is still unsatisfactory, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify instant dismissal, a final written warning will normally be given to the employee by the disciplinary panel. This will give details of the allegations, will warn that dismissal (or some action short of dismissal) may result if there is a failure to improve satisfactorily or modify behaviour and will advise of the right of appeal. A copy of this final written warning will be kept on the employee's personal file but it will be disregarded for disciplinary purposes after 24 months, subject to sustained satisfactory conduct and performance.
- e) **Dismissal** – if further misconduct of any kind occurs or if conduct is still unsatisfactory or the employee still fails to reach the prescribed standards, or if the misconduct is sufficiently serious to warrant it, dismissal will normally result. The employee will be provided, as soon as reasonably practicable, with reasons for dismissal, the date on which the contract between the parties will terminate, the appropriate period of notice or pay in lieu of notice if the contract provides for this. The employee will also be provided with information about the right of appeal, including how to make the appeal and to whom.
- f) **Action short of dismissal** – in some cases where dismissal was a clear possibility but significant mitigating circumstances were presented to and accepted by the panel other sanctions short of dismissal can be implemented. These include, but are not limited to, demotion and associated loss of pay, transfer without pay protection either on a permanent or temporary basis, a change of work base (if available) without excess mileage protection, removal of responsibilities and/ or privileges associated with the employee's role/ position. These sanctions can be issued in conjunction with a written warning. The level of sanction should be proportionate to the severity of the offence.

7.7.4 If an employee is issued with a formal disciplinary sanction their pay progression will be deferred in accordance with the Trust's Pay Progression Policy. The employee will be notified of the deferral of pay progression in the letter confirming the disciplinary sanction issued.

7.7.5 The purpose of issuing a warning is to allow the opportunity for the employee to improve their behaviour in work within the period of the warning and future employment. If an employee is absent from work due to illness or special leave for a period of 28 calendar days or more the warning will be suspended until the employee returns to work. This will be detailed in the warning letter to ensure that the employee understands this.

7.7.6 If on completion of the investigation and disciplinary hearing the Trust is satisfied



that gross misconduct has occurred the result will normally be summary dismissal, i.e. dismissal without notice or, if provided for in the contract of employment, payment in lieu of notice.

- 7.7.7 In instances of a formal sanction being issued all correspondence relating to the disciplinary action, including any letters confirming the outcome, will be kept on the employee's personal file. The Trust can take into account any live warning on an employee's record when considering disciplinary sanctions.
- 7.8 Once the effective period of the warning is spent, the line manager will write to the employee to advise them that the warning has expired. The employee will be informed that the original outcome letter from the disciplinary hearing will remain on their personal file purely as a record that the process took place but any other paperwork relating to the management case or witness statements that may have been on their personal file will be removed.
- 7.9 There may be occasions where an employee's conduct lapses once the warning is no longer in force. Where a pattern of behaviour emerges and it is believed that there is an abuse of the disciplinary process, the employee's disciplinary record should be borne in mind in deciding the level for disciplinary action and the length of time the warning is in force.

#### **7.10 Appeals**

- 7.10.1 An employee who wishes to appeal against the decision from a disciplinary hearing should inform the Director of Human Resources and Organisational Development in writing, setting out the grounds of appeal in detail, within 7 calendar days of notification of the disciplinary outcome.
- 7.10.2 The appeal will be arranged in accordance with the Trust's Appeals Policy and the employee will be advised of the arrangements.
- 7.10.3 At the appeal any disciplinary penalty imposed will be reviewed but it cannot be increased. The Trust shall, whenever possible, ensure that whoever deals with an employee's appeal has had no previous involvement with the disciplinary decision.
- 7.10.4 The outcome of the disciplinary hearing will still stand until the appeal is heard. In the case of appeal against dismissal, if on appeal a decision is taken to re-instate the employee any loss of pay shall be paid. However, where dismissal is rescinded but replaced by a lower sanction there is no further right to appeal.

#### **7.11 Resignation During a Formal Process**

- 7.11.1 Where an employee leaves before an investigation or formal process is completed any reference provided for that employee will state they left whilst under investigation/before the process was concluded and there is an unresolved investigation into alleged misconduct.
- 7.11.2 In some cases it may be necessary to conclude the investigation following resignation of an individual. If the case indicates that it is serious enough to warrant a referral to a professional body or the DBS the individual will be notified of this and the referral made.

