

Dignity at Work Policy and Procedure

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1.0. INTRODUCTION

- 1.1.** East London Foundation Trust (herein referred to as 'the Trust') is committed to creating a work environment where everyone is treated with dignity and respect which is free from bullying, harassment and victimisation. All staff should be able to work free of harassment. The Trust does not condone harassment, bullying or victimisation and, where found, the disciplinary policy and procedure will be implemented. Bullying and/or harassment may constitute gross misconduct, or even a criminal offence, and employees who are found to have behaved in this way may face disciplinary penalties up to and including summary dismissal.
- 1.2.** Where allegations of criminal acts such as indecent exposure, physical attack or sexual assault have been made, the complainant should be encouraged to report the matter to the police. The Trust may also opt to report the allegations to the police.
- 1.3.** In order to promote good employee relations, the Trust's Dignity at Work Policy and Procedure provides a framework for investigating bullying and harassment complaints in a fair, reasonable, timely and consistent manner at the earliest possible stage and as close to the point of origin as possible. This policy therefore encourages proactive and meaningful discussions to take place at the informal stage of these procedures.
- 1.4.** Dignity at work complaints relate to the behaviour of an individual; including bullying, harassment, victimisation or discrimination arising from a protected characteristic as defined under the Equality Act 2010 (i.e. age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation).
- 1.5.** The procedure outlined in this policy will create a fair route for complaints of bullying and harassment so that they can be investigated in a manner that recognises the sensitivity of the issues and respects the rights of confidentiality of those involved.
- 1.6.** Please refer to Appendix 1 for the roles and responsibilities.

2. PRINCIPLES

- 2.0.** Managers will not discriminate in the application of this policy and procedure in respect of but not restricted to; age, disability, race, nationality, ethnic or national origin, gender, religion, beliefs, sexual orientation, domestic circumstances, social and employment status, HIV status, gender reassignment, political affiliation or trade union membership.
- 2.1.** Other than in exceptional circumstances the status quo, i.e. the previously agreed working and/or management arrangements, which applied before the complaint will continue through the informal stages of this procedure. Once a decision has been made at a formal stage or an agreement made at an informal stage, new arrangements may apply. In some cases redeployment may be considered.
- 2.2.** Records of any individual complaint raised under this policy will be kept on both the complainant and respondent's HR file for a period of 1 year, detailing the nature of the complaint raised, the Trust's response, any action taken and the reasons for it. All records will be kept confidential and retained in accordance with the Data Protection Act 1998. After 1 year, records will be removed from both employees HR file and destroyed.

- 2.3.** All staff must be treated with respect and dignity. Anyone who supports or encourages bullying or harassment by others may be liable to disciplinary action.
- 2.4.** The Policy focus on empowering the complainant to resolve issues of bullying and harassment as early as possible by providing clear steps on how to stop such behaviour.
- 2.5.** The Policy focuses on empowering the complainant to resolve issues as early as possible and aims to encourage a proactive approach to the early recognition of bullying and harassment and resolve such conflicts effectively and speedily if they occur.
- 2.6.** All employees will be protected under current employment legislation in the operation of this policy
- 2.7.** In cases of alleged misconduct, no disciplinary action will be taken until the case has been investigated thoroughly and promptly. Any employee accused of misconduct will be fully informed of the nature of the allegation against them and will be notified in writing of any subsequent disciplinary meeting.
- 2.8.** In all cases where a formal disciplinary hearing is necessary, the Disciplining Officer will not have investigated the case to be heard. If professional issues are involved an appropriate professional adviser should be available to advise the Disciplining Officer when required.
- 2.9.** Where employee are accountable to a statutory professional or regulatory body for their conduct, managers should seek advice from the most senior professional within the Trust before that professional body is informed of disciplinary action against one of its members.
- 2.10.** The employee will have the right of appeal against any formal disciplinary action taken against him/her.

3. SCOPE

- 3.0.** The Policy applies to all Trust Staff including fixed-term and substantive staff, agency, locum, students, honorary staff and bank workers directly employed by the Trust.
- 3.1.** If the complainant is a Trust employee and the alleged harasser is employed by another organisation (i.e. agency staff, contractor) the complainant, with the appropriate support from their line manager/HR manager, must make a formal complaint to the alleged harasser's employer organisation. However, it is essential that your local Human Resources Manager be informed of the complaint to monitor the outcome.
- 3.2.** The Trust has a duty of care towards its staff and is liable for their health and safety and well being (Health and Safety at Work Act 1974 2(1)). Therefore the Trust reserves the right to initiate its own investigations into harassment and bullying where there is sufficient cause for concern but not necessarily a formal complaint. Such action would only be taken where there was a reasonable belief that harassment and bullying may be occurring.

4. TIMESCALES

- 4.0.** In line with the ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice on Disciplinary and Complaint Procedures, April 2009, the Trust will aim to resolve all complaints in as timely a manner as possible, bearing in mind genuine operational time factors. Where resolution to a complaint is being delayed various options may be considered to ensure a timely resolution to the matter e.g. Union representation in the absence of an employee, written submissions where formal meetings cannot be arranged or agreed.
- 4.1.** Any complaints raised under the informal or formal stage of this procedure should be raised within 3 months of the issue arising. The issue will be considered to be out of time if raised after 3 months and as such it will not be allowed to proceed.
- 4.2.** Where the complaint or dispute relates to the immediate manager, the matter should be referred to the next in-line manager.
- 4.3.** In the event an informal method of resolution is being explored, any formal processes or investigations underway will be halted. Formal processes will only recommence once the informal process has come to an end and the issue is not resolved.

5. SUPPORT, ADVICE AND REPRESENTATION

- 5.0.** The Trust is committed to achieving informal resolution of complaints relating to harassment where possible.
- 5.1.** In line with this approach, a series of options have been put in place to enable staff to be supported. This support will be provided to complainants, respondents (person (s) whom allegations have been made against and any witnesses).

6. HARASSMENT SUPPORT ADVISORS

- 6.0.** The Harassment Support Advisors (known as SAFE advisors by Community Health Newham staff) are drawn from a wide range of jobs across the Trust and have been provided with specialist training. They are an independent and confidential resource for both the complainant and alleged harasser/bully. As part of their role they:
- Provide empathetic assistance to staff with complaints of bullying and harassment.
 - Explain how the procedures for making a complaint operate both informally and formally.
 - Establish and provide support as required for the complainant through the process.

7. COUNSELLING

7.0. The Trust offers an external, confidential counselling service for its staff through the and staff may self-refer themselves to it.

8. TRADE UNIONS

8.0. The Trust recognises the important role trade unions play in addressing harassment and members are encouraged to approach these representatives regarding their concerns. The Trust will work in conjunction with the trade unions in addressing unacceptable and inappropriate behaviours.

9. REPRESENTATION

9.0. Both the complainant and the respondent shall have the right to representation at all formal stages in this policy by a trade union/professional association or work colleague not acting in a legal capacity.

9.1. If the employee's representative is unable to attend on the proposed date, the employee may be offered an alternative time and date so long as it is reasonable and falls before the end of the period of a further 5 working days. Should the representative be unavailable on the rescheduled date, the meeting may go ahead in their absence.

10. INFORMAL ACTION

10.0. Where possible employees are encouraged to discuss any concerns about harassment with a Harassment Support Advisor, Human Resources, a Trade Union representative or or the line manager.

