

## Disciplinary Policy & Procedure

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## **1. INTRODUCTION**

- 1.1. East London NHS Foundation Trust (herein referred to as ‘the Trust’) believes that to promote good employee relations it is necessary to demonstrate that employees will be treated fairly, reasonably, promptly, impartially and consistently in matters relating to discipline. The Trust promotes high standards of behaviour and conduct for all employees and takes appropriate corrective action where those standards are not met. Disciplinary rules and procedures are designed to assist in the standard setting for conduct and behaviour. It is important that managers and employees understand them.
- 1.2. The disciplinary process is not intended to be punitive in nature. The intention of this policy is that potential disciplinary cases are dealt with at an early stage, with a view to resolving problems as quickly and fairly as possible; and that employees are encouraged to improve their standard of work and/or conduct.
- 1.3. It supports the Trust’s Equality, Diversity and Human Rights Policy in ensuring no employee receives less favourable treatment on grounds of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation, domestic circumstances, social and employment status, HIV status, political affiliation or trade union membership. The application and impact of this policy will be monitored in line with the Trust’s Equality, Diversity and Human Rights Policy.

## **2. SCOPE**

- 2.1. This procedure is applicable for personal and/or professional misconduct for all staff groups directly employed by the Trust, regardless of length of service or type of contract (that is, substantive and fixed term) unless specified by their terms and conditions of service.
- 2.2. Individuals engaged by independent contractors providing a contracted service to the Trust are excluded from this policy. However the Trust reserves the right to contact the independent contractor’s employer should their conduct and/or behaviour fall below an acceptable standard whilst on Trust premises; and to exclude them from Trust premises if necessary.
- 2.3. Medical staff will continue to fall under this Disciplinary Policy and Procedure. However, in taking any action under this policy, account must also be taken of the provisions of Maintaining High Professional Standards in the Modern NHS (MHPS) which includes taking advice from the National Clinical Assessment Service (NCAS) for cases relating to conduct and capability. In particular, the provisions of MHPS will take precedence for exclusion (suspension) and the processes of investigation, hearings and appeals.

## **3. PRINCIPLES**

- 3.1. The Trust has set standards of conduct and behaviour that it expects of all employees in the Standards of Conduct and Disciplinary Rules. These are included in the Trust’s Standards of Business Conduct and in Appendix 1. This procedure is intended to help and encourage all employees achieve and maintain acceptable standards of conduct and job performance, and to provide a fair and effective method of dealing with alleged breaches of these standards.

- 3.2. Any employee accused of any misconduct will be fully informed of the nature of the allegation against them and will be notified in writing of any subsequent disciplinary hearing.
- 3.3. In all cases where a formal disciplinary hearing is necessary, the Chair of the Disciplinary hearing (herein referred to as “the Chair”) will not have investigated or been the “Commissioning Manager” for the case to be heard. If professional issues are involved, an appropriate professional adviser should be available to advise the Chair when required.
- 3.4. The employee will have the right of appeal against any formal disciplinary action taken against him/her.

#### **4. REPRESENTATION**

- 4.1. The employee has the right to be represented in all formal meetings and hearings under this procedure by a representative from a recognised trade union (please see the Trust’s Partnership Recognition and Procedural Agreement Policy) or professional association, or accompanied by a work colleague. Friends, family members or ex-work colleagues will not be allowed to accompany staff to investigation meetings and any hearings arranged under this policy. If an employee is disabled or has language barriers, other, suitable representatives may be considered.
- 4.2. It is the employee’s responsibility to forward any relevant paperwork to their representative. The employee should also provide their Representative’s name and contact details to the Investigation Officers.

#### **5. PROCESS FOLLOWING ALLEGATIONS**

- 5.1. As soon as an alleged breach of discipline occurs, the line manager should gather the relevant preliminary documentation and inform the Head of Service for the relevant discipline, who would be classed as the “Commissioning Manager” or equivalent.
- 5.2. Please note that for allegations involving safeguarding children and/or vulnerable adults, please also refer to the Trust’s Management of Allegations Involving Safeguarding Adults and Children Concerns Made Against Employees Policies.
- 5.3. Once the preliminary documentation has been gathered, if there is a potential case to answer, the Commissioning Manager, in conjunction with the local HR Team 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 line manager, a member of the local HR Team and the investigating officer(s). For further guidance, please refer to **Appendix 2** in the Disciplinary Guidance document.

