**Appendix D**

**Disciplinary Guidance Documents**

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**Appendix D1**

**Roles and Responsibilities**

* 1. It is fundamental that staff on all levels take appropriate action regarding any potential disciplinary matters in line with the Disciplinary Policy and Procedure of the Trust.
  2. **All Staff**

1.2.1 All staff have a responsibility to fully cooperate with this Disciplinary Policy and Procedure and to report to their Line-Manager any actions which could potentially warrant disciplinary action whether concerning themselves or others. In the event that the member of staff involved is that persons Line-Manager, the member of staff should report the allegation to the next manager in line or their Service Director.

* + 1. Staff are required to inform their line manager immediately if they:
* Are arrested for, charged with, cautioned or convicted of a criminal offence; and/or
* Have had a complaint made about their clinical/professional practice or behaviour elsewhere (not ordinarily know to the Trust); and/or
* Are under investigation or review by any regulatory body e.g. General Medical Council; and/or
* Have behaved in a manner which may bring the Trust into disrepute.
* Are involved in the recruitment of a relative or partner
* Are being investigated about their immigration status (e.g. work permit/visa expires or invalid/out of date passport).
  + 1. Staff are expected to provide their manager with full details of the matter and keep them informed of any developments in this respect. Failure to disclose such information may be regarded as gross misconduct and result in disciplinary action being taken against them up to an including dismissal from the Trust.
    2. Failure to disclose information can also constitute a criminal offence and referrals may be made to the LCFS to investigate.
  1. **Line-Managers**
     1. Line-Managers are expected to take appropriate action when a potential disciplinary allegation is made. This will involve:
* Gathering the relevant preliminary documentation without unreasonable delay
* Informing People and Culture and their Service Director of the potential allegation;
* To attend and fully participate in the initial planning meeting;
* For allegations of fraud and bribery, inform the LCFS or Chief Finance Officer;
* In cases of suspension, complete a Staff Change Form immediately for the employee so that this is recorded on ESR.
* To provide appropriate support to the staff member who the allegations are made against (please refer to Appendix A)
  1. **Investigating Officers**
     1. The responsibilities of Investigating Officers include:
* To attend and fully participate in the initial planning meeting, including completing the Disciplinary Investigation Planner Tool (**Appendix D5**), in conjunction with the Commissioning Manager and the People Relations Advisor;
* To raise with Commissioning Manager if there is a conflict of interest with them undertaking the investigation
* To complete an unbiased investigation with the clear understanding that it is not their role to look for evidence that supports the management case. The investigator must make efforts to look for and highlight systemic issues/failures that may have contributed to the matter under investigation. Investigations should not be rushed, but should be completed as soon as practicably possible, without unreasonable delay;
* To interview the employee and any potential witnesses;
* To collate any other documentation relating to the allegation;
* To write the management statement of case;
* To liaise with the People Relations Advisor for any advice needed when undertaking the investigation and writing the management statement of case;
* To send the draft report to the appropriate People Relations Advisor for comments;
* To complete the final report to send to the People Relations Advisor who will then forward this to the Commissioning Manager for a decision;
* To invite and ensure attendance of witnesses to the hearing should this be conducted.
* To inform all parties involved in the hearing which witnesses have been invited at least 5 working days before the hearing date
* To present the management statement of case at the disciplinary hearing.
* If there are two investigating officers, they will need be agree which investigating officer will present and ask questions at the hearing. If the investigating officer requires the support of a People Relations Advisor at the hearing, they are not there to present the case. (It is not expected that three people will attend to support the presentation of the management case.)
  1. **The People and Culture Department**
     1. The role of the People and Culture Department is to advise and assist managers, Investigating Officers and the Commissioning Manager in dealing with and investigating disciplinary matters, with the aim of ensuring fairness and consistency in application throughout the Trust. People and culture are there to advise all parties involved in the process, but the responsibility for decisions made and actions taken ultimately lies with the individual, investigator, commissioning manager, Chair etc.
     2. Managers, Investigating Officers and Commissioning Managers should consult with their local People Relations Advisor at the earliest opportunity in all cases of suspensions, investigations and where formal or informal disciplinary action is contemplated.
  2. **Commissioning Manager**
     1. The responsibilities of the Commissioning Manager include:
* To chair the initial planning meeting, including completing the Disciplinary Investigation Planner Tool (**Appendix D5**), in conjunction with the Investigating Officers and the local People Relations Advisor;
* To complete the Pre-Investigation Checklist under the Fair Treatment Process with the support of the local People Relations Advisor
* In conjunction with the People and Culture team and the line manager, deciding if suspension is warranted or if an alternative to suspension is necessary;
* If suspension is necessary, the Commissioning Manager should complete the Record of Suspension/Review Checklist (Appendix B6) as soon as practicably possible. The Commissioning Manager should liaise with the Associate Director of People and Culture and the relevant Professional Lead before suspension is agreed.
* The Commissioning Manager should then instruct the relevant Deputy to conduct the suspension meeting and confirm the suspension in writing to the employee within 5 working days. The suspension letter should offer support to the employee, including details of the Employee Assistance Programme provider and the Occupational Health Service.
* Informing the employee of the allegations and the process to be followed;
* Along with the relevant People Relations Adviser appoint and inform the Trust’s Investigating Officers of the allegation and the need to investigate;
* To ensure that there is no conflict of interest for the Investigation Officers.
* Keep up to date with the progress of the investigation by regularly checking with the Investigating Officers that they are adhering to the timing schedule agreed in the Investigation Planner Tool, at the planning meeting.
* To consider the utilisation of the Early Resolution Process up to the hearing stage, where possible

1.6.2 Following a thorough review of the investigation report, the Commissioning Manager will make a decision as to whether the matter needs to be dealt with under a formal disciplinary hearing or if the matter can be dealt with informally.

* + 1. Please note that when a service user and/or carer raises allegations involving a member of staff about misconduct which prompts a disciplinary process, upon completion of the disciplinary process, the Commissioning Manager is responsible for appointing a nominated deputy to feedback the findings and outcome of the process, subject to confidentiality issues, to the service user and/or carer who triggered the process.
  1. **Chair of the Disciplinary Hearing** 
     1. The responsibilities of the Chair of the Disciplinary Hearing include:
* Ensuring they are available (as much as is reasonably possible) to attend disciplinary hearings that they are allocated to Chair.
* Send Disciplinary Hearing Invite Letter to the employee along with a copy of the final disciplinary report and all appendices at least 10 working days before the hearing.
* Arrange for each panel member to receive a copy of the final disciplinary report and all appendices at least 10 working days before the hearing. This process is managed administratively with the support of the local People Relations Advisor. To provide a hard copy of the report to the staff member and staffside representative on request.
* Chase the employee if they have not confirmed their attendance at the disciplinary hearing by the deadline. This process is managed administratively with the support of the local People Relations Advisor.
* If the employee cannot attend the scheduled dates, the Chair is required to inform the appropriate persons i.e. other panel members and the Investigating Officers and send an invite letter to a re-scheduled disciplinary hearing. This process is managed administratively with the support of the local People Relations Advisor
* Chair the disciplinary hearing using appropriate guidance and templates as included in their designated panel pack
* Make a timely decision, on the same day of the hearing and inform the employee of the outcome at the hearing (if possible)
* In cases of upheld allegations of fraud, discuss and inform the employee that the Trust may seek to recover the amount via Payroll and/or through other means i.e. through the civil or criminal courts
* Will check with People and Culture representative on the panel whether there are any live warnings of a similar nature on the employee file.
* Draft the disciplinary hearing outcome letter within 5 working days of the decision being made, with support from other panel members
* In some cases, the panel may need to take a longer adjournment in order to consider all the evidence presented to them and seek further clarification. In such cases the employee should be sent a holding letter, notifying them of any delays which will not exceed a further 5 working days
* Discuss a professional body referral i.e. NMC with the appropriate professional lead
* Discuss a DBS referral with the appropriate safeguarding lead
* Draft and submit a management response to an appeal if appropriate
  1. **Chair of the Appeal Panel**
     1. The Appeal Chair will have responsibility for ensuring that all parties attending the appeal hearing (excluding witnesses) receive a copy of the grounds for appeal, management response and any other written submissions 5 working days before the hearing. This process is managed administratively by the Executive Assistant to the Director of People and Culture. It is at the Appeal Chair’s discretion whether or not to consider documents that were not submitted at the time of the disciplinary hearing or any documents submitted after the appeal documents are sent out.
     2. The purpose of the appeal will be to consider the grounds for appeal and the Appeal Chair will decide whether based on this to either uphold or overturn the decision of the disciplinary panel. As such, at the appeal hearing the Appeal Chair’s will ensure that the proceedings do not usually spill over into a rehearing of the disciplinary case unless required by natural justice and will have responsibility to Chair the hearing and ensure that all parties adhere to the grounds for appeal and due process.
     3. Whilst it is the responsibility for appellant or disciplining officer to call any relevant witnesses, these should be disclosed to the Appeal Chair in advance of the appeal hearing and the Appeal Chair may make a decision on whether it is appropriate to call those witnesses or not at this stage, bearing in mind their relevance to the grounds for appeal and whether it is an introduction of new evidence; unless the evidence was not previously known or available

**Appendix D2**

**Informal Approach / Standard Setting**

* 1. The aim of standard setting at the informal stage is to obtain a mutually acceptable remedy and thereby avoid the need for formal disciplinary action. This will take the form of an informal discussion between the member of staff and the line manager.

Minor forms of misconduct such as lateness, unauthorised absence, behaving inappropriately in meetings etc. may be dealt with initially in this setting.