10.1. In some cases talking directly with the person who is causing the bullying and harassment problem may be enough. This approach may be appropriate if the person complaining believes that the destructive behaviour is unintentional, and the respondent is unaware of its impact. The person complaining can take this approach alone, or with help from a work colleague or trade union representative. The person complaining should clearly:-

- Explain how the behaviour makes them feel
- Explain how it is interfering with their work
- Ask for it to stop
- Keep a note of everything that is said.

If the employee does not feel able to raise their concerns with the person directly, they could write to them stating that they feel harassed, state where and when this occurred and how they wish to be treated. They should always keep a copy.

11. MEDIATION

11.0. The Trust has a list of formally trained mediators who are able to conduct the formal mediation process. Please see Appendix 3 for information on Mediation process. Mediation is a process of negotiation and is generally used when disputes exist among

two or more parties. The Mediator is not there to form or make any judgments or decisions but is there to help both parties reach a mutual decision which will assist them to move forward.

12. FORMAL STAGE

12.0. If an informal approach does not resolve matters, or the situation is too serious to be dealt with informally, employees can make a formal complaint by using the Dignity at Work Procedure outlined in Section 16 of this policy.

13. CONFIDENTIALITY & WORKING ENVIRONMENT

13.0. In the case of complaints about bullying or harassment, the normal complaint procedure is modified so that you can choose whether to raise your complaint with your manager or directly with the Human Resources department.

13.1. To ensure the requirement for confidentiality is not breached, the complaint should only be sent to the relevant line manager and the trade union representative or the work colleague who will be accompanying the complaint during the process. The complaint should not be sent or copied to other members of staff or external people or organisations. If this occurs it could be considered a breach of the Data Protection Act. It could also be a breach of complainant's contract of employment because it includes a confidentiality clause. Therefore disciplinary action could be taken after consideration is given of the facts related to the disclosure.

13.2. In very serious cases, a criminal offence may have been committed and the complainant may wish to report matters to the police.

13.3. All complaints of bullying and harassment will be treated sensitively and confidentiality maintained to the maximum extent possible. Investigation of allegations will normally require limited disclosure on a "need to know" basis.

13.4. For example, the complainant's identity and the nature of the allegations must be revealed to the alleged perpetrator so that he or she is able to respond to the allegations. Some details may also have to be given to potential witnesses but the importance of confidentiality will be emphasised to them. If the complaint is upheld, managers may need to be given some information where this is necessary for them to manage the risk of further harassment.

13.5. Wherever possible, the Trust will try to ensure that the complainant and the alleged perpetrator are not required to work together whilst the complaint is under investigation and when appropriate and possible redeployment of one or both parties may be considered.

14. REMOVAL FROM THE WORKPLACE AND SUSPENSION FROM DUTY

- 14.0.** The Trust will only consider exclusion from work in cases where there are no practical alternatives to allow an appropriate investigation into allegations of serious misconduct.
- 14.1.** If used, suspension allows the organisation to investigate serious alleged disciplinary offences. Suspension is not disciplinary action and does not involve any prejudgement. If a staff member is required to be absent from work, the case will be subject to regular review, to ensure that it is no longer than necessary. The suspension procedure is attached as Appendix 6.

15. FORMAL STAGE 1 – DIGNITY AT WORK PROCEDURE

15.0. Notification of Formal Complaint

- 15.0.1.** If the informal procedure has not been successful, the employee could raise a formal complaint by writing to their immediate line manager. Where the complaint is against the individual's line manager, they should send this to the Manager's immediate line manager.
- 15.0.2.** Refer to Section 14.2 regarding confidentiality when submitting a complaint.
- 15.0.3.** The employee should formally state their complaint and desired outcome within 15 working days of the outcome of the informal stage by completing the Notification of Formal Complaint Form in Appendix 4. This will form the basis of the subsequent hearing and any investigations, so it is important that it is completed clearly and comprehensively. If the complaint is unclear, clarification of the complaint will be required before any meeting takes place.
- 15.0.4.** Setting out a complaint in writing is not always easy, especially for employees whose first language is not English or who have difficulty expressing themselves on paper. In these circumstances the employee will be encouraged to seek help for example from a work colleague or a trade union representative.
- 15.0.5.** The complaint will be acknowledged by the line manager in writing within 5 working days of receipt.
- 15.0.6.** Prior to any formal action being taken the line manager along with the Human Resources Advisor may consider the appropriateness of temporary redeployment of either party until resolution has been sought. This action may be taken to relieve the stress and pressure on one or both and/or to prevent the risk of further incidents occurring.
- 15.0.7.** In normal circumstances if the complainant expresses concerns of both parties continuing to work together until a resolution has been achieved, the needs of the service will be taken into account regarding which party is redeployed.

16. PRELIMINARY INVESTIGATION PROCESS

- 16.0.** As part of the preliminary investigation process, the manager will issue a written notice to the employee whom the allegations were made against informing him/her what they are alleged to have done and allowing them to explain what happened.
- 16.1.** If the preliminary investigation indicates the allegation or incident is serious or recurring, the manager should:
 - 16.1.1.** Liaise with Human Resources and assess whether a full investigation needs to be carried out
 - 16.1.2.** Inform all parties concerned that a full investigation is underway

17. FULL INVESTIGATION

- 17.0.** A thorough investigation of the alleged actions of bullying and harassment must be carried out. The investigation procedure is attached as Appendix 7.
- 17.1.** The employee's line manager normally carries out the investigation. However, where the manager is directly involved in the alleged incident and there are concerns over impartiality, the Human Resources Department may appoint an independent manager. It is recognised that investigators should be appropriately trained in carrying out investigations.
- 17.2.** The aim of the full investigation is to build upon the preliminary investigation and determine as fully as possible the incident(s), background and circumstances by formally interviewing the employee and all available witnesses. The investigation must be carried out objectively, thoroughly and as soon as practical. It should be completed within 60 working days.

18. THE INVESTIGATION REPORT

- 18.0.** The Investigating Officer must prepare a written report of his/her findings within 10 days of the completion of the investigation unless there are exceptional circumstances.
- 18.1.** Following submission of the final draft of the report, the Head of Service or their designated deputy will decide what action will follow. This may involve the following:
 - 18.1.1.** Allegations are unfounded and no further action should be taken
 - 18.1.2.** Recommendations for action
 - 18.1.3.** Disciplinary action
- 18.2.** Individual meetings should be held with both parties to share the outcome of the investigation report as soon as possible and no later than 10 working days of receipt of the report. Written confirmation outlining the discussions at this meeting must be forwarded to both parties no later than 5 working days after the meeting.

19. POSSIBLE OUTCOMES

19.0. Except where successfully resolved at the informal stages, the following outcomes may be reached by the Commissioning Manager at conclusion of Stage 1:

To uphold or partially uphold the dignity at work complaint:

19.1. If such a finding is made it will normally be appropriate for the Commissioning Manager to also recommend actions to remedy the situation. This could include further informal resolution, or in the case that the complaint is against an individual it may be appropriate to undertake capability management, a meeting of concern or formal disciplinary action. Due to confidentiality, the complainant may not be given details of the remedy that relates to performance or conduct management of another staff member; it will be sufficient that they are made aware that appropriate action has been taken. Any disciplinary action will be dealt with under the Trust's Disciplinary Policy & Procedure.