#### **6. ALLEGATIONS AGAINST AND SUSPENSION OF AN ACCREDITED TRADE UNION REPRESENTATIVE**

- 6.1. If the employee who is subject to disciplinary investigation is an accredited Trade Union Representative, the same procedure will apply as detailed in this policy. However in addition, the Full Time Officer of the union should be informed by the

HR Advisor prior to any disciplinary action being taken, and given reasonable opportunity to represent the employee at any disciplinary meeting and/or hearing.

- 6.2. If it is necessary to suspend an accredited representative of a trade union then, wherever possible, the appropriate Union Official or Full Time Officer should be informed by the HR Advisor prior to the suspension taking place.

## **7. REMOVAL FROM THE WORKPLACE AND SUSPENSION FROM DUTY**

- 7.1. 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;

- 7.2. Staff who are placed on paid or unpaid suspension are not permitted to undertake any work during their contracted hours.

- 7.3. All decisions to suspend should be reviewed every 4 weeks by the Commissioning Manager, who should then complete the Suspension/Review Checklist after every suspension review (**Appendix 6**) in the Disciplinary Guidance document). This information should be provided as part of the quarterly workforce report for SDB.

- 7.4. Suspension from duty is not a disciplinary measure and will normally be paid. 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.

## **8. UNPAID SUSPENSION**

- 8.1. 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 will be stopped for the duration of unavailability.
- 8.2. 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 i.e. following a LCFS report). In such cases, the Director of Finance will have to approve this. 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)

## 9. INFORMAL PROCEDURE FOR MINOR MISCONDUCT AND STANDARD SETTING

- 9.1. 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. For further guidance, please refer to **Appendix 8** in the Disciplinary Guidance document.
- 9.2. 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 9** in the Disciplinary Guidance document).
- 9.3. Further action is only appropriate where informal action has not led to the necessary improvement or if the matter is more serious.

## 10. AGREED OUTCOME PROCESS

- 10.1. If, before, during or following an investigation, an employee admits, acknowledges and/or and accepts the allegations made against them regarding their conduct, the Commissioning Manager may, with the agreement of the member of staff, proceed to issue a disciplinary sanction. This does not apply in cases of gross misconduct when the sanction is potentially dismissal.
- 10.2. This situation would only apply when the employee accepts that the allegations made against them are accurate. If this is the case, the Commissioning Manager would establish with HR advice what they think the disciplinary outcome would most likely be. The employee would need to confirm their admission and acceptance of the agreed outcome in writing. If they do not agree, the case will continue to the next stage of this policy i.e. formal disciplinary hearing. **Appendix 10** in the Disciplinary Guidance document provides the Agreed Outcomes process.

## 11. DISCIPLINARY HEARING

- 11.1. 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.
- 11.2. 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. Written notice of the disciplinary hearing will be provided to the employee, giving a minimum of 5 working days' notice to allow them to arrange representation if they wish. Further guidance and the procedure to be followed in a disciplinary hearing are attached as **Appendix 12 and 13** in the Disciplinary Guidance document.

## **12. DISCIPLINARY OUTCOMES**

- 12.1. The Disciplining Officer's conclusion should take into account all of the information gathered in the investigation and heard during the disciplinary hearing. The Disciplining Officer should 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.
- 12.2. Following the consideration of all the information at the disciplinary hearing, the Chair will conclude if the allegations are substantiated or unsubstantiated. If the allegations are unsubstantiated, no further action may be taken against the employee; however standard setting, training and/or departmental/individual recommendations can be put in place if necessary.
- 12.3. Following consideration of all the information at the disciplinary hearing, the Disciplining Manager may conclude the following:
  - Allegation unsubstantiated;
  - Minor misconduct substantiated;
  - Gross misconduct substantiated.

## **13. SANCTIONS:**

### **13.1. First Written Warning**

Should the Chair find that there has been minor misconduct, he/she can issue a first written warning. A first written warning will be confirmed in the disciplinary hearing outcome letter and will be placed on the employees file for a period of 12 months. The employee will have the right to appeal this sanction. The employee will be warned that a repetition or other subsequent misconduct may lead to further disciplinary action being taken against them, not excluding dismissal.