* 1. It is good practice for managers to deal with issues of minor misconduct informally. In many cases, an informal conversation between a manager and the member of staff will be enough. Managers should ensure that they have looked into all of the facts before discussing the issue(s) with the member of staff. An informal interview should then be initiated by the line manager and conducted, with the employee in question, in private. It is important the interview be a two-way discussion, with the emphasis on finding ways in which the employee can remedy any shortcomings. The employee should be advised of the standards expected of them, given support, encouragement and, where appropriate, training to meet these standards. The discussion should be summarised in the form of a letter which should be sent to the employee within 5 working days and a copy retained by the manager.
  2. When adopting the informal stage of the policy and procedure, managers should ensure that instances of minor misconduct are dealt with promptly, with members of staff made fully aware of why their actions have a detrimental effect to the Trust. This is also an opportunity to outline to the member of staff the expected standards to be complied with.
  3. Examples of where an informal approach may be considered include:
* When it is evident that management action is needed within the whole ward/department rather than against one employee
* It is apparent that local procedures and guidelines are not in place
* It is clear that the misconduct is as a result of a Trust/management failure
* When advice and counselling for the individual would be more appropriate and effective
* It is reasonable to conclude that others would have acted in the same way
* This is a first offence and very out of character for the individual
* Where an employee's conduct does not improve but the concern remains minor, the Manager may wish to take a more structured approach, which should be documented in a letter/file note, for example:
  + Further discussion and advice
  + Referencing information to assist (e.g. ELFT Trust Values, Trust’s Standards of Business Conduct, professional codes of conduct etc.)
  + Coaching or refresher training
  + Objective setting
  + Workplace support
* These actions should be part of a two-way conversation with constructive input from both parties and the outcome should be to provide:
  + A clear understanding of what is expected of the employee in the future
  + A framework of support and a clear understanding of what action may be taken if the employee fails to improve in the identified areas
* A brief file note of any agreed action points or informal conduct discussion notes will be kept for reference purposes and a copy given to the employee. This will not be considered to be disciplinary action and is not subject to appeal.
* Should the misconduct persist or matters appear to be more serious than originally thought, the formal procedure may need to be invoked and advice should be sought from the People and Culture Department.
* It is important that the informal approach is used consistently and not for more serious offences such as:
  + Safeguarding Incidents
  + Substance Misuse
  + Allegations of Theft/Fraud
  1. Where informal discussions have not succeeded, the manager will meet the member of staff to hold a ‘meeting of concern’ and will talk to the employee about the issue (for guidance, please refer to **Appendix D2ii**).
  2. Further action is only appropriate where informal action has not led to the necessary improvement or if the matter is more serious.

**Appendix D2 (i)**

**Holding a Meeting of Concern**

In cases where the misconduct/behaviour was not serious enough to require an investigation under the Disciplinary Policy and Procedure, the line manager may feel that it is necessary to hold a meeting of concern with the employee concerned. This meeting should include the setting of appropriate standards of work behaviour and is an opportunity to make the employee fully aware of why their actions have a detrimental effect on the Trust.

The manager should aim in the meeting to obtain a mutually acceptable remedy and avoid the need for formal disciplinary action. The manager must ensure that they have looked into all the facts before discussing the issue(s) with the member of staff.

The meeting of concern should ensure that instances of minor misconduct are dealt with promptly. Minor misconduct may include poor time keeping; unauthorised absence; inappropriate behaviour.

Further disciplinary action will be appropriate when the actions discussed in the meeting of concern has not led to the necessary improvement, if any further misconduct arises whilst the meeting of concern letter is on file, or if the matter becomes more serious.

1. **General guidance**

* The manager should seek advice from the People Relations Advisor prior to the meeting of concern The manager should inform the employee at the meeting what the concerns are; what policies/procedures have been breached and the impact of these breaches
* Reasons for unacceptable conduct should be explored and the manager should try to establish if organisational reasons are a cause.
* The manager should explore if any support can be offered to the employee to improve their conduct/behaviour i.e. if the issue is poor time keeping, it may be possible to look at flexible working arrangements.
* The employee should be informed of what the required standards are; and warned that the consequences of failing to meet required standards may result in disciplinary action being taken against them, and that a marked improvement is expected.
* The manager should follow this up in writing to the individual concerned within 5 working days, and again warn them, in writing, that should any further misconduct issues arise whilst the meeting of concern letter is on file, this may lead to formal disciplinary action being taken under the Trust’s Disciplinary Policy and Procedure, and may result in action being taken against them up to and including dismissal.
* The letter should be copied to the People and Culture department so this can be placed on the employees file for 6 months.
* As a manager it is imperative that accurate records are kept relating to the employees standard of work behaviour and conduct, as without this, there will be no evidence to base a decision to move to the formal part of the process

**Appendix D2 (ii)**

**Meeting of Concern Template Letter**

<**Managers contact details**>

**Website:** <http://www.elft.nhs.uk>

**First Class & Recorded Delivery**

<Name>

<Address>

<Address>

<Postcode>

<Date>

Dear <Name>

**Re: Outcome following Meeting of Concern**

Following our meeting I am writing to confirm the outcome of our discussions on <**date**> which was held in line with the Trust’s Disciplinary Policy and Procedure.

I informed you that confidentiality was essential and asked that you do not discuss this meeting with anyone else. I also gave you details of the Trust’s employee assistance programme, HELP, who you may contact for support.

At the meeting I highlighted my concerns over your (timekeeping and late arrival at work/conduct in relation of ISSUE/the alleged incident between yourself and NAME on DATE) **<Describe the unsatisfactory conduct, making it clear what it is that is unsatisfactory>.** <**please give specific example(s)>.** Your cooperation in attending this meeting was appreciated.

We therefore discussed your perspective on this and you stated that **<summarise the member of staff’s viewpoint – for example whether they agreed and any response you had to this>.** We also discussed whether there were any possible contributing factors and you informed me that **< summarise their response e.g. you did not think there were/describe what they thought these could be and the agreed support that would be put in place as a result>.**

I explained the difficulties your behaviour/conduct <**delete as appropriate**> causes the department. I also explained <**anything else discussed**>.

To help you to achieve and sustain these improvements we also agreed supportive measures, details of which are included in the attached action plan.

I explained that I expect these improvements to be made immediately and I would monitor your progress that I would expect you to sustain the required improvements. I asked that you highlight to me any difficulties you may be experiencing or any additional support that you may need to be able to sustain this improvement.

I explained that a copy of this letter will remain on your file for a period of 6 months.

I also stated that failure to make the necessary improvements, and meet the agreed standards of behaviour may result in formal disciplinary action being invoked, and may result in formal action being taken against you, up to an including dismissal. Should you not adhere to this, I must advise you that I shall have no option but to consider the matter formally in accordance with the Trust’s Disciplinary Policy and/or Staff Performance Improvement &Capability Policy.

I hope that the outlined improvements are made so that no further action will be required.

Should you have any queries regarding the contents of this letter please do not hesitate to contact me.

Yours Sincerely

Line Manager

**Title**

**Appendix D3**

**Early Resolution Process (Agreed Outcome)**

1. The success of the Trust relies on all employees taking individual responsibility in order to improve the quality of service and personal experience of care for all patients/service users. Each 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.
2. Early resolution is the preferred pathway for dealing with staff who acknowledge failure on their part.
3. The early resolution option will be available up to the hearing stage of the disciplinary process.
4. This standard operating procedure for Personal Responsibility Framework (PRF) has been developed to encourage employees to become involved in creating and developing an open culture with a focus on improvement throughout the Trust.
5. This process can apply when the employee accepts and acknowledges failure. Where this is the case, an early resolution meeting will be arranged and will provide an opportunity for the allegations to be discussed, intentionality to be explored and mitigation to be provided with the aim of reaching agreement on an acceptable disciplinary sanction based on the nature/seriousness of the case.
6. The employee would need to confirm their admission and acceptance of the agreed outcome in writing. If they refuse or do not agree with the sanction imposed, then case will progress to the next stage of this policy i.e. a formal disciplinary hearing.
7. This Early Resolution Process must be considered by the Commissioning Manager with the full agreement of the employee and their Trade Union Representative. The local People Relations Advisor will support the Commissioning Manager in this process
8. The Early Resolution Process should only apply where all of the following statements apply:

* The issue is not considered serious enough to warrant likely dismissal from the Trust but warrants some alternative to dismissal. For guidance, this reference should be made to the examples of gross misconduct in **Appendix B**.
* The issue is likely to be considered to be serious enough to warrant a letter to be placed on the person’s file recording what has occurred and outlining any objectives or actions to be taken.
* The facts of the case are not in dispute.
* The individual concerned has acknowledged and admitted their mistake and taken responsibility for their actions
* The person concerned is willing to learn from the mistakes admitted and is prepared to accept any reasonable objective that may be set as a result of the incident or issue.
* These may include attending training, working on a particular project or some other specific piece of work deemed appropriate

1. The manager and the individual with advice from the People Relations Advisor and the individual’s trade union representative must be in agreement that the Early Resolution Process can be used. If there is disagreement to the statements above then the formal procedure will be used.
2. Where there is agreement to an agreed outcome meeting, the following should be followed:

* Both parties must be in agreement to proceed in this way. It needs to be understood that in choosing to follow the Early Resolution Process that the staff member is demonstrating, potentially foregoing a full investigation and hearing. This decision is final and there should not be a later referral to a disciplinary hearing or appeal on this issue.
* The relevant Commissioning Manager with the authority to issue the disciplinary sanction must be aware of and agree to the proposal for an agreed outcome meeting
* Agreed outcomes can only be considered for cases where dismissal is not a likely outcome
* Cases must not interfere with, or compromise ‘due process’, e.g. audit
* A meeting should be held at which both parties (i.e. employee and their representative and the Commissioning Manager) will be present, together with a People and Culture representative. The line manager may or may not be present but must be aware of the fact that the meeting is taking place.
* At the meeting, all information relevant to the allegation(s) must be available and both parties must have a full opportunity to discuss all the issues, in accordance with the normal principles of natural justice.
* The meeting can be adjourned and reconvened at any time; if for example, there is a need to obtain further information.
* The relevant Commissioning Manager will write to the employee and their representative setting out the sanction and the duration of this.
* The employee will be required to sign this letter, accepting the offered sanction, within 7 calendar days, referred to as ‘the cooling off’ period. If the individual wishes to withdraw from the agreed outcome process, the Commissioning Manager will make the decision whether or not a full Disciplinary Hearing is necessary.
* In the event that the employee does change their mind, then the normal disciplinary hearing process will be followed.
* Following the meeting and ‘cooling off’ period, the Commissioning Manager will write to the employee to confirm the disciplinary sanction and get their written agreement to the outcome (see template letter as **Appendix D3a**).
* The disciplinary sanction issued, and accepted by the employee, will have the same status as those obtained via a hearing, except that there will be no right to appeal.
* All relevant documentation, including a record of the meeting, must be retained in the usual manner on the personal file, with copies sent to the People and Culture department and the Trade Union representative.