19.2. If a complaint is upheld against a respondent, as well disciplinary action, the panel may also consider whether it is appropriate to redeploy the complainant or respondent, based on the needs of the service, so they do not work alongside each other in future; or to support the complainant and respondent to repair their working relationship if redeployment is not appropriate.

19.3. The complainant has a right not to be victimised for making a complaint.

To not uphold the dignity at work complaint:

19.4. It may also be appropriate with such a finding to also recommend actions, although it may be the case that no further action is required.

19.5. The complainant has a right not to be victimised for making a complaint in good faith, even if the complaint is not upheld.

To find that the dignity at work complaint is vexatious:

19.6. The Trust is confident that the very large majority of grievances raised by staff are not vexatious and would not deter any individuals from raising a grievance that is genuine and made in good faith. However, if it is found that the grievance is vexatious, then it may be decided to undertake disciplinary action against the complainant which will be dealt with under the Trust's Disciplinary Policy & Procedure. In this event a separate formal process may commence which may draw upon the information gathered as part of the grievance process.

19.7. Staff who submit multiple grievances, either simultaneously or on separate occasions about the same or other matters, which are subsequently found to be without merit will be considered to be acting in a vexatious manner. Similarly, staff who seek to perpetuate the processes unnecessarily and without merit, shall be considered to be acting in a vexatious manner.

20. FORMAL STAGE 2 – APPEAL PROCESS

Notification of appeal

- 1.1. If the complainant is dissatisfied with the decision made at the Stage 1 they should write to the Service Director within 15 working days of the receipt of the letter confirming the outcome of the meeting held under the formal process outlining fully why they feel the issues have not been resolved. This should include an explanation of what factors the employee felt should have been taken into consideration and what factors they felt were not taken into consideration. The appeal notification form is attached as Appendix 8. The letter can be emailed in addition to being hand delivered or sent recorded delivery to allow for record of proof of delivery and receipt.
- 1.2. It should be noted that only the complainant has the right of appeal at stage two of this procedure. If there is a named respondent to the grievance or dignity at work complaint their right to appeal is only for any subsequent disciplinary action undertaken and not under the stage two of this process.
- 1.3. The grounds for appeal should cover one or more of the reasons below:
 - The grievance or dignity at work procedures were not followed and were not taken into consideration by the panel.
 - The grievance or dignity at work issue was not properly considered.
 - Non-compliance with statutory policy, procedure and legal rights.
 - If applicable, the investigation and evidence which was not considered at stage 1.

Response to appeal

- 1.4. The appeal will be acknowledged in writing within 5 working days by the Service or Corporate Director receiving the appeal notification form as **Appendix 7**.
- 1.5. Upon receipt of the notification form and consideration of the stated grounds for appeal, the relevant Service or Corporate Director will take the most appropriate of the following actions:

Decide there are no grounds to appeal
- 1.6. Where the Director decides there are no grounds for appeal the employee will be informed in writing within 5 working days of receipt of the notification form.

21. GRIEVANCES AGAINST THE INVESTIGATORS

- 21.0. In the course of the Investigation process the complainant or the employee who is alleged to have committed the misconduct may raise a grievance about the behaviour of the Investigating Officer. Where this occurs and depending on the circumstances, it may be appropriate to suspend the investigation for a short period until the grievance can be considered in line with the Trust's Grievance Policy. A letter should be sent with detailed reasons about his/her concerns to the Director of Human Resources, who will make a recommendation on whether to appoint a new Investigating Officer or not to the manager who appointed the Investigating Officers for his/her consideration. The employee will receive a response within 5 working days after the letter was received.

22. DISCIPLINARY PROCEDURE AND HEARING

22.0. Where a formal disciplinary hearing is appropriate, the investigating officer is responsible for writing and presenting the management-side statement of case. The process for preparing for a disciplinary hearing is attached as Appendix 8.

22.1. 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
- The appropriate level of disciplinary action

22.2. The format for the disciplinary hearing is attached as Appendix 9.

23. GRIEVANCES AGAINST THE DISCIPLINARY PANEL

In the course of the Disciplinary process, the complainant or the employee who is alleged to have committed the misconduct may raise a grievance about the behaviour of the Disciplinary Panel. A letter should be sent with detailed reasons about his/her concerns to the Director of Human Resources or his/her nominated deputy. The Director of Human Resources will make a recommendation on whether to appoint a new panel to the manager who appointed the panel for his/her, consideration. The employee will receive a response within 5 working days after the letter was received.

24. DISCIPLINARY - APPEAL PROCEDURE AND HEARING

24.0. 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 appeals procedure is attached as Appendix 11.

24.1. The time limit for lodging any appeal is 15 working days from the date of the decision made following the disciplinary meeting.

25. APPEAL HEARING

25.0. Where a Disciplinary Appeal hearing is required, the Trust will endeavour to have an appeal heard within 3 months of the appeal request. The members of the Appeal Panel will not include any member of the Trust who has been directly involved in the circumstances leading to disciplinary action.

25.1. Appeal against a Written Warning

Two Senior Managers drawn from a pool that will have had no previous involvement with the discipline of the member of staff concerned. A Human Resources Representative will also be present in an advisory capacity.

25.2. Appeal against a Dismissal

At least one Director of the Trust and the Director of Human Resources or his/her 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.

25.3. 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. The format for the hearing is attached as Appendix 12.

26. MEDICAL AND DENTAL STAFF

26.0. Misconduct matters for Medical and Dental staff, as for all other staff groups are matters to be resolved locally and under the Trust's Disciplinary Policy and Procedure and Maintaining High Professional Standards Policy. However, it is strongly advised that advice is taken from the NCAS for conduct cases particularly professional misconduct.

27. POST INVESTIGATION

27.0. If the complaint is upheld, and the person remains in employment, every effort will be made to ensure, where possible, that, if the complainant does not wish to, they do not have to continue to work alongside the perpetrator. The options will be discussed with the employee and the needs of the Service will also be taken into account. These may include the transfer of the perpetrator or, if the complainant wishes, they may be able to transfer to another post if one is available.

27.1. If the complaint is not upheld, the Trust will support the complainant, the alleged perpetrator and their manager(s) in making arrangements for both employees to continue or resume working and to help repair working relationships. The Trust will consider making arrangements to avoid the employees having to continue to work alongside each other, if either of party do not wish to do this and service needs permitting. Although every effort will be made to accommodate both parties this cannot however be guaranteed.

27.2. The complainant has a right not to be victimised for making a complaint in good faith, even if the complaint is not upheld. However, making a complaint which the complaint is known to be untrue may lead to disciplinary action being taken as outlined in section 29 below.

28. VEXATIOUS COMPLAINTS

If, after hearing a complaint the line manager believes that the complainant has made the complaint vexatiously (put forward with the intention of causing deliberate harm to the person against whom the claim has been made) or abuse of this policy, the line manager may decide if the matter should be referred to the disciplinary policy and disciplinary action may be taken against the complainant up to and including dismissal.

29. EQUALITY IMPACT ASSESSMENT

29.0. The Equality Impact Assessment demonstrates that if this policy was applied consistently it would not disproportionately affect any of the Groups with the personal characteristics covered in the Equality Act 2010. (Age, Gender, religion and belief, marriage and civil partnership, race, gender re-assignment, sexual orientation, religion and belief, pregnancy and maternity).