### **13.2. Final Written Warning**

Should the Chair feel that there has been serious misconduct, he/she can issue a first written warning or a final written warning. If the employee already has a current warning for misconduct, the level of warning may be escalated. A final written warning will be confirmed in the disciplinary hearing outcome letter. The Chair will decide on the duration of how long this warning will be placed on the employees file for, from a minimum period of 12 months to a maximum period of 24 months, taking into account all of the facts of the case as well as any mitigation. The employee will have the right to appeal this sanction. The employee will be warned that a repetition or other subsequent misconduct may lead to further disciplinary action being taken against him/her, up to and including dismissal.

### **13.3. Dismissal**

If the employee already has a current first or final written warning for misconduct, then the employee may be dismissed with appropriate notice. Or in a situation of gross misconduct, an employee may be dismissed. The employee will have the right to appeal this sanction. The dismissal must be confirmed in writing within 5 working days indicating:

- The reasons why the employee is being dismissed;
- Any previous warning still current;
- The effective date of termination;
- Appropriate period of notice (the employee is entitled to the appropriate statutory or contractual notice period, whichever is longer) 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.

In exceptional circumstances and only after taking advice from the Director of HR, as an alternative to dismissal, the Chair may feel that an alternative sanction should be considered such as redeployment, demotion (pay protection will not apply) or loss of seniority. In cases of demotion an established and vacant post must be identified and discussed. The employee must agree to the alternative post.

#### **13.4. 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. In exceptional cases, where there are strong mitigating circumstances against cases of gross misconduct, a final written warning may be issued. In such circumstances the duration of the warning would normally be extended.

#### **13.5. Fraud Cases:**

For fraud cases where the allegation is upheld, each case will be reviewed by the Director of Finance and if it is possible to quantify the value of the fraud, the Chair will 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.

### **14. EXTENSION OF WARNINGS**

- 14.1. A first or final warning can also be extended in cases where long-term absence would otherwise prevent the employee from remaining at work regularly for the duration of the warning. Each case will be reviewed on an individual basis by the Chair in conjunction with HR.

### **15. RIGHT OF APPEAL**

- 15.1. Staff have the right of appeal against any formal disciplinary action taken against them and will be informed of this in the disciplinary hearing outcome letter.
- 15.2. The time limit for lodging any appeal is 15 working days from the date of the disciplinary hearing outcome letter.
- 15.3. Written notice of the appeal should be lodged with the Director of Human Resources with sufficient details of the reasons for the appeal using the appeal proforma (appendix 9). 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

## **16. RESIGNATION**

- 16.1. An employee who is the subject of an investigation may decide to resign prior to a disciplinary hearing or prior to the completion of the investigation. For investigations that involve fraud, patient care and/or safeguarding issues, the investigation must be completed and a management meeting held to discuss and consider whether any further action is required e.g. notifying a regulatory body regarding professional misconduct or notification to DBS.
- 16.2. In all cases where the employee has resigned under these circumstances, if a reference is subsequently requested, the factual reference must state that the employee was the subject of a disciplinary investigation and that the employee chose to resign before the completion of the investigation or before the disciplinary hearing could take place.

## **17. CRIMINAL OFFENCES**

### **17.1. Inside Employment**

Where the misconduct is the subject of a police investigation or legal process, the Trust has the discretion to proceed with its own investigation and disciplinary action in accordance with this procedure, without awaiting the outcome of any police investigation or prosecution.

### **17.2. Outside Employment & Reporting**

Where an employee is arrested; and/or cautioned; and/or convicted of a criminal offence; and/or issued with a reprimand letter for an offence committed outside of work, it is the employee's responsibility to inform their manager of the circumstances immediately. Failure to report or disclose this information will result in disciplinary action being taken up to and including dismissal.

### **17.3. Consequences**

A criminal offence outside employment which may result in an arrest, caution, conviction or any other type of reprimand will not automatically be regarded as a reason for disciplinary action or dismissal. The main consideration will be whether the conviction has clear implications for the performance of the employee's duties or is such that it damages the reputation of the Trust, in which case disciplinary action, up to and including dismissal may be taken. If it is decided that the offence could affect the performance of the individual or brings the Trust into disrepute, further action should be taken as appropriate, in line with this policy.

- 17.4. Where an **employee** has been imprisoned/remanded in custody, decisions may be made in the employees' absence.