## **7.12 Where a Grievance is Raised**

- 7.12.1 Where a formal grievance is raised during a disciplinary process the appropriate action will be determined on a case by case basis.
- 7.12.2 The two processes may run concurrently, unless the content of the grievance is so significant in relation to the disciplinary case that a deferral of the disciplinary proceedings becomes inevitable.

## **8 REFERRAL TO A PROFESSIONAL BODY OR SAFEGUARDING ORGANISATION**

- 8.1 In cases that indicate there has been harm or risk of harm to children or vulnerable adults the Trust has a responsibility to notify the appropriate professional and/or statutory bodies. Such cases must be reported as a priority to the Trust's Safeguarding Lead, the Deputy Director of Nursing and/or the appropriate head of profession and the Deputy HR Director.
- 8.2 The outcome of a fact find, investigation, accelerated process meeting or disciplinary hearing may result in the need to refer an employee to their professional body or to an organisation concerned with the safeguarding of child and vulnerable adults. Such cases must be reported to the Deputy Director of Nursing or appropriate head of profession and the Deputy HR Director, and where appropriate the Trust's Safeguarding Lead, as a priority.
- 8.3 If any allegation has criminal implications there may also be a need to involve the police and where appropriate the Trust's Safeguarding Lead.
- 8.4 In cases of substantiated professional incompetence or misconduct the Trust has a responsibility to notify the appropriate professional and/or statutory bodies.

## **9 MISCONDUCT INVOLVING FRAUD, BRIBERY, CORRUPTION OR CRIMINAL ACTIVITIES**

- 9.1 Concerns where fraud, bribery, corruption, patient assault or criminal activity is suspected should be discussed as a matter of urgency with a HR representative who will advise on the involvement of the local counter fraud specialist or the police.
- 9.2 Certain alleged behaviours may constitute criminal acts and lead to police involvement. In circumstances where there is police involvement, management shall not be precluded from undertaking a disciplinary investigation in accordance with this policy.
- 9.3 An employee is required to inform their line manager immediately if they are arrested, reprimanded or cautioned by the police, made subject of criminal proceedings or convicted of a criminal offence during their employment with the Trust. Any information disclosed will be treated in the strictest of confidence and considered with the context of the employee's job. Failure to disclose such information may result in disciplinary action being taken. Line managers should always discuss such disclosures with a HR representative.
- 9.4 Where a criminal offence has allegedly been committed by an employee inside or

outside work, an investigation of the facts and circumstances surrounding the case will be conducted. Where it is established there is a case to answer a disciplinary hearing will normally be arranged. The hearing may take place before the conclusion of police involvement or it may be delayed pending the outcome of any police involvement.

- 9.5 Being arrested, charged or convicted of a criminal offence may not in itself give reason for disciplinary action. Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do their job and the impact on their professional code.

## **10 ALLEGATIONS AGAINST A TRADE UNION REPRESENTATIVE**

- 10.1 Where the allegations are made against a trade union representative no action other than placing the employee on alternative duties or suspension, if the allegation requires it, should be taken until the matter has been discussed with the Director of Human Resources and Organisational Development or the Deputy HR Director and the representative's full-time officer.

## **11 THE RIGHT TO BE ACCOMPANIED AT FORMAL MEETINGS**

- 11.1 Employees have a right to be accompanied by a colleague who is an employee of the Trust or a certified trade union official where they are invited or required to attend disciplinary interviews and hearings.
- 11.2 Before a hearing takes place, the employee must inform the employer who will be accompanying them if they are to be supported at the hearing.
- 11.3 Where the chosen accompanying colleague/ trade union representative cannot attend on the proposed date of the hearing, one alternative date will be suggested. Reasonable efforts will be made to accommodate availability but reasonable timescales must be adhered to.
- 11.4 The accompanying colleague/ trade union representative has a right to address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. The accompanying colleague/ trade union representative does not, however, have the right to 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.