ROLES & RESPONSIBILITIES

The Trust

The Trust will ensure that: -

- Formal training to support this policy is provided to appropriate employees, in particular people who will facilitate, mediate or hear grievance hearings, those who investigate and those who support and advice individuals who complain or are complained about.
- All employees are informed about the contents of this policy and complaints procedures.
- Policy provisions comply with UK law and regulations.
- Independent Trained Mediators within the Trust are available to conduct the informal mediation process.
- All staff have access to Harassment Support Advisers, if they so wish
- All staff have access to independent counselling, if they so wish
- Formally trained mediators within the Trust are available to conduct the formal mediation process.

Managers

Managers and supervisors have a particular duty to ensure that their own behaviour is beyond reproach at all times. Managers and supervisors are essential in implementing this policy. They do this by:

- Ensuring employees know about this policy and know how to raise a grievance and/or harassment and bullying issues.
- Dealing with any complaints fairly, thoroughly, quickly and confidentially, respecting the feelings of all concerned.
- Ensuring good communication with staff and between staff by operating an open door policy, and discussing bullying and harassment issues at team meetings
- Setting examples and standards of behaviour in the workplace that include not bullying and harassing staff, and being aware of how their behaviour affects other people
- Creating an environment and culture where destructive forms of behaviour are not tolerated and where everyone is treated with respect and dignity
- Recognising destructive behaviour and taking action where it occurs
- Working to find solutions to bullying and harassment cases
- Supporting staff who may feel they are being harassed and bullied
- Getting advice from Human Resources as quickly as possible following the receipt of a grievance.
- Ensuring that there is no retaliation against the employee who made the complaint.

- Complying with the timescales set out in this policy.
- Dealing with any complaints fairly, thoroughly, quickly and confidentially, respecting the feelings of all concerned

Within the Trust there is an expectation that managers fulfill their duties and responsibilities. It is reasonable to expect a manager to carry out their function in a fair, firm and consistent manner. This may involve:

- Issuing reasonable requests and/or instructions and expecting members of staff to undertake these and generally manage performance and conduct
- Set expected standards of performance supported by relevant appraisal, performance management framework, job description or set objectives
- Disciplining staff for misconduct and poor performance where appropriate
- Implementing action in respect of general Trust policies e.g. management of sickness absence
- Where these functions are carried out in a fair and reasonable way they will not constitute acts of unacceptable behaviour, bullying or harassment or victimization.

Firm/Fair Management	Bullying/Harassment
Consistent and fair	Ongoing Aggressive, inconsistent and unfair treatment
Determined to achieve the best results, but reasonable and flexible	Continually being unreasonable and inflexible towards an individual
Knows their own mind and is clear about their own ideas, but is willing to consult with others	Believes that they are always right, has fixed opinions, believes that they know best and disregards others views
Insists upon high standards of service in quality of and behaviour within the team	Insists on high standards of service and behaviour but blames others if things go wrong
Ask for people's views, listens and assimilates feedback	Tells people what will be happening, does not listen

Staff

All members of staff have a responsibility to behave appropriately in the workplace and treat each other with dignity and respect. They should be aware of the issues and both the serious and genuine problems which harassment can cause.

All members of staff are responsible for adhering to this policy. They are required to:-

- Treat all colleagues with dignity and respect and be aware of how their behaviour can affect other people, for example, by ensuring that normal workplace banter enhances rather than undermines teamwork
- Support colleagues who are being bullied or harassed and bring it to the attention of their line manager, or another appropriate senior manager

- Respond promptly to any feedback and advice on their behaviour, be it from a colleague or manager
- Seek to resolve matters informally as much as possible
- Ensure that they understand the policy and the consequences of vexatious complaints and abuse of this policy
- Comply with the requirements of this policy when setting out a complaint, including the
- provision of evidence and compliance of timescales set out in this policy
- Comply with the requirements of this policy when setting out a grievance or dignity at work complaint, including the provision of evidence and compliance of timescales set out in this policy

Human Resources Department

The Human Resources Department has a responsibility to ensure that the policy is followed fairly and consistently. Their duties include:-

- Advising managers on the application of the policy
- Advising managers and staff, where appropriate, when individuals feel that they are being harassed or bullied in the course of their employment
- Ensuring the effective implementation of the policy
- Monitoring incidences of bullying and harassment and initiating appropriate action reviewing and amending the policy as necessary.

DEFINITIONS

Harassment

Harassment, in general terms, is unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, sexual orientation, marriage and civil partnership, pregnancy, maternity, gender reassignment, nationality or personal characteristics of the individual, and may be persistent or an isolated incident. The key is that the actions or comments are reasonably viewed as demeaning and unacceptable to the recipient.

Harassment can take many different forms and examples, which are not exhaustive, include:-

- Persistent incidents
- A single serious incident
- Unwanted physical conduct including unnecessary touching, assault, physical threats, insulting or abusive behaviour or gestures
- Verbal abuse such as anonymous answer phone messages, offensive language or innuendo, telling offensive jokes, name calling or spreading malicious rumours;
- Non-verbal including display, storage or distribution of offensive material (including information held on the computer) such as pornographic or suggestive pictures, or written material or visual material and graffiti, leering or staring, ignoring or avoiding colleagues;
- Covert or disguised behaviour such as social isolation and non-cooperation, implicit threats, and pressure for sexual favours;
- Incidents associated with work such as stalking

Such behaviour is unacceptable if:

- It is unwanted, unreasonable and offensive to the recipient;
- It is used as the basis for employment decisions
- It creates a hostile or ineffective working environment

Behaviour that any reasonable person would realise is likely to offend will be harassment without the recipient having to say in advance that they find it offensive such as unwanted physical contact.

Where it may not be so clear in advance that the behaviour would be unwelcome to, or what could offend a particular person e.g. certain banter, flirting, asking someone for a drink after work, then the recipient should make it clear by words or conduct that such behaviour is unacceptable to him/her. If the behaviour continues after it has been made clear that it is unacceptable then it may be perceived as harassment.

Bullying

Bullying differs from harassment and discrimination in that the focus is rarely based on age, sex, race, disability, religion, sexual orientation or nationality. The focus is often on competence, or rather the alleged lack of competence of the bullied person.

Bullying is any persistent behaviour, directed against an individual, which is intimidating, offensive or malicious and which undermines the confidence and self-esteem of the recipient. For formal and informal investigative purposes under this procedure bullying needs to be measurable and demonstrable.

Bullying can take many different forms and examples, which are not exhaustive, include:-

- Sadistic or aggressive behaviour over time
- Exclusion from meetings
- Humiliation or ridiculing
- Criticism in public that is designed to humiliate
- Persistent, unwanted criticism in private
- Singling out one person for criticism where there is a common problem
- Offensive or abusive personal remarks
- Treating colleagues as children, not as adults undermining staff by replacing their areas of responsibility unreasonably or without justification
- Setting unattainable targets
- Withholding information to deliberately affect a colleague's performance
- Claiming credit for someone else's work
- Constantly changing work deadlines or work guidelines to cause someone to fail
- Making false allegations
- Preventing people from taking up training and development opportunities in line with agreed PDP or agreed development plan.

Bullying or harassment may be by an individual against an individual (perhaps by someone in a position of authority such as a manager or supervisor) or involve groups of people. It may be obvious or insidious. Whatever form it takes it is unwarranted and unwelcome to the individual.