## **18. REFERRAL TO PROFESSIONAL BODY/DISCLOSURE AND BARRING SERVICE**

- 18.1. The Chair will also consider whether the conduct of the employee should be reported to their professional body. In such cases it is the responsibility of the Chair to inform the professional lead e.g. Medical Director or Director of Nursing, as well as the employee, that this referral will be made. If a referral is appropriate, it is usual that it will be made only following conclusion of the appeal process, however where allegations of gross misconduct are made, consideration of earlier referral to a professional body may be necessary.
- 18.2. It is important to note that in all substantiated fraud allegation cases; these should always be reported to the employee's relevant professional body by the LCFS. The LCFS will send a copy of this referral to the relevant HR manager.
- 18.3. In safeguarding cases, there is a legal duty to refer to the disclosure and barring service if a staff member satisfies the harm test, has engaged in relevant conduct or received a caution or conviction for a relevant offence (see appendix 12).

## **19. SERIOUS UNTOWARD INCIDENTS (SUIs)**

- 19.1. Where serious untoward incidents have disciplinary implications, the disciplinary investigation may be undertaken at the same time as but separate to the SUI investigation.

## Standards of Conduct and Disciplinary Rules

### 1. Introduction

1.1. In any organisation there is a need to regulate conduct and behaviour to acceptable standards in order to maintain the safety and well-being of staff and to ensure the efficient running of the organisation.

1.2. The purpose of this document is to:

- Set out the standards and rules expected of all employees;
- Give an indication of the general circumstances, which could lead to disciplinary action; and
- List offences which are among those regarded as Gross Misconduct and which will, if proven, normally lead to summary dismissal.

### 2. General Rules

All staff should comply with the Trust's Standards of Business Conduct ([East London NHS Foundation Trust Intranet: Corporate Governance & Finance Policies](#)). These rules apply to all staff employed by the Trust and non-observance could lead to disciplinary action.

### 3. Examples of Misconduct Warranting Disciplinary Action

- Failure to follow reasonable instructions or insubordination
- Acting outside of professional code of conduct
- Causing careless damage to property or inconvenience to patients, members of the public or colleagues
- Persistent bad time keeping
- Unauthorised and/or frequent and/or persistent absence and/or lateness without good reason
- Unauthorised use of NHS property
- Smoking and/or using electronic cigarettes in prohibited areas
- Non-compliance with the Trust's rules in relation to the Working Time Regulations 1998 ([http://elftintranet/our\\_organisation/trust\\_bank.asp](http://elftintranet/our_organisation/trust_bank.asp))
- Other actions which are, in the opinion of management, a breach of good conduct and/or likely to bring the Trust into disrepute.

### 4. Serious Offences – Gross Misconduct

The following list, although by no means exhaustive, summarises examples of Gross Misconduct which may lead to summary dismissal. This would be misconduct which is so serious that any further working relationship is impossible between the employer and employee. This list is not exhaustive or complete.

- 4.1. **Assault** - Assault on a patient, visitor, fellow employee or member of the public while on duty or on Trust premises. This includes fighting or physical abuse; sexual assault including sexual relationships with service users.

- 4.2. **Corrupt Practices/ Bribery** - The receipt or acceptance of a bribe, or the offer to, promise or giving of a bribe, which assists in obtaining/ retaining business or financial advantage, or the inducement or reward of someone for the “improper performance” of a relevant function. Please refer to the Trust’s Counter Fraud and Bribery Policy for further information ([http://elftintranet/our\\_library/corporate\\_governance\\_finance\\_policies.asp](http://elftintranet/our_library/corporate_governance_finance_policies.asp)).
- 4.3. **Defrauding the Trust** - Any deliberate attempt to defraud the Trust or a member of staff or a patient or member of the public. Please refer to the Trust’s Counter Fraud and Bribery Policy for some examples of NHS Fraud. Please note: all suspected cases of fraud will be communicated to the Counter Fraud Department who may undertake an initial investigation.
- 4.4. **Transaction with patients** - Employees are not permitted to enter into financial transactions with patients or their relatives relating to goods or property, which could be to the pecuniary advantage of the employee, whether during working hours or not.
- 4.5. **Providing False Information** - This rule may be breached when an employee knowingly or through wilful neglect makes any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for the employer’s purposes; or has knowingly or through wilful neglect made any false, misleading or inaccurate statement material to his or her appointment to the service of the employer. The rule may also be breached if without reasonable cause an employee destroys or mutilates any book, document, record or information storage or retrieval facility kept for the employer’s purposes, or alters or erases or adds to any entry in such book, document, record or information storage or retrieval system. This applies to clinical/patient records and/or any other information systems.
- 4.6. **Alcohol and Drugs** - Includes incapacity to perform normal duties owing to the consumption of alcohol or misuse of drugs; consumption of alcohol and/or drugs whilst on duty; and being under the influence of alcohol and/or drugs whilst on duty and/or on Trust premises. Reference should also be made to the Trust’s Alcohol and Substance Misuse Policy ([http://elftintranet/our\\_library/human\\_resources\\_policies.asp](http://elftintranet/our_library/human_resources_policies.asp))
- 4.7. **Negligent Behaviour** - Any action or failure to act which seriously threatens the health and safety of a patient, employee or member of the public. This could include:
- Sleeping on duty – where safety of staff and services users is endangered
  - Incorrect administration/documentation of medicines
  - Failure to act in accordance with professional registration
  - Failure to undertake clinical observations
- 4.8. **Breach of Trust rules regarding the Working Time Regulations 1998 and/or Trust Staff Bank Terms and Conditions that place staff and/or patients at risk** - This includes breach of working time regulations 1998; working in excess of 48 hours if no opt out is signed, working in excess of 60 hours per week if an opt out is signed, back-to-back shift working, that is, working a late shift (or long-day) shift followed by a night shift or a night shift followed by any day duty. A ‘study day’ is considered as a ‘shift’ for this purpose thereby not complying with the adequate rest periods, breaching adequate rest of minimum of 90 hour rest