**Appendix D3(a)**

**Early Resolution Process / - Template Letter**

Dear [insert name],

**RE: Agreement between [insert employee’s name] and East London NHS Foundation Trust.**

I am writing to confirm the outcome of the meeting which you attended on [insert date] and at which you were accompanied by your Trade Union representative/work colleague [insert name].

The purpose of the meeting was to consider the allegations that: [insert specific allegations]

BELOW IS AN EXAMPLE ONLY:

*Following the preliminary investigation, you admitted you were absent from work on two occasions in the last month and that you made no contact with your line manager to explain the reasons for your absence which was, therefore, regarded as unauthorised, and to agree, in the light of your acceptance of these allegations, an appropriate outcome.*

The purpose of this letter therefore is to confirm that you have been issued with a (first/final warning) which will run from the date of this letter for a period of …………… months for future disciplinary purposes. AND/OR an action plan for ………………. will be implemented and an appropriate review process, agreed by all parties, will be followed.

During the meeting, you accepted the allegations made against you and, at the end of the meeting you indicated your acceptance of this agreed outcome/warning as appropriate.

I must advise you that any further misconduct could lead to further disciplinary action being taken against you.

On the basis that you have accepted the above misconduct and given that this agreement is a mutually acceptable outcome between both parties, you have accepted that there is no dispute as to the facts or sanction; and that you do not need to appeal. Please refer to Appendix 6 of the Trust’s Disciplinary Policy & Procedure (attached) regarding the ‘cooling off’ period.

It is accepted by both parties that all matters which have arisen during the course of this meeting are confidential and should continue to be treated as such.

Would you please sign and date a copy of this letter to signify that you are in agreement with the above, and return to the People and Culture Department.

Yours sincerely

Disciplinary Officer

Signed: (Employee) ……………………………. Date: ……….………

Signed: (Disciplining Officer) …………………... Date: ………………

**Appendix D4**

**Fair Treatment Process**

* 1. As soon as an alleged breach of discipline occurs, the line manager should gather the relevant preliminary documentation and inform the Head of Service of the relevant discipline i.e. Borough Lead Nurse/Head of Nursing, who would be classed as the “Commissioning Manager”.
  2. Once the preliminary documentation has been gathered, if there is a potential case to answer, the Commissioning Manager, in conjunction with the local People Relations Advisor Team will complete the Pre-Investigation checklist and review the flowchart **(Appendix** **B4i)**
  3. Following the outcome of the pre-investigation checklist, if an investigation is to be commenced, the commissioning manager will appoint either one or two investigating officers, depending on the complexity of the investigation. A planning meeting should then be held with the Commissioning Manager, the People Relations Advisor and the investigating officer(s).
  4. If suspension is necessary, the Commissioning Manager should complete the Record of Suspension/Review Checklist (**Appendix B7**) as soon as practicably possible, by completing the Pre-investigation checklist and send this to the Associate Director of People and Culture and the appropriate professional lead. For Nursing this must be the Chief Nurse and for medical staffing this must be sent to the Medical Director.
  5. If the employee is to be suspended, the Commissioning Manager should instruct the relevant Deputy/Service Lead (Band 8a and above) to conduct the suspension meeting and confirm the suspension in writing to the employee within 5 working days. The suspension letter should offer support to the employee, including details of the Employee Assistance Programme provider and the Occupational Health Service.
  6. Following the suspension of the employee (whether paid or unpaid), the line manager will be required to complete a staff change form to confirm the suspension, which will ensure that the employee’s smart card is de-activated during this process.
  7. The timescale of an investigation will vary, depending of the scope of the investigation. a timing schedule for the investigation will be agreed with the investigating officer(s) to ensure that the investigation is completed as soon as possible and without unreasonable delay.
  8. A letter is then sent to the employee by the Commissioning Manager to inform them of the specific allegation(s) that will be formally investigated and the predicted timescale etc.
  9. The Commissioning Manager will then send a letter to the investigating officer to formally appoint them.
  10. Following the completion of the investigation, the Commissioning Manager will assess the report and make a decision on the outcome, which could include:
* No further action
* Informal action i.e. meeting of concern
* Agreed Outcome Meeting
* Proceed to a disciplinary hearing
  1. If the allegations are found to be unsubstantiated, the Commissioning Manager will not take the case any further and will explain this to the member of staff in writing within 5 working days of the decision being made. In some cases, although a formal investigation under the disciplinary policy may not be necessary as the conduct was not seriously sufficient to warrant this, it may however, be necessary to hold an informal meeting of concern as outlined in **Appendix D2**.
  2. The Commissioning Manager should complete the Post-Investigation Checklist (**Appendix D4-ii**) within 48 hours of the outcome being sent to the employee, and this is to be sent to the Associate Director of People and Culture.

**Appendix D4 (i)**

**Process - Pre-investigation checklist**

A pre-investigation checklist has been developed to assist managers to decide on initial action to take with staff involved in an incident that may lead to an allegation of misconduct. It is intended to promote a consistent and fair approach and identify at an early stage the extent to which systems failures or procedural flaws are a contributing factor.

This checklist is to be completed within two days of the incident by the person who will potentially investigate the matter, a senior manager within the directorate (8c and above) who will not have any further involvement in the case and with support from the employee relations advisory service.

A senior manager from another area can be substituted for a directorate manager.

Separate checklists should be carried out for each individual involved in the incident.

When discussing the individual concerned the use of their name or gender should be avoided where possible. For example, refer to them/they. It may be necessary to outline their role as it may be relevant to the discussion however if this would identify the individual then consider referring to the role in generic terms if possible e.g. clinical, therapy, admin. Any identifiable details should be added at the end of the discussion.

1. Outline a summary of the incident/allegations being tested:

|  |
| --- |
|  |

1. Conduct an assessment to inform the decision on next steps (all questions should be answered):

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Indicators for testing | Yes | No | Unclear | Consideration |
| If there was an adverse outcome for a patient is it evident that the individual intended to cause harm or damage? |  |  |  | If yes or unclear at this stage then begin an investigation to establish the facts. |
| Did mental or physical ill health or substance abuse cause or contribute to an incident? |  |  |  | Underlying factors should be taken into account when deciding on the next step.  If yes or unclear then a discussion should take place with the individual to see if they think an underlying condition may be a factor.  OH can provide advice on the likely impact of any underlying medical condition to an incident. |
| Is there a protocol/procedure/policy that refers specifically to the expected standard of behaviour / conduct? |  |  |  | Consider whether the policy/protocol/policy is clear.  Where this is not the case, consider reviewing the protocol/procedure/policy rather than the individual conduct. |
| Is it evident that the individual was aware of the rule or required standard? |  |  |  |
| Is it evident that the individual departed from protocol/procedure/policy? |  |  |  |
| Is there evidence that the individual took an unacceptable risk? |  |  |  | Where unacceptable risk was taken in breach of a policy/protocol/procedure, be clear which aspects are being investigated. |
| Would an individual from the same professional group with the same skills and level of experience behave in the same way in similar circumstances? |  |  |  | Where the answer is yes, consider reviewing practices/systems within the department rather than just the individual’s conduct. |
| Has the individual demonstrated on previous occasions the required skills and knowledge? |  |  |  | If it is evident that the individual did not have the knowledge/skills or awareness then it may be necessary to transfer to the performance procedure. |
| Is this a repeat of a similar incident for the individual that has previously been dealt with informally? |  |  |  | If not, informal interventions should be considered in the first instance. |

Based on the above assessment it has been decided to:

Please put an x for all that apply

|  |  |
| --- | --- |
| 1. Manage the situation informally with the individual (advice can be sought from ER on the available options) |  |
| 1. Conduct an investigation into allegations of misconduct on the part of an individual |  |
| 1. Early resolution consideration |  |
| 1. Notify author or policy/protocol of requirement to make it clearer |  |
| 1. Conduct an investigation into departmental systems/practices with a view to making recommendations |  |
| 1. Other |  |

Notes (please put any relevant notes below)

|  |
| --- |
|  |

If the managers involved are unable to reach agreement on the next steps then the checklist should be escalated to the Service Director. They can liaise with their HRBP for advice and then make a decision on the best course of action.

Please provide details of decision if referred to Service Director.

|  |
| --- |
|  |

If an investigation into allegations of misconduct is to take place then please complete below:

Where there is an alleged breach of trust policy please list with reference to the section of the policy, the area that is under investigation

|  |
| --- |
|  |

Please outline the specific allegations that will or have been put to the individual:

|  |
| --- |
|  |

Allegations need to be related to those that are listed within the disciplinary policy. If the allegations are not covered within the disciplinary policy, please discuss this with the ER team. The individual should be aware of the allegations against them and if they change at any time the individual should be informed and have the opportunity to respond to them.

Are there any barriers to the investigation being completed within 2 weeks? If so, please outline the actions that will be taken to minimise any delays.

|  |
| --- |
|  |

Further actions for the investigator:

1. Log the case with ER and ensure that investigation training has been undertaken by investigator
2. Ensure that you engage with the individual in a constructive way so that they feel supported and updated throughout.
3. Provide regular written updates to the individual throughout the investigation (minimum fortnightly)
4. Consider whether any duties may need to be adjusted to either prevent further occurrences or to support the staff member. Ensure they are clear, time limited and kept under review.
5. Provide a copy of this completed form to the individual.