Victimisation

Victimisation is treating someone less favourably than others because s/he has complained (formally or otherwise) that someone has been bullying and harassing him/her or someone else. Similarly, if the person has supported someone to make a complaint, or given evidence in relation to a complaint of bullying and harassment.

The Trust will take appropriate action to deal with any alleged victimisation. This would include an investigation and, if found, may include disciplinary action against the employee who victimised another person

Appendix 3

The Mediation Procedure

“Mediation is a process of negotiation, generally used when a dispute exists among two or more parties, conducted by a trained mediator who works with all parties involved so that their true interests are identified and a resolution is achieved that responds effectively and fully to those interests”.

Mediation is particularly appropriate when there is willingness to resolve the issues by both parties and when there is an ongoing working relationship.

Role of the Mediator

The role of the mediator is to facilitate and manage the entire mediation process, to understand the key issues and help both parties entering in mediation on a voluntary basis to reach a mutual agreement, which will assist them to move forward in the future. The mediator is also responsible to manage the mediation process from the beginning to the end,

The format of a mediation meeting

Mediation is usually carried out using the facilitative model, which is based on a mediator which facilitates the meeting between the parties in conflict adopting a non directive approach.

In the facilitative model the mediator works with the parties' strengths and weaknesses. It is based on the mediator being impartial and encouraging the parties to come to a solution to the problems they are facing. It is usually done by a single mediator although it may be possible for co-mediation to take place within the facilitative model.

There are 5 stages within this model, which are not always linear, so for example it may be possible that during the mediation process, the mediator goes back to previous stages.

The 5 stages are as follows:

- First contact with the parties
- Setting the scene
- Exploring
- Building and writing agreements
- Closure and follow up

First contact with the parties

The first contact stage is when the mediator meets the parts individually. It is during this first contact that the mediator will build the parties understanding and explain his or her role, which is to facilitate the meeting and manage the process of mediation.

The mediator will explain in detail what mediation entails the principles (voluntary, impartial, confidential, non-judgmental and non-binding) and try to get the parties' commitment to take part of mediation, which is different from persuading or putting

pressure on them. It is also at this stage that both parties will be able to explain in detail what the issues surrounding the conflict is, what is it that they wish to gain from the mediation process.

The mediator will manage expectations, try to understand some common ground between the parties, and also agree what the ground rules during the joint meeting will be.

This first contact is the opportunity for parties to ask any questions, ask for clarifications and for the mediator to manage any anxieties they may have regarding the process.

Setting the Scene

Setting the scene is when both parties come together into the mediation. Here the mediator will agree with both parties the ground rules (which will have been discussed during the first contact meeting). The mediator will set the scene, again, explaining his/her role and going over the principles of mediator again. remind both parties again of the process, the structure of the meeting and how he will conduct the meeting, for example who will go first, what needs to happen when one party is talking, for example asking for both to listen carefully, be very honest and open, abide by the ground rules, etc.

Exploring

The next stage is called exploring and here is when the issues will be discussed. First each party will have an opportunity to explain what their issues are. Both will be given equal opportunity to explore their main concerns. After each party has had an opportunity to explain their issues, the mediator will summarise what they believe to be the issues. Here, the mediator will try to take out the emotion, he or she will reframe what is being said and put an agenda of the main issues, which will then be explored in turn.

The next stage, which will probably happen intermittently with the one above (going through every item on the agenda) is when both parties reach a consensus, for example what they are agreeing to.

Closure

The final stage is the closure. The mediator writes up the agreement (if it was agreed that a written agreement would be put together as on occasions, parties will only accept verbal agreements). Give two copies to both parties to sign, date and keep a copy each. As part of the closure process the mediator again thanks both parties for taking part on the mediation process. He or she reminds both parties of the confidentiality issues around it and any follow up that may be required and may be agreed. The mediator reminds the parties that he or she will not be involved any further and he or she wishes them well.

Appendix 4

Complaint Notification Form – Stage One

Stage one of the formal procedure should only be invoked if the informal process has not been successful.

This form must be completed and sent to the individual's line manager, and if the complaint is related to the line manager then please send it to the Manager's immediate line manager within **15 working days** of the date of the letter confirming the outcome of the informal stage.

An employee registering a formal complaint should complete Parts 1 and 2 of this form.

PART 1 – EMPLOYEE DETAILS

Name: Job Title:

Department: Base:

Telephone No. Email:

PART 2 – DETAILS OF THE COMPLAINT

Please summarise your complaint below and attach any supporting documentation. You may continue on a separate sheet if necessary.

In your own words state what you are complaining about. If appropriate you should provide details such as dates and times of events, the names of any witness, where events took place and any relevant background information leading up to the complaint.

Why was your complaint not resolved at the informal stage?

What outcome are you looking for?

Signature Date:

Received by:

Name: Date:

(Manager)

Signed

Appendix 5

Record of Suspension Checklist

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

Employee Name	
Job Title	
Band	
Location	
Allegation & date	
Manager authorising suspension & date	
HR 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 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.		

The Suspension Procedure

The Trust will only consider exclusion from work in cases where there are no practical alternatives to allow an appropriate investigation into allegations of serious misconduct.

Circumstances where removal from the workplace may be appropriate include the following:

- Immediately following any 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 employee or patients or the general public at risk
- Where the employee's presence might reasonably be considered to hamper the investigation.
- Some other substantial reason affecting the employee or the workplace. In such situations, advice must be taken from the director of human resources or his nominated deputy.

Suspension Process

The employee may be accompanied by his/her Trade Union representative, a colleague or friend, where this is practical. The employee should be advised in writing of:

- The reason for their exclusion from work
- The fact that suspension is not considered as disciplinary or punitive action
- He/she is not permitted to take up other work whilst suspended from duty
- The possible date of return to work
- The right to appeal against suspension and the appeal procedure
- Why redeployment was not considered as an alternative to exclusion from work.

The professional leads may need to report the allegations to the relevant professional body, for example, to consider an interim suspension to practice in line with the professional body's regulations.

Suspension Review

All decisions to suspend should be reviewed every 2 weeks by the Director of Human Resources. This information should be provided as part of the quarterly workforce report for the SDB.

The Investigating Officer should provide an update on the progress of the case to the manager who commissioned the investigation and the employee member concerned. If they anticipate any delays. In the event of information coming to light early on, a discussion should be had with the service/clinical director as appropriate about bringing the person back to work if there are no immediate risks identified. Confirmation of the decision should be recorded and given to the individual prior to their return.

Options including Suspension

When considering alternatives in which to deal with an employee in a situation that may fit those given above, there are a number of actions available to the manager:

- moving the individual to another area for the duration of the investigation.
- restricting the scope of duties.
- increasing the level of supervision.
- If their role permits, allowing them to work from home.
- suspension from duty

Authority to Suspend

Authority to suspend is vested in Trust Service Directors and designated Deputy. In the absence of this person, the most senior manager on duty may suspend on full pay.

At night or out of hours the decision to suspend lies with the Director 'on call'. The most senior manager on duty or the Duty Nurse must liaise with the Director 'on call' who will decide if suspension is appropriate or if alternative action should be taken. It is the responsibility of the senior manager on duty or the Duty Nurse to inform the individual of what action will be taken once this decision has been made.

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.