## **PART 3**

### **12 DEFINITIONS**

- 12.1 Misconduct – is a breach of the Trust’s policies or rules, and / or a failure to observe standards of expected conduct at work, and / or a breach of professional codes of conduct (see Appendix 1).
- 12.2 Gross misconduct – is misconduct of such nature that the Trust is justified in dismissing the employee who commits the offence(s). Such offences may warrant summary dismissal without any prior warnings (see Appendix 1).
- 12.3 Commissioning manager – oversees the case from setting the terms of reference to the completion of the investigating officer’s report. The commissioning manager decides if there is a case to answer and whether or not it should proceed to a disciplinary hearing or accelerated process meeting.
- 12.4 Investigating officer – has responsibility for completing the investigation within the remit defined by the commissioning manager.

### **13 PROCESS FOR MONITORING COMPLIANCE**

- 13.1 This policy will be subject to joint monitoring and will be reviewed through the Human Resources Department and JNCF as per the review date.
- 13.2 The Human Resources team will maintain a casework list of disciplinary cases and reasons.

### **14 TRAINING**

- 14.1 Training will be delivered on an ad hoc basis as required.

### **15 ASSOCIATED DOCUMENTS**

- 15.1 This policy will be used in conjunction with the following Trust policies and documents:
- Appeals Policy
  - Dignity at Work Policy
  - Improving Performance Policy
  - Maintaining High Professional Standards – Medical Staff Policy
  - Pay Progression Policy
  - Redeployment Policy
  - Resolution Policy
  - Supporting Attendance Policy
  - Checklist for Amended Duties, Suspension and Accelerated Process

## **APPENDICES**

### **APPENDIX 1: DISCIPLINARY STANDARDS OF CONDUCT**

#### **Misconduct**

The following is a list of examples of behaviour that may be considered misconduct. Failure to comply with these standards may result in disciplinary action being taken. The severity / frequency of misconduct may escalate the offence into gross misconduct. Please note this list is not to be regarded as exclusive or exhaustive.

1. Minor breaches of Trust rules, regulations, policies or procedures including the Supporting Attendance Policy, IT policies and health and safety policies.
2. Failure to comply with the Trust's Smoke Free Policy, which includes not smoking on any Trust premises and only using electronic nicotine delivery systems or vaporisers, which can be used outside on Trust grounds, on agreed recorded breaks.
3. Any failure to meet the required standards of behaviour, conduct, performance or attendance which may be set out locally, in professional codes of conduct or Trust policies and procedures.
4. Failure to comply with a reasonable request/ instructions by an authorised person.
5. Poor timekeeping.
6. Abusive, objectionable or insulting behaviour.
7. Use of foul or abusive language.
8. Damage to, or unauthorised use of, Trust property. This includes excessive use of telephones for personal calls and excessive personal email, social media or internet usage when on duty.
9. Failure to follow the correct absence reporting procedures.
10. Unauthorised absence from work.
11. Failure to comply with the Trust values.
12. Failure to maintain registration with the appropriate professional body.

#### **Gross Misconduct**

The following is a list of examples of behaviour that may be considered as gross misconduct. Gross misconduct is regarded as so serious that an employee who is found guilty of having committed such an offence may be dismissed summarily (without notice or payment in lieu of notice) despite the absence of any previous warnings. Please note this list is not to be regarded as exclusive or exhaustive.

1. Any assault, violence (actual or threatened), threatening or menacing behaviour, or physical or verbal abuse or harm towards service users, members of the public,

visitors or other members of staff. This can be via any means and includes social media and email.