This form was completed by:

|  |  |  |
| --- | --- | --- |
| Role | Name | Date |
| Potential investigator |  |  |
| Directorate senior manager |  |
| People Relations advisor |  |

Add after discussion has been concluded

|  |  |
| --- | --- |
| Role | Name of individual discussed |
|  |  |

**Appendix D4 (ii)**

**Post-Investigation Process**

A post-investigation checklist has been developed to assist managers to decide on the final recommendations for an investigation report. It is intended to promote a consistent and fair approach and identify the extent to which systems failures or procedural flaws are a contributing factor.

This checklist is to be completed by the investigator, a senior manager within the directorate (8c and above) who will not have any further involvement in the case with support from a member of the employee relations advisory service. Where possible it should be the original team that carried out the pre-investigation checklist.

1. Outline a summary of the incident/allegations being tested (should be copied from the investigation report):

|  |  |
| --- | --- |
|  | |
| Have the allegations changed since the initiation of the investigation? | y/n |
| If so, has the individual been notified of this and had the opportunity to respond to all of the allegations? | y/n |

1. Conduct an assessment to inform the decision on next steps:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Indicators for testing | Yes | No | Unclear | Consideration | |
| If there was an adverse outcome for a patient is it evident that the individual intended to cause harm or damage? |  |  |  | If there was no intent to cause harm then a reflective statement should be requested so the individual’s intentions can be fully considered. This may be over and above any statement provided as part of the investigation. | |
| Is it evident that mental or physical ill health or substance abuse cause or contribute to an incident? |  |  |  | Underlying factors should be taken into account when deciding on the next step.  If unclear then a discussion should take place with the individual to see if they think an underlying condition may be a factor.  Ideally OH will have been asked to provide advice on the likely impact of any underlying medical condition to an incident. | |
| Is there a protocol/procedure/policy that refers specifically to the expected standard of behaviour / conduct? |  |  |  | Consider whether the policy/protocol/policy is clear.  Where this is not the case, consider reviewing the protocol/procedure/policy rather than the individual conduct. | |
| Is it evident that the individual was aware of the rule or required standard? |  |  |  |
| Is it evident that the individual departed from protocol/procedure/policy? |  |  |  |
| Is there evidence that the individual took an unacceptable risk |  |  |  | Where unacceptable risk was taken in breach of a policy/protocol, be clear which aspects are being investigated. | |
| Has the individual demonstrated on previous occasions the required skills and knowledge |  |  |  | If it is evident that the individual did not have the knowledge/skills or awareness then it may be necessary to transfer to the performance procedure. | |
| Would an individual from the same professional group with the same skill/experience behave in the same way in similar circumstances? |  |  |  | Where the answer is yes, consider reviewing practices/systems within the department rather than an individual’s conduct. | |
| Is this a repeat of a similar incident for the individual that has previously been dealt with informally? |  |  |  | If not, informal interventions should be considered in the first instance. | |
| Does the investigation report make reference to the relevant sections of policies/protocols/procedures where there is an alleged breach? | | | | | y/n |
| Are all allegations drawn or linked to those listed within the disciplinary policy? | | | | | y/n |
| Does the summary of findings relate specifically to the allegations listed? | | | | | y/n |
| Have all sources of evidence and witnesses been explored? | | | | | y/n |
| Has the individual been kept up to date throughout the investigation? | | | | | y/n |
| Has the individual admitted to a failure on their part? If so has an Early resolution meeting been offered? | | | | | y/n |
| If no to any above please comment and outline any further action to be taken as a result: | | | | | |

Based on the above assessment a decision has been taken:

Please put an x for all that apply

|  |  |
| --- | --- |
| 1. No case to answer |  |
| 1. Early Resolution meeting offered. |  |
| 1. Manage the situation informally with the individual & follow up in writing |  |
| 1. Further investigation before deciding on the next steps |  |
| 1. Progress the case to a disciplinary hearing for review |  |
| 1. Carry out a review of the policy/protocol/procedure to make it clearer |  |
| 1. Conduct an investigation into departmental systems/practices with a view to making recommendations |  |
| 1. Other, please state: |  |

Notes (please put any relevant notes below)

|  |
| --- |
|  |

This form was completed by:

|  |  |  |
| --- | --- | --- |
| Role | Name | Date |
| Investigator |  |  |
| Directorate senior manager |  |
| People Relations advisor |  |

|  |
| --- |
| If the reviewers are different\* to those that carried out the pre-investigation checklist please provide a brief explanation: |

\*reviewers may be different due to leave or availability

Add after discussion has been concluded

|  |  |
| --- | --- |
| Role | Name of individual discussed |
|  |  |

A copy of this form should be given to the individual or attached as part of an investigation report.

**Appendix D5**

**Disciplinary Investigation Planner Tool**

Planning is the key to meeting the investigation deadline. Assigning time in your diary now, to carry out interviews, gather information, assess evidence, write the report and scan appendices, can be useful. Also setting early dates (with 5 working days’ notice) to meet with employee and witnesses and keeping some flexibility in your diaries is often prudent, as sometime parties may ask for the interview to be rescheduled, which may affect your timetable.

**Investigation is in relation to:**

*Disciplinary investigation into the following allegations:*

*1. ….*

*2. …*

**Investigating Officer(s):**

**Commissioning Manager and People and Culture (who the report needs to go to):**

**Terms of Reference:**

1. To establish through investigation, whether there appears to be a case to answer or not in respect of the allegation(s) against the employee concerned; AND
2. To present the findings of the investigation and to establish if there is evidence to support the allegations.

The ***Investigating Officer(s)*** will lead the investigation, seek advice from the nominated People Relations Advisor, seek OH/other advice as appropriate, gather evidence appropriately, inform the disciplining officer if any information comes to light to review suspension/restrictions to work or any obstacles to investigation process, arrange meetings, draw up and send correspondence, chair and prepare for meetings (e.g. by drawing up questions), take or arrange note taking at meetings, check meeting notes for accuracy and send to employee/witness to check and sign, take responsibility for ensuring projected timescales are met and keep all parties informed of progress, gather relevant physical evidence and policies, write up the investigation report and submit to disciplining officer with all appendices, if the matter proceeds to a hearing arrange for the attendance of management side witnesses & ensure witnesses have copies of their statements and notes of their meetings and are emotionally prepared for the process.

The ***People Relations Adviser*** will provide specialist advice to the Investigating Officer(s), can advise on planning an investigation, correspondence, meeting and investigation case content, evidence, writing the investigation and can seek further advice from People and Culture colleagues/solicitors, as required.

**Plan for Investigation**

The following policies/standards or codes of conduct/performance may be relevant:

(E.g. observation policy, job description, NMC codes of conduct etc.)

The following documents/evidence may be relevant: (E.g. patient notes, observation records, phone records, preliminary documentation etc.)

The following people may be witnesses (you may wish to consider if best to interview employee or witnesses first, and the order of witnesses; also you should ask employee who they think relevant to interview and if they have any specific questions for them):

Any initial anticipated obstacles to investigation (e.g. annual leave dates of investigating officers, annual leave/sickness absence of employee/witnesses etc):

**Investigation Timescales:**

* The investigation should normally be completed as soon as possible. Inform the Commissioning Manager and People and Culture Advisor **immediately** if you encounter any obstacles.
* Please give 5 working days’ notice of meetings to allow staff to find representation.
* Dates should be set aside in diaries at the outset to avoid delays.

|  |  |  |  |
| --- | --- | --- | --- |
| **Task** | **Estimated completion date** | **Actual completion date** | **Comments (include reasons for delays and remaining tasks)** |
| Review preliminary information and complete investigation planner tool |  |  |  |
| Schedule Interview with employee accused |  |  |  |
| Schedule interviews with witnesses |  |  |  |
| Schedule interviews with patient/relatives (if applicable) |  |  |  |
| Send interview notes to employee accused |  |  |  |
| Receive signed interview notes from employee accused |  |  |  |
| Send interview notes to witnesses |  |  |  |
| Receive signed interview notes from witnesses |  |  |  |
| Obtain further evidence/documents (e.g. rota’s, policies, codes of conduct, patient notes, supervision records etc.) |  |  |  |
| Consider the evidence (or to discuss with People and Culture department if required) and identify inconsistencies |  |  |  |
| Schedule 2nd interviews (*if required i.e. to clarify points after interviews*): |  |  |  |
| Send interview notes for 2nd interviews (if applicable) |  |  |  |
| Receive signed interview notes for 2nd interviews (if applicable) |  |  |  |
| Consider evidence and draft report |  |  |  |
| Send first draft report to People Relations Advisor |  |  |  |
| Consider People Relations Advisor amendments/suggestions and finalise report |  |  |  |
| Scan all appendices and send these along with the report to People Relations Advisor |  |  |  |

**Appendix D6**

**Suspension / Exclusion from Duty**

* 1. There are a number of circumstances when it may be appropriate to remove an employee from the workplace in order to facilitate an investigation or for some other reason. In most cases the employee may be able to remain in the workplace, either in their existing role, on restricted duties, with increased supervision, or moved to another role temporarily. Any action must be made mindfully with regard to the employee’s confidentiality, with only the necessary parties being informed. Circumstances where removal from the workplace may be appropriate include the following:
* Immediately following an allegation of gross misconduct;
* Where the conduct of an employee places them at serious risk (e.g. aggression/drunkenness);
* Where the continued presence of the employee could put other employees or patients or the general public at risk;
* Where the employee’s presence might reasonably be considered to hamper the investigation;
  1. All decisions to suspend should be reviewed by the Head of People Relations and the Associate Director of People and Culture before suspension occurs. Once this is confirmed then the suspension should be reviewed every four weeks by the Commissioning Manager, who should then complete the Suspension/Review Checklist after every suspension review (**Appendix D7),** giving a clear reason why the employee cannot be returned to the workplace. This information should be provided as part of the quarterly workforce report for the SDB.
  2. As soon as the decision is made to suspend an employee, the line manager should complete a Staff Change Form immediately to ensure that the suspension is recorded on ESR and to ensure that the employee is paid appropriately.
  3. Staff who are placed on paid suspension are not permitted to undertake any work during their contracted hours.
  4. The Investigating Officer should inform the Commissioning Manager when any new information comes to light during their investigation which may have an impact on the suspension decision. In this event, a discussion should be had with the Commissioning Manager and the Line Manager as appropriate, about bringing the employee back to work if there are no immediate risks identified. Confirmation of this decision should be recorded and given to the employee prior to their return. The employee's line manager is responsible for inducting and supporting the employee back into the workplace and ensuring that the return to work runs as smoothly as possible, except in the case of redeployment where a named manager will be given this responsibility.
  5. Alternatively, if an employee wishes to request a formal review of their suspension, they may do so by writing to the disciplining officer stating why they feel an alternative to suspension should be considered. The request will be reviewed by the Commissioning Manager and should take place within 5 working days of the request being received. The Commissioning Manager should communicate the decision to the employee within 5 working days of the review decision being made. If the decision results in the continuation of suspension, the reasons why this decision has been made will be stated in the letter.
  6. The Investigation Officer should provide an update of their investigation progress to the Commissioning Manager every 2 weeks using the Disciplinary Investigation Update Tool (**Appendix D5**).
  7. **Pay during Suspension**