period per week, undertaking bank/agency duties within a period of 7 days of staff returning from sickness absence and any other unexpected leave; working within core 28 days annual leave entitlement. Work that brings someone into breach may include work inside and outside the Trust, including all Bank work. All staff are required to declare work outside the Trust.

- 4.9. **Breach of Security** - Any act or violation of a security regulation which compromises the safeguarding of Trust property, staff or service users.
- 4.10. **Unauthorised Absence** - Prolonged and/or repeated periods of unauthorised absence where no attempt is made to contact the Trust. Please note that in cases of unauthorised absence, the Trust reserves the right to withhold an employees pay.
- 4.11. **Malicious Damage** - Intentionally causing any damage to the property, or to the Trust and confidence the public may have in the Trust, including breaches of confidentiality and trust.
- 4.12. **Unauthorised or Unlawful Possession of Property** - Any unauthorised or unlawful possession of property of the NHS, patients or members of the public.
- 4.13. **Misuse of Information Systems** - Inappropriate or excessive private use of the Email, Internet or telephone. Inappropriate use of these services may involve material or information of a sexual or racial nature which a colleague may find objectionable and offensive. Reference should be made to the Trust's policy on the Internet and Email usage ([http://elftintranet/our\\_library/information\\_governance\\_policies.asp](http://elftintranet/our_library/information_governance_policies.asp)).
- 4.14. **Breach of Confidence** - Any failure to treat sensitive Trust, patient or employee information with the utmost confidence.
- 4.15. **Breach of Trust** - This rule may be breached when an employee acts in a way which can reasonably be considered as damaging, or likely to damage, the relationship of confidence and trust between him or her and the employer (eg the unauthorised disclosure of information about the employer's business to a third party). This trust and confidence can be implicit or explicit.
- 4.16. **Bullying, Harassment, Victimisation or Discrimination** - Any instances of bullying, harassment or discrimination on the grounds of race, national or ethnic origin, colour, religion, religious belief, sex, marital status, sexual preference, disability, trade union membership/activities etc. in accordance with the Trust's Equality, Diversity and Human Rights Policy ([http://elftintranet/our\\_library/human\\_resources\\_policies.asp](http://elftintranet/our_library/human_resources_policies.asp)).
- 4.17. **Theft** - This refers to any instance of theft of property from the Trust or from patients, visitors, or from other members of staff on Trust premises. Please note in these instances, an immediate referral should be made to the Trust's Local Security Management Specialist.
- 4.18. **Standards of Business Conduct** - This refers to staff who place themselves in a position which risks, or appears to risk, conflict between their private interests and with their duties. This could include, but without limitation, failing to declare employment outside the Trust. Please refer to the Trust's Standards of Business Conduct for further information.