2. Physical violence, fighting, assault on another person or against another employee away from the workplace, anti-social activities such as brawling, indecency, serious verbal abuse.
3. Harassment, serious bullying, serious acts of discrimination towards service users, members of the public, visitors or other members of staff. Breach of the Trust's Dignity at Work Policy.
4. Sexual misconduct including sexual interactions of any kind with a service user known through the course of duty or another member of staff while on duty.
5. Professional negligence or misconduct or misrepresentation, including serious breaches any rules of conduct as set out by a professional body.
6. Causing loss, damage or injury through serious negligence.
7. Conduct which has or potentially would have compromised service user care.
8. Serious breach of or refusal to follow Trust rules, policies and procedures.
9. Serious insubordination, including repeated or serious failure to obey instructions. Unjustified refusal of a lawful and reasonable instruction which is within the employee's capabilities.
10. Deliberate and serious damage to Trust buildings, fittings, property or equipment, or the property of a colleague, service user, contractor or member of the public.
11. Misuse or unauthorised use of Trusts property or resources, including excessive personal use or inappropriate use of the internet or email facilities contrary to Trust policy, unauthorised use of a Trust vehicle, or the consumption of food and beverages intended for service users/visitors.
12. Contravention of the Trust's IT policy including deliberate access, transmitting, displaying or downloading of offensive/illegal material via any internet, e-mail service or whilst using Trust property, i.e. laptop.
13. Unauthorised computer access, including accessing, disclosing, deliberately divulging or otherwise using confidential or sensitive information on a fellow employee, service user, or supplier without authority.
14. Employees disclosing or obtaining data or personal sensitive data on employees, service users or other Trust information unless it is considered to be essential for the execution of an employee's role or provision of service. Information should only be obtained or disclosed on a 'need to know' basis. Employees should not undertake any action which will breach data protection legislation; internet/intranet policy; or the Trust's Data Protection and Confidentiality Policy.
15. Serious breach of confidence (subject to the Public Interest Disclosure Act 1998 which is referred to in the Whistleblowing Procedure) including unauthorised use or disclosure

of confidential information; failure to ensure that confidential information in your possession is kept secure; and deliberately divulging to the media or a competitor Trust confidential and/or business sensitive information.

16. Being rendered incapable of working normally while on duty or on Trust premises due to the influence of alcohol or drugs or other similar substances (not medically prescribed).
17. Serious breach of health and safety rules and/or serious misuse of safety equipment.
18. Breach of civil or criminal law. In the case of criminal offences, where such offences (whether committed during or outside the employee's hours of work for the Trust) adversely affects the Trust's reputation, the employee's suitability for the type of work they are employed by the Trust to perform or their acceptability to other employees or to service users or students. Failure to disclose any previous convictions and/ or any current and/ or ongoing criminal convictions, cautions, or involvement in police investigations.
19. Convictions or professional sanctions whether or not relating to activities outside work which have a direct bearing on a person's employment and duties with the Trust and/or bring the reputation of the Trust into disrepute.
20. Working while contravening an enactment or breach of rules laid down by statutory bodies such as erasure from a professional register or loss of driving licence where driving is an essential component of the duties of the post.
21. Engaging in other employment which breaches the Trust's Additional Employment Policy, which adversely affects, hinders or conflicts with the interests of the Trust without obtaining the consent of the employee's line manager.
22. Fraud, bribery, corruption, theft, unauthorised removal with intent to steal, dishonest handling, dishonest appropriation, obtaining by deception, money or property belonging to the Trust or involving money or property belonging to other employees, service users or visitors on Trust premises. This includes the fabrication of expense claims and incorrectly recording worked time on electronic rosters/timesheets.
23. Submitting a deliberately misleading and/or inaccurate self-certification form or medical certificate.
24. Sleeping on duty.
25. Presentation of information, e.g. on social networking sites, about the employee or the Trust that may present the Trust in an unfavourable light serving to damage the reputation of the Trust, its services and /or its wider workforce.
26. Deliberately making false statements, or dishonest conduct in relation to the Trust, its employees, service users, customers or suppliers.
27. Contravention of the Trust's Standards of Business Conduct.
28. Misrepresentation at any time, including at the time of appointment, of previous positions held, qualifications held, date of birth, declaration of health, or failure to

disclose a criminal offence or pending criminal action in accordance with the provisions of the Rehabilitation of Offenders Act 1974.

29. Failure or refusal to disclose any of the information required by your employment or any other information that may have a bearing on the performance of duties.
30. Any other action which brings the Trust into disrepute and/or causing a breakdown in the relationship between employer and/or employee and/or fellow employees.
31. A failure to exercise a duty of care which adversely affects / could potentially have affected the safety or well-being of service users, staff or visitors; or the perpetration of a hoax, or practical joke, or any other negligent act which results in serious disruption of the service.