Suspension from duty is not a disciplinary measure and will normally be on full pay. Suspension must not be used to imply guilt or misconduct; the purpose being to investigate the full circumstances of the allegation which has been made. Suspension pay will be based on an average earning over the previous three-month period, taking into account any enhancements or bank shifts undertaken during that period. If the previous three months does not reflect the individuals normal working pattern i.e. there have been significant absences, then a more reflective three month period will be chosen.

Any reduction in pay due to sickness during this three-month period should not have an impact on suspension pay. If prior to being suspended an employee was on reduced sick pay the manager must inform the payroll department clearly stating in the change forms that the suspension pay should be calculated based on an average of earnings three months prior to sickness commencing.

* 1. **No Pay during Suspension** 
     1. A condition of continued payment during suspension is that the employee must be available during Monday to Friday, 9am to 5pm to attend any meeting and/or hearing that may be convened as part of any investigation. It therefore follows that if an employee is not available and does not have authorised leave their pay may be stopped for the duration of unavailability.
     2. The Trust reserves the right to suspend without pay when there is a prima facie case (i.e. the evidence establishes that the misconduct may have occurred and warrants further examination) established i.e. through a Local Counter Fraud Services report and Chief Finance Officer approval is given. Although this list is not exhaustive, this may include the following circumstances:
* Where an employee does not have the right to legally work in the UK
* Or their professional registration has been suspended (revoked by a professional body)
  + 1. In such instances, all reasonable steps will be taken to ensure that there are no delays in the process.
  1. **Confidentiality**
     1. Managers and staff should be mindful of the confidential nature of the suspension with only employees who are crucial to the investigation being informed, and any other body if applicable in accordance with legislation.
  2. **Entry to Trust Premises whilst Suspended**

The employee will not be allowed to enter the Trust’s premises or premises where the Trust provides a service, other than with the prior permission of the manager who conducted the suspension or the Service Director or his/her nominated deputy, nor make contact with other staff or colleagues involved in the investigation. This includes undertaking any bank or agency shifts within any locality within the Trust. Other than in exceptional circumstances, the employee will be granted permission to enter the premises to consult with his or her representative.

* 1. **Medical Treatment Whilst Suspended**

These requirements do not apply in instances where an employee, as a patient, is required to attend Trust premises in order that they may receive treatment.

* 1. **Annual Leave during Suspension**
     1. A suspended member of staff may take annual leave during suspension provided they obtain permission and give adequate notice to their Line-Manager who will inform the Investigating Officer. Except in exceptional circumstances cancellation of a pre-planned investigation meeting or hearings for annual leave should be avoided. Whilst on annual leave the suspended member of staff will be relieved of attending any meetings required as part of the investigation or a hearing. The process will be continued on their return.
     2. Staff who are suspended will not be able to carry over more than five days annual leave from one leave year to the next unless there are exceptional circumstances. In order to carry forward more than five days leave to the next year, the member of staff must apply in writing to the Head of Service.
     3. Staff who are granted annual leave during a period of suspension will be entitled to full pay – therefore the line manager of a person suspended without pay should liaise with People and Culture department to ensure the appropriate steps are taken for the employee’s pay to be reinstated during this period of annual leave.
  2. **Sickness during Suspension**
     1. Should an employee become ill during their suspension they must inform the suspending manager to allow management to make the necessary arrangements to keep the investigation as short as practicable.
     2. Whilst on suspension, the employee must continue to comply with the Trust’s Sickness and Absence Policy and local reporting procedures. This includes the provision of medical certificates to the employee’s line-manager as required.
     3. The investigating officers for the case must in this instance refer the employee to the Occupational Health Department to seek advice as to whether the employee can continue with the investigatory meetings and or/hearings throughout the period of their sickness absence.
  3. **Study Leave during Suspension**

Employees who have Trust study leave booked during their period of suspension should not attend unless permission has been granted to do so by the Disciplining Officer. It is the employees’ responsibility to request permission to attend study leave during the period of suspension. However, staff may complete statutory and mandatory training whilst on suspension. If this requires attendance at a course this should be arranged by the line manager.

**Appendix D7**

**Record of Suspension/Review Checklist**

Please complete the following checklist when considering any case of suspension.

|  |  |  |  |
| --- | --- | --- | --- |
| Employee Name |  | | |
| Employee Job Title, Banding & Location |  | | |
| Allegation & date |  | | |
| Manager authorising suspension & date |  | | |
| People and Culture representative consulted & date |  | | |
| Date of suspension |  | | |
| Date suspension to be reviewed & by whom |  | | |
| **Consideration** | | **Y/N** | **Comments**  **Continue on a separate sheet as necessary** |
| Does the employee present a threat, danger or a risk to themselves or others? | |  |  |
| Is there a risk that the employee might interfere with or compromise an investigation by remaining at work? | |  |  |
| Is there a concern that further serious misconduct or offences might occur? | |  |  |
| Would this allegation be regarded as gross misconduct? | |  |  |
| Have criminal charges/professional regulatory body complaint been brought against the employee? | |  |  |
| Is their job also considered to be a ‘vocation’? | |  |  |
| Have all alternatives to suspension been considered?  If so, what?  For what reason(s) have these been discounted? | |  |  |
| In the case of a patient safety incident did you use the Incident Decision Tree? If yes please summarise the outcome | |  |  |
| Will the suspension be paid or unpaid? If unpaid, please provide clear explanation of reasons why | |  |  |

**1st Suspension Review (2 weeks after suspension date):**

|  |  |
| --- | --- |
| Date suspension reviewed and by whom |  |
| Is suspension to continue? |  |
| What information was considered when deciding on suspension review outcome? |  |
| Date employee informed of suspension review decision (if returning): |  |

**2nd Suspension Review (2 weeks after 1st Suspension Review):**

|  |  |
| --- | --- |
| Date suspension reviewed and by whom |  |
| Is suspension to continue? |  |
| What information was considered when deciding on suspension review outcome? |  |
| Date employee informed of suspension review decision (if returning): |  |

**3rd Suspension Review (2 weeks after 2nd Suspension Review):**

|  |  |
| --- | --- |
| Date suspension reviewed and by whom |  |
| Is suspension to continue? |  |
| What information was considered when deciding on suspension review outcome? |  |
| Date employee informed of suspension review decision (if returning): |  |

**4th Suspension Review (2 weeks after 3rd Suspension Review):**

|  |  |
| --- | --- |
| Date suspension reviewed and by whom |  |
| Is suspension to continue? |  |
| What information was considered when deciding on suspension review outcome? |  |
| Date employee informed of suspension review decision (if returning): |  |

**Appendix D8**

**Investigation Procedure**

1. **INVESTIGATION**

Where a formal investigation is necessary, the Commissioning Manager will consult with the local People Relations Advisor and an Investigating Officer will be appointed (see section 1.2 below). If the case is complex which includes interviewing a number of witness and multiple allegations a Co-Investigating Officer may be appointed. The member of staff subject to a disciplinary investigation must inform their witnesses and Trade Union Representative. Staff suitable for undertaking investigations will be selected from the list of accredited Investigating Officers held by the People and Culture Department.

* 1. **Investigating Officer**

The Investigating Officer(s) must be someone who would not be potentially implicated in the investigation. For example, the Investigating Officer(s) should not be a member of staff who could be a potential witness or who may have been involved in the suspension.

It is the Investigating Officer’s responsibility to ensure that an unbiased, timely, thorough investigation is completed as soon as practicably possible. The investigating officer must be clear that it is not their role to look for evidence to support the management position. They must also make a deliberate effort to look for and highlight systemic failings that may have contributed to the issue/event under investigation. The Investigating Officer(s) should timetable the investigation as a priority and this must be agreed with their Line-Manager.

Formal investigations will not be conducted by the line manager of the person under investigation.

* 1. **Trained Investigating Officers**

The Trust will develop and maintain a list of trained Investigating Officers. Investigating Officers must have received formal training or gained suitable experience in this field.