Unpaid Suspension

In cases where staff have been suspended due to an inability to attend work which arises from their own conduct, for example where an employee has been remanded in custody on suspicion of a criminal offence or their professional registration has been suspended, pay may be stopped.

Confidentiality

Managers and employee should be mindful of the confidential nature of the suspension with only employee who are crucial to the investigation being informed.

Record and Notification of Reasons for Suspension

A manager considering suspension should complete and record their decision using the Suspensions checklist attached as Appendix 5.

An employee who is suspended must be clearly informed of the reasons for the suspension and the allegations made against them. Following such action, written

confirmation of the action, including reasons and conditions of suspension must be sent by the Suspending Officer to the employee as soon as possible after the suspension has taken place and no later than 5 working days following the suspension meeting.

Review and Continuation of Suspension

Whilst suspended, the employee's line manager will write to the individual to offer support during the course of the investigation, which should include details of the Employee Assistance Programme provider and the Occupational Health Service. The suspension of the individual will be reviewed fortnightly and may be lifted during the course of the investigation if the director or 'next-in-line', in conjunction with the investigating officers, feels that this is appropriate. The outcome of the suspension review meetings must be outlined in a letter, and forwarded to the individual under investigation. This is to ensure that they are kept up to date with the investigation process.

Alternatively, if an employee wishes to request a formal review of the 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 Director or 'next-in-line', a senior member of the Human Resources Department and a trade union representative (who has no prior involvement in the particular allegation(s) being investigated). The review should take place within 5 working days of the request being received by the Trust. The decision should be communicated to the employee within 5 working days of the review meeting. If the decision results in the continuation of suspension reasons why this decision has been made will be stated in the letter.

A list of all suspended employees will be sent to and reviewed by the Director of Human Resources or his/her nominated deputy every two weeks.

Appendix 7

The Investigation Procedure

Where a formal investigation is necessary, the Disciplining Officer will consult with the Human Resources Department and an Investigating Officer or Officers will be appointed. Staff suitable for undertaking investigations will be selected from the list of Investigating Officers held by the Human Resources Department.

Investigating Officer

The Investigating Officer must be someone who would not be potentially implicated in the investigation. For example, the Investigating Officer should not be a member of staff who could be a potential witness or who may have been involved in the suspension. The onus is on the investigating officer to declare to the line manager and the HR Advisor on any issues which might compromise the credibility of the report.

It is the Investigating Officer's responsibility to ensure a timely and thorough investigation. The Investigating Officer(s) should timetable the investigation as a priority and this must be agreed with their Line-Manager. It is estimated that even the most complex of investigations should take no longer than 60 working days to complete.

If, in very exceptional circumstances, the Investigating Officer(s) cannot complete the investigation in 60 working days they must discuss this with the Human Resources Manager requesting an extension outlining the reasons why the investigation has not been completed and why an extension is needed.

Trained Investigating Officers

The Trust will maintain a list of Investigating Officers who must have received formal training or gained suitable experience in this field. The decision as to whether the previous experience gained is suitable will be made by the Associate Director of Human Resources.

The Human Resources Department should ensure that a meeting with the investigating officers is arranged prior to them starting the investigation. During this meeting, the HR advisor will explain the process of the investigation.

The Responsibilities of the Investigating Officer

1. Initiating the Investigation

The Investigating Officers should:

- Attend the initial meeting with the locality HR advisor in order to obtain the necessary information and understand the full process involved in carrying out the investigation.
- Seek advice from the relevant Human Resources Adviser throughout the investigation process and report to them on a fortnightly basis with an update of progress.

- inform the employee in writing that they will be conducting the investigation into the allegation previously communicated to them 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 should request a written statement from and state the reason why that employee is relevant to the case. If the investigating Officer decides not to call a witness suggested by the employee, they need to justify their decision. This does not preclude the Investigating Officer from seeking other witness statements pertaining to the allegations.
- 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.

2. 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/performance issues.
- 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.
- 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.

3. The Report and Hearing preparation

The Investigating Officers will also be expected to:

- Write up an investigatory report within 10 working days of the completion of the investigation unless there are exceptional circumstances.
- Present the investigatory report should it proceed to a formal hearing, which will include preparing questions to be asked to witnesses and respondent at the hearing.
- Write to witnesses requiring those who the Investigating Officer would like to question to attend the formal hearing.
- Be responsible for ensuring that witnesses who the Investigating Officer would like to question attend the formal hearing.

4. Notice of Investigation Meetings

The Investigating Officer(s) should give the employee at least 5 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 employee may offer an alternative time and date so long as it is reasonable and falls before the end of the period of a further 5 working days. Should the trade union representative 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 its absence.

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 formal meetings and will be given to the employee against whom the allegations have been made.

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

User involvement within the Investigation process

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

Investigation Report

The Investigating Officer must come to a conclusion about which version of events is most credible, and resist any temptation to apply their own standards to the seriousness of the issue. The employee on the receiving end is the judge of whether particular behaviour is offensive. The case of the employee complaining will be stronger if s/he complained at the time, or made notes of the incident and the response. However, take into account that the employee complaining may have been too upset or distressed to do so, or may not have thought of it at the time.

Following the investigation the Investigating Officer will produce a report; this will be sent to the relevant HR Advisor to ensure that report complied with the standards outlined in the policy. Any amendments should be completed within 5 working days. The report should be sent to the manager who commissioned the report. The investigation should include signed and dated statements and interviews from the following:

- The individual raising the allegation(s).
- The employee against whom the allegations have been made.
- Any employee 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.
- The report should highlight what allegations are upheld based on the evidence that have been gathered as part of the investigation.
- The report should not include recommendations of the next steps in the process e.g. Whether the case should go to a disciplinary hearing or not.

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

Investigation Interviews

The employee(s) investigating the aggrieved member of staff should first find out the facts from the point of view of the employee complaining. At interview ask questions such as:

- What happened?
- In what context did this happen?
- Who was involved?
- When did the incident take place?
- How did you react?
- Was this the first time this has happened?
- Tell me about the other occasions?
- Did anyone see/hear this or a previous incident?
- Is there any physical, documentation, or other evidence of the incident?
- Have you talked about this incident to anyone?
- How has it affected you?
- What do you want to happen to resolve this situation?

Questions that should not be asked include:-

- What were you wearing at the time?
- Did you do anything to lead him/her on?
- Surely s/he was only joking?
- I know the employee you are talking about. I can't believe s/he would do something like that. Are you sure that there hasn't been a misunderstanding?
- Do you really want me to take this complaint further?

Disciplinary Hearing Procedure

If the outcome of the investigation into the complaints confirms that misconduct has occurred and if it is decided that a formal disciplinary hearing is needed to fully conclude the case, the disciplinary hearing should be held as soon as possible after the conclusion of the investigation.

Written notice of the date of the disciplinary hearing will be provided to the employee giving a minimum of 5 working days' notice. The purpose of this notice period is to allow the employee to arrange representation if they wish. If the employee is unable to attend on the proposed date, an alternative date will be found for the hearing. The Trust reserves the right to change the panel members to accommodate the employee's proposed date.

If the employee is unable to attend the re-arranged hearing, the hearing may go ahead in their absence. The decision to go ahead in the employee's absence must be given serious consideration by the panel and their reasons formally noted on the disciplinary record before proceeding. Before going ahead in the employee's absence the employee must have been given the opportunity to send their written submissions to the panel for consideration and/or be given the option of his/her representative presenting the employee's case on his/her behalf.