## **APPENDIX 2: DISCIPLINARY HEARINGS FORMAT**

In order to ensure consistency throughout the Trust, the following arrangements have been agreed with the trade unions through the JNCF and must be followed for every disciplinary hearing.

It should be noted that, in exceptional circumstances, a disciplinary hearing, which has been arranged, and a date agreed, may be re-arranged at the request of either side on one occasion. However, in the case of a requested second postponement, the hearing will proceed unless there are exceptional circumstances.

It should be noted that hearings will be digitally recorded.

All parties should conduct themselves in a professional manner and if they fail to do so, after warnings have been given, can be asked to leave by the Chair and the proceedings continue without them.

Should the panel feel that they need further information or clarity they can refer the case back to the investigating officer before commencing the hearing or before the panel reaches a decision.

Should the panel agree to accept additional evidence that could significantly affect the outcome of the case they can refer the case back to the investigating officer for further investigation or seek further information before continuing with the hearing.

The following running order may be used:

### **INTRODUCTIONS**

- a) The Chair facilitates introductions all parties present.
- b) The Chair goes through the format for the hearing.

### **MANAGEMENT**

- a) Investigating officer presents management case.
- b) Investigating officer calls witnesses, if any.
- c) Employee or employee's representative may question investigating officer/ any witnesses.
- d) Members of the panel may question any investigating officer/ witnesses.
- e) Investigating officer may re-examine their witnesses on any matters brought out in (c) and (d) above.

### **EMPLOYEE**

- a) Employee or employee's representative states case.
- b) Employee or employee's representative calls witnesses, if any.

- c) Investigating officer may question employee/ employee's representative/ any witnesses.
- d) Members of the panel may question employee/ employee's representative/ any witnesses.
- e) Employee or employee's representative may re-examine their witnesses on any matters brought out in (c) and (d) above.

### **SUMMING UP**

- a) Investigating officer sums up the case.
- b) Employee or employee's representative sums up the case.

In this summing up neither party may introduce new matters or information.

### **DECISION**

- a) The parties to the hearing will withdraw to enable the panel to consider the case privately.
- b) If any points requiring clarification arise, BOTH sides must be recalled together, even if only one side is concerned.
- c) Prior to a decision being reached, the Chair will ask the employee whether they wish to receive the decision in writing or whether they wish both sides to be recalled to hear the decision. If the decision is made that both sides are to be recalled, this will take place within 7 calendar days. If the employee confirms that they shall be notified of the panel's decision in writing, this will be within 7 calendar days of the panel reaching a decision.
- d) The decision must always be clearly set out including the reasons why this is felt appropriate. The panel must provide a written decision in all cases that must be sent to the employee, and trade union representative/ companion if agreed by the employee, within 7 calendar days of the panel reaching its decision. The employee must also be notified of their right of appeal.

## **APPENDIX 3: GUIDANCE ON RECORDING INVESTIGATORY INTERVIEWS AND HEARINGS**

### **Introduction**

The recording of interviews and hearings facilitate full and more accurate records for the investigating officer as well as for the interviewee(s) and, in the case of hearings, the panel members.

It is intended to use the facility of recording only for the transcribing of interviews being conducted as part of a formal investigation and, where appropriate, subsequent hearings. This is in order to aid in the production of accurate records of interviews and hearings. However, it will only be used where the individual concerned is happy to do so and recording can be suspended at the request of either party for a break in the interview/hearing.

1. All staff should be informed that investigatory interviews or hearings will be digitally recorded when arrangements are made to set up the meeting.
2. Once the equipment is set up for use, a check must be made to test that it is fully functional. At the start of any interview or hearing the date, time and location should be recorded.
3. All parties present should introduce themselves to enable later voice identification.
4. Once the recording for the investigatory meetings have been transcribed, the transcript should be forwarded to the employee or witness.
5. If there is a concern regarding accuracy of the transcribing the employee or witness will be given the option to listen to the recording.
6. Recordings of interviews will be held securely within the Human Resources Department until the conclusion of the investigation and subsequent hearing if required.
7. The recording produced as part of an investigation will not go forward to a hearing; the transcript will be used.