* 1. **The Responsibility of the Investigating Officer(s)**
     1. **Step One: Initiating the Investigation**

The Investigating Officers should:

* + - * Complete the Investigation Planner Tool included in their guidance pack with support from the local People Relations Advisor, seek advice from the local People Relations Advisor throughout the investigation process and report to the Commissioning Manager on a fortnightly basis with an update of progress using the Investigation Update Tool.
      * Inform the employee in writing that they will be conducting the investigation into the allegations, which will involve collating evidence to support and/or refute the allegations, and that this will include collecting statements where appropriate and conducting interviews where necessary;
      * Request that the employee submits a written statement to be considered as part of the investigation if they haven’t already done so;
      * Ask the employee if there are any individuals that they would recommend that the Investigating Officer(s) should request a written statement from and state the reason why that person is relevant to the case. NB: It is ultimately the Investigating Officer’s decision whether or not they request/interview these witnesses. Also, this does not preclude the Investigating Officer(s) from seeking other witness statements pertaining to the allegations; and
      * Inform the employee that they will be invited in writing to attend an investigatory meeting with the Investigating Officers to give them a further opportunity to state their case before the investigation is concluded.
      * Complete the investigation as soon as is reasonably possible.
    1. **Step Two: Obtain Information**

The Investigating Officers should:

* Obtain signed and dated statements from the employee and any witnesses if these have not already been submitted as part of the investigation into the alleged conduct/performance issues;
* Collect any other documentation, supporting evidence from witnesses and any other individuals in relation to the alleged misconduct;
* Advise all witnesses that may be required to attend any hearing on request of the investigating officers or staff representatives.
* Write to the employee and witnesses, requesting their attendance at a investigatory meeting, in addition, reaffirming the allegation/s, outlining the purpose of the meeting and informing the employee of their right to representation at this meeting.
* Interview the employee to clarify the contents of their statement and to add any other further information they feel may be important to the case;
* Interview witnesses to clarify the contents of their statements where necessary;
* Notify interviewees that they may be asked and required to attend any hearing by either investigating officer or staff representative.
  + 1. **Step Three:**

The Investigating Officers will also be expected to:

* Write up an investigatory report (refer to section 1.10 below) as soon as reasonably practical after the completion of the investigation
* Present the investigatory report should it proceed to a disciplinary hearing, which will include preparing questions to be asked to witnesses and respondent at the hearing
* If there are two investigating officers, they will need be agree which investigating officer will present at the hearing. If there is only one investigating officer the investigating officer will be supported by the People Relations Advisor at the hearing.
* Invite the necessary witnesses to the disciplinary hearing. This will include any witnesses the member of staff concerned has put forward.
* Be responsible for ensuring that witnesses attend the disciplinary hearing
* To inform the member of staff concerned who the witnesses are five workings days prior to the hearing.
  1. **Notice of Investigation Meetings**

The Investigating Officer(s) should give the employee at least 10 working days’ notice of an investigation meeting to allow them time to find representation. If the employee’s representative is unable to attend on the proposed date, the Investigating Officers should offer one more alternative time and date for the meeting. Should the Trade Union representative or work colleague be unavailable on the rescheduled date, the meeting may go ahead in their absence.

Should the employee fail to attend the investigatory meeting at the rescheduled date then they will be advised that they may not be given a further opportunity to provide their evidence and the report may be completed in their absence.

Investigation meetings may take place in person or virtually, whichever is the most suitable for all parties.

* 1. **Witnesses**

Witnesses should be advised of their right to representation prior to being asked for information, and informed that any statement or information gathered may be used in a disciplinary hearing and will be given to the employee against whom the allegations have been made. Witnesses should be informed that they will need to attend a hearing, if requested.

If a witness is asked to provide evidence as part of the investigatory process, they must comply with this request. Failure to do so may lead to disciplinary action being taken against them.

* 1. **Service User involvement within the Disciplinary process**

If an allegation is made by a Service User or a Service User is witness to an incident that is subsequently investigated under the Trust Disciplinary Procedure, then the Investigating Officer(s) will liaise with the Service User’s Lead Clinician or Consultant Psychiatrist **(**where appropriate**)** in order to determine the suitability of their participation within the Disciplinary Investigative interview. If the Service User’s involvement is approved, then the Investigating Officers should ensure that they conduct the interview in the presence of an appropriate Service user advocate.

* 1. **Other related or unrelated disciplinary issues**

If any other related or unrelated disciplinary issues emerge during an investigation, a discussion will take place with the People and Culture Team as to whether these should form part of the same or a separate investigation. The Trade Union representatives will be consulted if required.

* 1. **Investigation Report**

Following the investigation, the Investigating Officer(s) will produce a report, this will be sent to the relevant People Relations Advisor. The investigation should include signed and dated statements and interviews from the following:

* The employee against whom the allegations have been made;
* Any person who can offer relevant information, especially anyone who witnessed the alleged offence, or was on duty at the time the alleged offence took place.
* In addition, copies of staff rota’s, timesheets and relevant policies and procedures may be included as a part of the report.
* Confirmation to the Line-Manager/Disciplining Officer as to whether the allegations have substantiated or not.

It will not be appropriate to proceed to a disciplinary hearing until the investigation is complete, regardless of how straightforward the case might appear.

**Appendix D9**

**Disciplinary Hearings**

* 1. **Purpose of the Hearing**
     1. The purpose of the hearing is to ensure that all the relevant facts and the circumstances of the allegations are fully heard and to decide:
* Whether or not disciplinary action should be taken; and
* The appropriate level of disciplinary action.
  + 1. The procedure to be followed in a disciplinary hearing is attached as Appendix 13.
  1. **Notice Period of a Disciplinary Hearing**
     1. If it is decided that a formal disciplinary hearing is needed to fully conclude the investigation into the allegation it should be held as soon as possible after the conclusion of the investigation. In order to speed up this process, a rota system will be implemented. This rota will comprise of all Chairs, Specialist Advisors and People Relations Advisors from across the Trust, who are eligible to sit on disciplinary panels. This rota similar will follow the same booking system as the current appeal hearing process.
     2. All disciplinary hearing panel members will have had no previous involvement in the case.
     3. Written notice of the disciplinary hearing will be provided to the employee. Written notice of the disciplinary hearing will be provided to the employee, giving a minimum of 10 working days’ notice to allow them to arrange representation if they wish.
     4. Two dates for a disciplinary hearing will be offered in the invite letter. If no response is received from the employee, the hearing will go ahead on the second, latest date scheduled. Before going ahead in the employee’s absence, they must have been given the opportunity to send their written submissions to the panel for consideration.
     5. The Disciplinary Panel will consider all ‘in time’ written submissions by the employee, and/or their representative and the Investigating Officer (consideration of late submissions by either the Investigating Officer or the employee will be at the sole discretion of the panel).
     6. The Chair reserves the right to change the panel members as necessary.
     7. Dependant on circumstances, the hearing may take place in person or virtually.
  2. **Documentation**
     1. Any documentation to be used at the hearing must be made available to all parties, including the employee’s representative where this is known, at least 5 working days in advance of the hearing. No supplementary information should be tabled at the hearing unless it is agreed by the panel in exceptional circumstances. If new evidence does come to light in the period between scheduling the hearing and this taking place, the disciplinary hearing may need to be delayed to allow sufficient time to investigate and absorb this new information.
  3. **Disciplinary Panel**
     1. The Disciplinary Panel will comprise of the Chair, a People and Culture representative and, if appropriate, a professional adviser. A separate note-taker may also be present.
  4. **Witnesses** 
     1. Both the investigating officers and the employee and/or their representative will have the opportunity to call and question witnesses at the hearing. The employee and/or their representative will need to inform Management side which witnesses they want to invite to the hearing. Management will arrange for the witnesses to attend the hearing and facilitate time-off from duty as appropriate.
     2. At least 5 working days in advance of the hearing, both the investigating officer(s) and the employee are required to inform the panel, and each other, who they intend to invite to the hearing as witnesses.
     3. Failure to arrange for witnesses to attend will not delay the process, with the Chair proceeding on the basis of all the information gathered/heard.
     4. Bank staff who are required to attend investigatory meetings or hearings will be paid at their normal hourly rate.
  5. **Notification of Outcome**
  6. The disciplinary hearing outcome will normally be notified to the employee at the end of the hearing and in writing as soon as practicable, and no later than 5 working days. This letter will be copied to the employee’s representative. In some cases the panel may need to take a longer adjournment in order to consider all the evidence presented to them and seek further clarification. In such cases the employee will be notified of any delays which will not exceed a further 5 working days.
  7. The letter should confirm the sanction and indicate:
* The nature of any misconduct;
* Reference to previous informal/formal actions and/or warnings still current;
* That further disciplinary action up to and including dismissal would normally follow further misconduct;
* The course of action required to meet the standard of conduct expected;
* If necessary, actions taken short of dismissal and likely periods of review (e.g. demotion);
* That the first or final warning will be retained on the personal file for a period of 12 months, after which it will be removed, if no further disciplinary action is taken; (refer to para 12 of the disciplinary policy).
* The employee's right of appeal and guidance on how the right may be exercised.

**Appendix D10**

**Formal Disciplinary Hearing Procedure**

##### Preparation

The employee should be given a minimum of 10 working days’ notice of the date, time and location of the disciplinary hearing should be forwarded the management case in writing a minimum of 5 working days prior to the date of the hearing. The hearing may take place in person or virtually, dependent on circumstances. The employee may also submit their case, if they wish to do so a minimum of 10 working days before the date of the hearing. This must be sent directly to the Chair of the panel who will forward a copy to the Investigating Officer(s).

Before the disciplinary hearing is convened the Disciplining Officer should give the employee the opportunity to indicate how they respond to the allegation; that is whether the allegation is contested. If at this point an employee agrees and acknowledges failure/wrong doing, an Early Resolution Process meeting will be offered.

At the start of a disciplinary hearing, the Discipline Officer should provide a further opportunity for the employee to indicate how they respond to the allegation. This is not a statement of case. If the employee does not contest the allegation the Disciplining Officer may decide that it is not necessary to hear the management case and may move directly on to the mitigating circumstances stage. The employee should be advised that as they are not contesting the allegation there will be no opportunity to test the evidence and ensure they are aware of this before progressing to the mitigating circumstances stage.

During the hearing, the employees’ representative may make representations to the panel and ask questions on their behalf but should not answer any questions for the employee. The employee has the opportunity to confer with their representative in private at any time during the hearing.