The Disciplinary Panel will consider all 'in time' written submissions by the employee, and/or his/her 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).

Documentation

The Disciplinary Officer must ensure that all documentation to be used at the meeting 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 meeting. No supplementary information should be tabled at the meeting unless it is agreed by the panel in exceptional circumstances. If new evidence does come to light in the period between scheduling the meeting and taking place, the disciplinary hearing may need to be delayed to allow sufficient time to investigate and absorb this new information.

Disciplinary Panel

The Disciplinary Panel will comprise the Disciplining Officer and a Human Resources representative and, if appropriate, a professional adviser. A separate note-taker may also be present.

Opportunity to Indicate Response to the Allegation

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. This is not a statement of case

Witnesses

Both Management and Employee-Side will have the opportunity to call and question witnesses. It is the responsibility of the person who wishes to question the witnesses. The employee must inform the Disciplining Officer and Investigating Officer of their witness at the minimum of 5 working days before the hearing. This provides appropriate time for the Investigating Officer to contact the witness line- to arrange their attendance at the disciplinary hearing Management will facilitate time-off from duty as appropriate.

Failure to arrange for witnesses to attend will not delay the process, with the disciplining manager proceeding on the basis of all the information gathered/heard. Witnesses who the Investigating Officer wants to question will be invited to the hearing by the investigating officer unless in exceptional circumstances they are unavailable.

Bank employees who are required to attend investigatory meetings or hearings will be paid at their normal hourly rate.

The Disciplinary Hearing - Format

The formal disciplinary hearing is chaired by a Disciplining Officer. The employee should be given a minimum of 5 working days' notice of the date, time and location of the meeting. S/he should be forwarded the management case in writing a minimum of 10 working days prior to the date of the meeting. The employee may also submit their case, if they wish to do so a minimum of 5 working days before the date of the hearing. This must be sent directly to the Disciplining Officer chairing the panel who will forward a copy to the Investigating Officer.

The Meeting

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

1.0 Introductions

- The purpose of the hearing is explained by the Disciplining Officer.
- The procedure to be followed is explained by the Disciplining Officer.
- Before proceedings start the Individual is given the opportunity to indicate how they respond to the allegation.
- During the course of the meeting the Chair may call adjournments to either consider evidence or for natural breaks. The employee or their representative or the Investigating Officer may ask the chair to consider an adjournment at any stage of proceedings. The Panel may at its discretion adjourn the appeal meeting at any time in order that further evidence may be produced by either party to the dispute or for any other reason.

2.0 Management Case

- An Investigating Officer presents management's case supported by the other Investigating Officer or a member of the Human Resources team.
- If applicable as part of the Investigating Officer's presentation s/he may call witnesses in sequence to present a statement. The witnesses are asked prior to the meeting to wait in a location outside the meeting until they are called to present their evidence. The investigating officer may then question their witnesses when they are called into the hearing.
- The employee and/or his/her representative may then question the Investigating Officer's witnesses.
- The panel may then question the Investigating Officer's witnesses.
- The Investigating Officer, the employee and the panel may ask the witnesses any further questions, after which the witnesses leave the room.

- The Investigating Officer concludes their presentation.
- The employee and the panel are given an opportunity to ask the Investigating Officer questions.

3.0 The Employee's Case

- The employee presents their case.
- If applicable as part of the employee's case s/he may call witnesses. The witnesses are asked prior to the meeting to wait in a location outside the meeting until they are called to present their evidence
- The Investigating Officer may question the employee's witnesses.
- The panel may question the employee's witnesses.
- The employee, the Investigating Officer, and the panel may ask the witnesses any further questions, after which the witnesses leave the room.
- The employee and/or their representative concludes their presentation.

4.0 Summing Up

- The Investigating Officer has the opportunity to give a brief summing up of their case.
- The employee and/or their representative have the opportunity to give a brief summing up of their case.

5.0 Mitigating Circumstances

The employee is given the opportunity to explain any mitigating circumstances they would like the panel to take into account. If this is the case the panel may hear these confidentially, the Investigating Officer(s) may be asked to leave the room.

6.0 Adjournment

An adjournment is called to allow the panel to consider the evidence

The appellant and his/her representative along with the investigating officers shall withdraw to allow the panel to make a decision.

7.0 Procedure

The procedure to be followed in a disciplinary hearing is attached at Appendix 8 but may be varied at the discretion of the Chair of the disciplinary hearing to take account of exceptional circumstances (e.g. patients/clients giving evidence).

8.0 Notification of Outcome

The outcome will normally be notified to the employee following an adjournment and will be confirmed to the individual in writing as soon as practically possible after the disciplinary hearing and at the latest within 5 working days of the decision. This letter will be copied to the employee's representative. In some circumstances the panel may need to consider all the evidence presented to them over night. In such circumstances the outcome of the hearing may be informed to the employee in writing only.

9.0 Disciplinary Outcomes

9.1 Following the consideration of all the information at the disciplinary meeting, the Disciplining Officer may conclude the following:

- Allegation is unsubstantiated;
- Minor misconduct is substantiated;
- Serious misconduct is substantiated; or
- Gross misconduct is substantiated.

9.2 The Disciplining Officer's conclusion

The Disciplining Officer's conclusion should take into account all of the information gathered in the investigation and heard during the disciplinary meeting. The Disciplining Officer should be clear of what the Trust's normal practice is for dealing with the type of misconduct is under consideration. This does not mean that similar offences will always call for the same action, each case must be looked at on its own merits and relevant circumstances. The Disciplining Officer should also take into account consistency of process and investigation rather than just outcomes. Allegations do not have to be proven beyond all reasonable doubt as in a court of law, but should be based on a balance of probabilities.

9.3 No Disciplinary Action Taken and Alternatives

If the Disciplining Officer feels that the allegation is not sufficient enough to warrant a disciplinary warning, they may feel that standard setting, training or development is appropriate. Alternatively a decision may also be made at this stage for a disciplinary transfer as action taken short of a disciplinary warning.

9.4 First Written Warning

If the misconduct is serious, or similar related offences occur following informal action, a first written warning may be given. A first written warning will be on file for a period of 12 months. During this period the line manager must ensure that any recommendations or actions are met to prevent a similar occurrence.

A letter will be issued by the Disciplining Officer/Line-Manager within 5 working days confirming the action and indicating:

- The nature of any misconduct or poor performance;-

- Any previous discussion or informal warning still current;-
- That a repetition of the offence or a similar or related offence is liable to lead to further disciplinary action;-
- If appropriate, the period of time given for improvement and the necessary course of action;-
- That the warning will be retained on the employee's personal file for a period of 12 calendar months, after which it will be removed, unless further disciplinary action is taken; and
- The employee's right of appeal and guidance on how the right may be exercised.

9.5 Final Written Warning

Where further misconduct occurs, or the misconduct is sufficiently serious to warrant only one written warning, but insufficiently serious to justify dismissal or there are mitigating circumstances, which have been taken into account, an employee may be given a final written warning. A final written warning will be on file for a period of 12 months. During this period the line manager must ensure that any recommendations or actions are met to prevent a similar occurrence. In addition to receiving a final written warning the Disciplining Officer may feel that a further penalty should be issued such as a disciplinary transfer, demotion or loss of seniority.