##### The Hearing

The following order of hearing should be used as a guide:

* 1. Introductions
  2. The purpose of the hearing is explained
  3. The procedure to be followed is explained
  4. The Investigating Officer’s Case is presented
  5. The Investigating Officer(s) call and question their witnesses
  6. The employee and/or their Representative can question the Investigating Officer’s witnesses
  7. The Panel can question the Investigating Officer’s witnesses
  8. The IO(s) have the right to re-examine their witnesses, after which the witnesses leave the room
  9. The employee and/or their Representative can question the Investigating Officer(s)
  10. The employee’s case is presented
  11. The employee or their Representative calls and questions their witnesses
  12. The Investigating Officer(s) can question the employee’s witnesses
  13. The Panel can question the employee’s witnesses
  14. The employee and/or their Representative have the right to re-examine their witnesses, after which the witnesses leave the room
  15. The Investigating Officer(s) and/or the Panel can question the employee
  16. The Investigating Officer’s case is summed up
  17. The employee’s case is summed up
  18. The employee is asked if there is anything further they wish to add
  19. An adjournment is called
  20. All parties return and the decision of the Panel is communicated
  21. The employee is informed of their right of Appeal and that the decision will be confirmed in writing

In some cases it may be necessary to take further time to consider the case, in order to seek further clarification. In such cases the employee will be notified of any delays which will not exceed a further 5 working days. The decision should be confirmed in writing within 5 working days of the decision being made.

In some cases it may be necessary to adjourn the hearing if the panel find it necessary to carry out any further investigation in light of any new points that have been raised at the hearing. If this is the case, the employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

**Appendix D11**

**Appeal Rights and Process**

* 1. Staff have the right of appeal against any formal disciplinary action taken against them and will be informed of this at the disciplinary hearing. The purpose of the appeal will be to consider the grounds for appeal as outlined in section 1.5 below and to consider the decision made by the disciplinary panel. The decision of the Appeal Hearing will be final.
  2. In cases of appeal against a dismissal, the date of which the dismissal takes effect will not be delayed pending the outcome of the appeal hearing.
  3. An appeal hearing will not usually be used to re-hear the evidence unless the employee or their representative, has additional material to introduce which was not available at the time of the disciplinary hearing that the panel deems necessary to hear; or if it is necessary to re-hear the evidence in the interest of natural justice. The appeal hearing could be a review of this information or a complete re-hearing of the case. This decision will rest with the chair of the appeal panel.
  4. The time limit for lodging any appeal is 15 working days from the date of the disciplinary hearing outcome letter.
  5. Written notice of the appeal should be lodged with the Director of People and Culture with sufficient details of the reasons for the appeal using the appeal pro-forma (**Appendix D11a**). The appeal should be based on one or more of the following grounds:
* The disciplinary policy and procedures were not followed and was not taken into consideration by the panel
* Disciplinary panel outcome decisions
* Breach of Natural Justice
  1. The Director of People and Culture will decide whether the reasons for Appeal warrant an Appeal Hearing. Where the Director of People and Culture decides there are no grounds for appeal the employee will be informed in writing within 10 working days or receipt of the letter.
  2. Where an Appeal hearing is required the Trust will endeavour to hold an appeal hearing as soon as reasonably practicable.

1. **Appeal Panels**
   1. In cases where the appeal is against a written warning, an appeal hearing will be arranged. The panel members will have had no previous involvement in the case.
   2. In cases where the appeal is against a dismissal, at least one Director of the Trust and the People and Culture Business Partner or their nominated representative will attend and act in an advisory capacity. Trust Directors can include Non Board Directors, Non-Executive Directors and Executive Directors. The other panel member can be an Assistant, Associate or Deputy Director. The panel members will have had no previous involvement in the case.
   3. In cases of a professional misconduct, it is necessary that one of the panel members must be a professional of that area, e.g. a nurse, will require a Senior Nursing Advisor on the panel.
2. **Receipt of an Appeal**

Following receipt of an appeal, an appeals panel will be convened.

The employee must submit the appeal pro-forma to the Director of People and Culture within 15 working days from the date of the disciplinary hearing outcome letter. If the appeal pro-forma lacks sufficient detail as to which aspects of the panels’ decision the appellant is dissatisfied with or are not compliant with section 1.5 of Appendix 14, they may lose their right to appeal.

The appeal letter should include all documents in support of the appeal, though the employee may submit further documents up until a minimum of 10 working days before the date of the appeal hearing. Any documents submitted outside of this timeframe may not be considered. The appeal document and any supporting documents are considered to be the employee’s statement of case.

Upon receipt of the appellant’s grounds for appeal, the EA to the Director of People and Culture will, within 48 hours, forward it to the People Relations Manager so that he/she can forward the documents to the relevant parties

Once the manager has received the grounds for appeal they must write their management case. They will have 10 working days before the appeal hearing to submit their management case to the Director of People and Culture, which should include a comprehensive justification for the decision made at the initial hearing and respond to any queries raised by the appellant.

The employee statement of case (their appeal pro-forma and supporting documents) and the management side case will be forwarded by the People Relations Manager, to all relevant parties (appeal panel members, employee side and disciplinary management side) at least 5 working days before the appeal.

All appeal panels should be held as soon as practicably possible following the employee’s appeal/statement of case being received.

If the employee or management case has not been submitted within the stipulated time frame, the hearing may be postponed. In exceptional circumstances, an extension of 5 working days may be granted for the submission of the paperwork.

1. **Notice of appeal hearing date**

The appellant should be given at least 5 working days’ notice of the date and time that the appeal hearing will be convened.

1. **Schedule/Rescheduled - Timescales**

Postponed appeal hearings will be rescheduled a second time. If the reason for postponement has been non-submission of paperwork, then all relevant missing paperwork must be submitted within 10 working days before the date of the second hearing. The same timescales for exchange of missing paperwork applies, i.e. 5 working days.

If the Management/appellant case is not submitted within 10 working days before the date of the second hearing is arranged, then the hearing will go ahead. The management/appellant will be given the opportunity to present their case and question the other side. In the absence of an appellant case, the original appeal letter can be used in the hearing. No new paperwork can be presented at the hearing.

If the employee is unable to make the date or does not turn up to the hearing, they will be given one further opportunity to attend. Failure to attend a second time will result in the appeal hearing being heard in their absence.

1. **The Appeal Hearing**

At the Appeal Hearing, the following procedure shall be observed:

* **Introductions**
  + - The purpose of the hearing is explained by the Chair of the panel
    - The procedure to be followed is explained by the Chair of the panel
  + **The Employee’s case**
* The appellant and/or their representative shall put their case to the panel in the presence of the Chair of the Disciplinary Hearing. In support they may call witnesses.
* The Chair of the Disciplinary Hearing shall have the opportunity to ask questions of the appellant, their representative and witnesses.
* The members of the Appeals Panel shall have the opportunity to ask questions of the appellant, their representatives and witnesses.
* The appellant or their representative shall have the opportunity to re-examine their witnesses on any matter referred to in their examination by members of the Appeal Panel or the Chair of the Disciplinary Hearing.
* During the course of the appeal hearing the chair may call adjournments to either consider evidence or for natural breaks. The employee or their representative or the Chair of the Disciplinary Hearing may ask the chair to consider an adjournment at any stage of proceedings. The Panel may at its discretion adjourn the appeal at any time in order that further evidence may be produced by either party to the dispute or for any other reason.
* **Management’s Case**
* The Chair of the Disciplinary Hearing shall state the Trust’s case in the presence of the appellant and their representative. They may call witnesses.
* The appellant or their representative shall have the opportunity to ask questions of the Chair of the Disciplinary Hearing and witnesses.
* The members of the Appeal Panel shall have the opportunity to ask questions of the Chair of the Disciplinary Hearing and witnesses.
* The Chair of the Disciplinary Hearing shall have the opportunity to re-examine their witnesses on any matter referred to in their examination by members of the Appeal Panel, the appellant or their representative.
* **Summing Up**
* The Chair of the Disciplinary Hearing will have the opportunity to sum up their case if they wish.
* The appellant or their representative shall have the right to speak last in summing up their case.
* Neither party may introduce any new matter.
* Nothing in the foregoing procedure shall prevent the members of the Panel from inviting either party to elucidate or amplify any statement they may have made. Neither should it prevent them from asking them such questions as may be necessary to ascertain whether or not they propose to call any evidence in respect of any part of their statement, or alternatively, whether they are in fact claiming that the matters are within their own knowledge, in which case they will be subject to examination as a witness as in point four of the employee’s case above.
* The Panel may ask questions or points of clarification at any time during this procedure.
* **Adjournment**
* An adjournment is called to allow the panel to consider the evidence
* Management, the appellant and his/her representative shall withdraw to allow the panel to make a decision.
* **All parties return and the decision of the panel is communicated**
* The Appeal Panel may call all parties back into the room on the day of the disciplinary hearing to give their decision. The appeal hearing outcome letter should be sent to the employee as soon as practicable and within no later than 5 working days.
* In some cases, it may be necessary to take further time to consider the case, in order to consider all the evidence presented to them and seek further clarification. In such cases the employee will be notified of any delays which will not exceed a further 5 working days. The decision should be confirmed in writing within 5 working days of the decision being made.

**Appendix D11(a)**

**Appeal Pro-forma**

If you are appealing the outcome of a formal disciplinary sanction you should complete this pro-forma and send it to the Director of People and Culture no later than 15 working days from the date of the letter detailing the outcome of the disciplinary hearing. Please note that in order for your appeal to progress to an appeal hearing you should be clear and specific about your grounds for appeal and submit this form according to timescale stipulated above.

|  |  |
| --- | --- |
| Your Name: |  |
| Your Job Title and Area of Work: |  |
| Disciplining Officer Name (Chair): |  |
| Date of Disciplinary Hearing: |  |
| Your preferred contact details (email and phone number): |  |

|  |  |
| --- | --- |
| If a representative has agreed to act for you in this case, please give their details:  You are advised to consult your representative before submitting this form | |
| Name of Representative: |  |
| Union or Organisation: |  |
| Their Contact Details (email and phone number): |  |

|  |  |
| --- | --- |
| What formal disciplinary outcome are you appealing (please tick): | * First Written Warning * Final Written Warning * Dismissal |

|  |  |
| --- | --- |
| On what grounds are you appealing(please tick all that apply) and evidence the details in full below: | * The disciplinary policy and procedures were not followed and was not taken into consideration by the panel * Disciplinary panel outcome decisions (refer to the policy and be clear why you believe the sanction is in breach) * Breach of Natural Justice |
| Please outline your grounds for appeal in full below or by attaching a written statement. Please also attach any documents in support of your appeal. | |

Signed: …………………………………................................... Date: ..............................

*Once you have formally lodged your Appeal, it will be acknowledged in writing.*

**Appendix D12**

**Referrals to the Disclosure and Barring Service**

In the event that the outcome of a disciplinary hearing is that a staff member is dismissed or should be permanently removed from regulated activity, it will be necessary for the Disciplining Officer to inform the relevant professional lead e.g. Director of Nursing or Medical Director. The professional lead will then consult with the Disciplining Officer and the Associate Director for Safeguarding Children or Associate Director for Safeguarding Adults in order to reach a decision on whether to make a referral to the Disclosure and Barring Service. Completion of the DBS referral form will be the responsibility of Director of Nursing unless the incident involves a medical employee in which case the responsibility will be with the Medical Director.

1. **WHEN THERE IS A LEGAL DUTY TO REFER**

The Safeguarding Vulnerable Groups Act 2006 (SVGA) places a legal duty on employers and personnel suppliers to refer when:

1. an individual has been permanently removed from engage in regulated activity, or would have been withdrawn so had that individual not resigned, returned, been made redundant or been transferred to a position which is not regulated activity; because
2. they think that the individual has:

* Engaged in relevant conduct; or
* Satisfied the harm test; or
* Received a caution or conviction for a relevant offence.

If both conditions are met the information **must** be referred to the DBS.

***Relevant conduct*** as set out by the 2006 Act is any conduct:

* That endangers a child or vulnerable adult or is likely to endanger a child or vulnerable adult;
* If repeated against or in relation to a child or vulnerable adult, would endanger them or would be likely to endanger them;
* That involves sexual material relating to children (including possession of such material);
* That involves sexually explicit images depicting violence against human beings (including possession of such images), if it appears to ISA that the conduct is inappropriate; or
* Of a sexual nature involving a child or vulnerable adult, if it appears to ISA that the conduct is inappropriate.

***Harm Test*** as defined by the 2006 Act is satisfied if the relevant person believes that an individual may:

* Harm a child or vulnerable adult;
* Cause a child or vulnerable adult to be harmed;
* Put a child or vulnerable adult at risk of harm;
* Attempt to harm child or vulnerable adult;
* Incite another to harm a child or vulnerable adult.

A ***relevant offence*** for the purposes of referrals to DBS is an automatic inclusion offense as set out in the Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009. A copy of these regulations can be found in the DBS Factsheet 5: relevant offences on <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157242/dbs-factsheet-05.pdf>

1. **WHEN A REFERRAL NEEDS TO BE MADE**

A referral should **not** be made when an allegation is first made, nor should one be made on point of suspension as this would not constitute a permanent removal from regulated activity. The employer must first undertake an investigation and gather evidence in order to establish if the allegation has foundation. Without evidence or information for the DBS to consider, many allegations will be quickly closed down as there will be no basis on which the DBS can proceed.

A referral should be made when the employer has gathered information and evidence to support the allegation and has decided that the criteria for making a referral to the DBS has been met. Employers should, as far as possible, complete their investigations (even if the person has left their employment). This will ensure that the DBS has all available information and evidence on which to base its decision.

If additional relevant information becomes available to an employer after making a referral, this should also be provided to the DBS.

In all cases, the referral should be made on the DBS Referral Form and posted to the DBS enclosing all relevant information that the employer holds.

If an agency worker carrying out regulated activity on behalf of an employer is removed from their role due to the reasonable belief that they have engaged in relevant conduct or if the harm test is satisfied, there is still a legal duty to refer. The DBS recommend that the referral is made by the organisation with the most knowledge about this incident; this would normally be the host employer and not the agency.

There may be occasions when the Trust wishes to make a referral in the interests of safeguarding children or vulnerable adults, but the legal duty has not been met. For example, where there are strong concerns but the evidence is not sufficient to justify dismissing or removing the person from working with children or vulnerable adults. The DBS is required by law to consider any and all information sent to it from any source, including information sent to the DBS where the legal referral criteria are not met. Referrals where there is no legal duty to refer must take into account relevant employment and data protection laws – in most cases legal advice should be sought beforehand.

The Trust will not receive notification from the DBS of the outcome of their decision making process, following a referral from an employer.

1. **PROCESS FOR MAKING A REFERRAL**

The Trust’s Associate Director for Safeguarding Children or Associate Director for Safeguarding Adults needs to be notified whenever formal disciplinary proceedings are taken against a staff member connected to a case concerning child or adult safeguarding. Notification will be the responsibility of the People Relations Manager. In addition to this the Associate Director of People and Culture (who is the nominated People and Culture officer responsible for Safeguarding) should be copied in to any notifications and the relevant column should be completed in the Employee Relations spreadsheet.

1. **Initial notification**

Notifications will be made when there is reasonable belief that a staff member has

Engaged in relevant conduct; satisfied the harm test; or received a caution or conviction for a relevant offence, as per the descriptions in part 1.

The notification should include:

* Name of the staff member
* Name of their line manager
* Specific allegations made
* Name of the investigation officer and People and Culture support
* Whether the staff member has been suspended or removed from contact with children or vulnerable adults
* Initial timeframes for conclusion

1. **Communication throughout the investigation**

The Associate Director for Safeguarding Children or Associate Director for Safeguarding Adults should be notified if, during the course of the investigation, there is any significant change in the allegations made; if any new evidence has come to light; or if a new decision has been made to impose or lift a suspension or removal from contact with children or vulnerable adults.

1. **Notification upon conclusion of disciplinary proceedings**

Once the disciplinary proceedings have been concluded the Associate Director for Safeguarding Children or Associate Director for Safeguarding Adults should be informed of the outcome of the case. This will include details on what, if any, sanction has been issued and recommendations from the hearing relevant to safeguarding. All cases must be concluded, regardless of whether the member of staff has left the organisation. Notification should be made once appeal processes have been concluded or the timeframe for appeal has lapsed.

1. **Action in the event of a dismissal or permanent removal from regulated activity**

In the event that the outcome of the hearing is that a staff member is dismissed or permanently removed from regulated activity it will be necessary to inform the Associate Director for Safeguarding Children or Associate Director for Safeguarding Adults in order that they can give advice in relation to whether a referral to the Disclosure and Barring Service should be made. Decisions will be made by the Director of Nursing or Medical Director, following consultation with the Associate Director for Safeguarding Children or Associate Director for Safeguarding Adults and other relevant professionals, including the Associate Director of People and Culture and the Trust’s Lead for Safeguarding.

Completion of the DBS referral form will be the responsibility of Director of Nursing unless the incident involves a medical employee in which case the responsibility will be with the Medical Director. Information will be provided by the Investigating Officer, the People Relations Advisor supporting the investigation and the relevant Service Manager. Further information may need to be provided from other sources e.g. the Doctor or Key Worker for the child or vulnerable adult in question.

Associate Director for Safeguarding Children or Associate Director for Safeguarding Adults will retain records of all cases submitted to the Disclosure and Barring Service.

1. **Further information**

Associate Director for Safeguarding Children or Associate Director for Safeguarding Adults may be contacted by the DBS for further information and will contact Investigating Manager or the People Relations Advisor for this information; there is a legal duty to supply requested information if it is held. The Disclosure and Barring Service do not, however, require employers or employer representatives to give verbal evidence, either during an investigation or a hearing.

1. **Outcome of the referral**

Under legislation, the DBS can only advise the person making the referral on the outcome of the referral if they can demonstrate a ‘legitimate interest’ in the person they have referred. For example, if they continue to employ the person. If the person making the referral no longer employs the person then they could not demonstrate a legitimate interest in the person they referred and accordingly could not be advised of the outcome. In cases where a staff member continues to be employed by the Trust, Director of Nursing or Medical Director will request the outcome from the DBS and, upon receipt, inform Locality People Relations Advisor and Service Director

1. **Making referrals if the to the DBS if the legal criteria are not met**

There may be occasions when the Trust wishes to make a referral in the interests of safeguarding children or vulnerable adults, but the legal duty has not been met. For example, if there are strong concerns but the evidence is not sufficient to justify dismissing or removing the person from working with children or vulnerable adults.

The DBS is required by law to consider any and all information sent to it from any source. This includes information sent to the DBS where the legal referral criteria are not met. Locality People Relations Advisors should discuss with Associate Director for Safeguarding Children or Associate Director for Safeguarding Adults and Associate Director of People and Culture any cases where the referral criteria are not met but which there is serious concern; legal advice may be sought relation to these cases.

**Appendix D13**

**Risk Management Matrix for Employment Cases**

|  |  |  |  |
| --- | --- | --- | --- |
| **Risk Matrix** | **Red** | **Amber** | **Green** |
| Financial | * More than 40k costs * Over 15k damages | * 15-40k costs * Under 15k damages | * Under 15 k costs * Under 5k damages |
| Litigation | * High profile/ Equalities Act / test case * Whistleblowing * Automatically unfair dismissal * Board level significance * Less than 50% chance of success | * Equalities Act case * 60% chance of success | * More than 60% chance of success |
| **Reputational** |  |  |  |
| External | * Involves protected characteristic * Involves issue of patient safety * Allegation brought by service user * Issue of Board level significance * Involves issue of stakeholders concern * Involves current NHS issue * Likely to have national press coverage | * Involves protected characteristic * Stake holder concerns * Low level general press interest | * No protected characteristic * Low stakeholder concern * Unlikely to be press interest |
| Internal | * Staff with over 10 years’ service * Board member /senior manager * No previous discipline/complaint * Sanction viewed as disproportionate * Issue raised with Service Director by other staff * Policy not followed * Sanction disproportionate | * Staff with 5-10 years’ service * Manager * Previous complaints upheld in staff favour * Some policy followed * Proportionate sanction | * Staff with under 1 years’ service * Non manager * Serial complaints not upheld in staff favour * Policy followed * Sanction proportionate |