In the event of demotion, the panel will need to recommend the contractual notice period to be given, to allow the individual to make arrangements. However, if the demotion is recommended as a result of a serious matter that failure to do so immediately would be to the detriment of the Trust, it may be appropriate to make it effective from the date of the hearing. Pay protection will not apply in this event.

A letter will be issued by the Disciplining Officer within 5 working days. A holding letter should be sent to the employee before the 5 working day deadline if an extension is required. The maximum extension is 5 working days. The letter should confirm the action and indicate:

- The nature of any misconduct;
- Reference to previous warnings still current;
- That dismissal or other disciplinary actions would normally follow further misconduct;
- The course of action required to meet the standard of conduct expected;
- Actions taken short of dismissal and likely periods of review (eg. demotion);
- That the 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; and
- The employee's right of appeal and guidance on how the right may be exercised.

9.6 Duration of Warnings and Developmental Agendas

In exceptional and rare circumstances, taking into account all of the facts of the case as well as any mitigation, the Disciplining Officer may decide to set the duration of a First written warning shorter or a Final Written Warning for a longer period than those times specified above. Where a longer period is set this must initially be agreed by the Director of Service and the HR Advisor and reviewed after 12 months by the Director of Service.

Where a pattern of conduct emerges whereby an individual is repeatedly transgressing the agreed standards of conduct as soon as a warning has lapsed, the disciplining manager may choose to extend the duration of the warning above that specified above.

If there is a current formal warning on the individuals file this will be material should this individual be subject to subsequent disciplinary action.

Where a developmental agenda is set as the result of a disciplinary meeting and a review period is agreed as part of this meeting, this review period may be extended in cases where long-term sick leave, maternity leave or any other type of leave would otherwise prevent the employee from completing the agreed developmental agenda.

9.7 Dismissal

Where further misconduct occurs following previous formal warnings or in a situation of gross misconduct an employee may be dismissed. The dismissal must be confirmed in writing within 5 working days indicating:

- The reasons why the employee is being dismissed;
- Any previous warnings still current;
- The effective date of termination;
- Appropriate period of notice and whether payment is being made in lieu of notice; and
- The employee's right of appeal and guidance on how that right may be exercised.

9.8 Professional Conduct

In some cases where professional conduct is a factor it may be appropriate to consider redeployment into a more suitable post as an alternative to dismissal where this is practicable.

9.9 Summary Dismissal

In cases where gross misconduct is substantiated the Disciplining Officer may decide to summarily dismiss the employee. Summary dismissal is defined as immediate dismissal without payment for the appropriate statutory or contractual period of notice.

9.10 Notice Periods

Except in cases of summary dismissal, the employee is entitled to the appropriate statutory or contractual period of notice whichever is the longer, and payment may be made in lieu of this entitlement.

9.11 Communication of the Decision

The Panel may call all parties back into the room on the day of the disciplinary meeting to give their decision. However, in some cases it may be necessary to consider the case over night where a decision may be confirmed at a later date. The decision will be confirmed in writing within 5 working days of the decision being made.

Employee is informed of their Right of Appeal and that the decision will be confirmed in writing.

Appendix 10

Notification of Appeal Form

This form must be completed and sent to the Director of Human Resources within **15 working days** of the date of the letter confirming the outcome of the formal meeting under Stage One. Please ensure that your grounds of appeal include at least one of the criteria for accepting appeals below. You may continue on a separate sheet

Parts 1 and 2 of this form must be completed.

PART 1 – EMPLOYEE DETAILS

Name: **Job Title:**

Department: **Base:**

Telephone No. **email:**

PART 2 – DETAILS OF APPEAL

Date of Formal Meeting:

Please state in your own words the grounds on which you are basing your appeal against the decision taken at the Stage One Formal Meeting and what outcomes you are looking for

The grounds for your appeal may include amongst others: procedural irregularities during the hearing, your complaint has not been properly investigated, you believe Trust policies have been breached (please state which policies), acts of discrimination/bullying/harassment at the hearing or you have new evidence that you want to be considered by an Appeal Panel.

Signature **Date:**

Appeals Procedure

The employee must submit an appeal letter to the Director of Human Resources within 15 working days after the date the decision was made following the formal meeting. If the letter lacks sufficient detail as to which aspects of the panels' decision the appellant is dissatisfied with they will be granted they lose their right to appeal.

Upon receipt of the appellant's grounds for appeal, the Director will send a holding letter to the appellant within 5 working days of receipt of the appeal. The appeal letter should be forwarded to the manager and HR Advisor who attended the stage1 hearing so that they can write the management side case.

A Manager and HR who has not been associated with the case should be appointed to act as appeal panel members. They will have 15 working days before the appeal hearing to submit their management case to the Director of Human Resources. This should include a comprehensive justification for the decision made at the initial hearing and respond to any queries raised by the appellant.

At least 5 working days before the appeal hearing the employee statement of case and the management side case will be forwarded to all relevant parties (appeal panel members, employee side and disciplinary management side).

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

Notice of appeal hearing date

The appellant should be given at least 25 working days' notice of the date and time that the appeal hearing will be convened.

Rescheduled Appeal Hearing 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.

Medical and Dental Employee

Misconduct matters for Medical and Dental employee, as for all other employee groups are matters to be resolved locally and under the Trust's Disciplinary Policy and Procedure. However, it is strongly advised that advice is taken from the NCAS for conduct cases particularly professional misconduct.

Where the alleged misconduct relates to matters of a professional nature or where the investigation identifies issues of professional misconduct the case investigator must obtain appropriate independent advice. Similarly, where a case involving issues of professional misconduct proceeds to a Disciplinary Hearing the panel must include a member who is medically qualified and who is not currently employed by the Trust.

Appeal Hearing

The hearing is chaired by a Panel Member. At the appeal hearing, the following procedure shall be observed:

1. 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

2. The Appellant's case

- The appellant and/or their representative shall put their case to the panel in the presence of the Disciplining Officer. In support they may call witnesses.
- The management side will 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 his/her representative shall have the opportunity to re-examine his/her witnesses on any matter referred to in their examination by members of the Appeal Panel or the management side.
- During the course of the meeting the chair may call adjournments to either consider evidence or for natural breaks.
- The employee or their representative or the Disciplining Officer 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.

3. Management's Case

- The management side shall state the Trust's case in the presence of the appellant and his/her representative. S/he may call witnesses.
- The appellant or his/her representative shall have the opportunity to ask questions of the management side and witnesses.
- The members of the Appeal Panel shall have the opportunity to ask questions of the Disciplining Officer and witnesses.

- The Disciplining Officer shall have the opportunity to re-examine his/her witnesses on any matter referred to in their examination by members of the Appeal Panel, the appellant or his/her representative.

4. Summing Up

- The panel will call a brief adjournment to all parties to prepare for the summing up of their cases.
- The management side sums up their case
- The appellant or his/her representative
- Neither party may introduce any new matter.

5. 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.

6. All parties return and the decision of the panel is communicated.

- The Panel may call all parties back into the room on the day of the appeal hearing to give their decision. However, in some cases it may be necessary to consider the case overnight where a decision may be confirmed at a later date. The decision will be confirmed in writing within 5 working days of the decision being made.
- The panel will consider all the evidence and representations carefully before them in advance of making a decision. The panel will provide reasons for any decisions that they make.

FLOW CHART – RAISING A COMPLAINT
(Informal Stage)