- 4.19. **Loss of legal authority to continue employment** - Summary Dismissal may also be appropriate in cases where there is loss of legal authority to continue employment, e.g. loss of/failure to renew professional registration, lack/failure of necessary qualifications or work permit not being issued, imprisonment.
- 4.20. **Inappropriate or Unprofessional relationship with a service user** - This includes the development of an improper relationship that leads to any form of abuse of a service user such as sexual, financial, psychological, physical, etc.
- 4.21. **Data Security/Confidentiality** - Any matter of a confidential nature, in particular any information relating to patients, individual staff records and details of contract terms and prices must under no circumstances be divulged or passed on to any unauthorised person or persons. Data loss/breach of confidentiality may result in disciplinary action. Misuse of or failure to safeguard confidential information and/or patient data will be regarded as misconduct/gross misconduct, depending on the seriousness of the incident.
- 4.22. **Health and Safety** - A serious failure to co-operate with management and other employees under the terms of the Health and Safety at Work Act or regulations made thereunder.
- 4.23. **Refusal to Carry out a Reasonable Management Instruction** - This includes gross or repeated insubordination to a line manager and/or senior manager.
- 4.24. **Conviction/Caution** - Committing an act outside work, or being convicted for a criminal offence, which is liable to adversely affect the performance of the contract of employment and/or the relationship between the employer and the employee
- 4.25. **Conduct likely to bring discredit to the employer's business or organisation** - This rule may be breached when an employee intentionally or recklessly or without reasonable cause acts in a manner which damages, or is likely to damage, the reputation of the organisation.
- 4.26. Any other breach of discipline or other matter not covered above which in law or the opinion of the Trust justifies dismissal.

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## Roles and Responsibilities

1.1. It is fundamental that all levels of staff take appropriate action regarding any potential disciplinary matters in line with the Disciplinary Policy and Procedure of the Trust.

### All Staff

1.2. 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.

1.3. Staff have a duty to comply with Appendix 2 of this policy and the Trust's Standards of Business Conduct ([East London NHS Foundation Trust Intranet: Corporate Governance & Finance Policies](#)), as well as all Trust Policies and Procedures.

1.4. 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).

1.5. 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.

1.6. Failure to disclose information can also constitute a criminal offence and referrals may be made to the LCFS to investigate.

### Line-Managers

1.7. 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 Human Resources 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 Director of Finance;
- In cases of suspension, complete a Staff Changes Form immediately for the employee so that this is recorded on ESR.

## **Investigating Officers**

1.8. The responsibilities of Investigating Officers include:

- To attend and fully participate in the initial planning meeting, including completing the Disciplinary Investigation Planner Tool (Appendix 3), in conjunction with the Commissioning Manager and the local HR Team;
- To complete the investigation as soon as 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 HR for any advice needed when undertaking the investigation and writing the management statement of case;
- To send the draft report to the appropriate HR advisor for comments;
- To complete the final report to send to HR who will then forward this to the Commissioning Manager for a decision;
- To invite witnesses to the hearing should this be conducted;
- To present the management statement of case at the disciplinary hearing.

## **The Human Resources Department**

1.9. The role of the Human Resources 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.

1.10. Managers, Investigating Officers and Commissioning Managers should consult with their local HR representative at the earliest opportunity in all cases of suspensions, investigations and where formal or informal disciplinary action is contemplated.

## **Commissioning Manager**

1.11. The responsibilities of the Commissioning Manager include:

- To chair the initial planning meeting, including completing the Disciplinary Investigation Planner Tool (Appendix 3), in conjunction with the Investigating Officers and the local HR Team;
- In conjunction with HR 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 6) and the Incident Decision Tree (Appendix 4) as soon as practicably possible.
- 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 HR Adviser appoint and inform the Trusts Investigating Officers of the allegation and the need to investigate;
- 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.

- 1.12. On reading 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.
- 1.13. 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.

#### **Chair of the Disciplinary Hearing Responsibilities:**

- 1.14. 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 rostered to Chair (following the same booking system as the current appeal hearing process).
  - Send Disciplinary Hearing Invite Letter to the employee along with a copy of the final disciplinary report and all appendices at least 5 working days before the hearing. This process is managed administratively by the Executive Assistant to the Director of HR.
  - Arrange for each panel member to receive a copy of the final disciplinary report and all appendices at least 5 working days before the hearing. This process is managed administratively by the Executive Assistant to the Director of HR.
  - Chase the employee if they have not confirmed their attendance at the disciplinary hearing by the deadline. This process is managed administratively by the Executive Assistant to the Director of HR.
  - 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 by the Executive Assistant to the Director of HR.
  - 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
  - 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 appropriate director if necessary
  - Draft and submit a management response to an appeal if appropriate

## **Role of Appeal Chair**

- 1.15. 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 HR. 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.
- 1.16. 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.
- 1.17. 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 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.

**Additional Guidance on Planning Meeting**

- 1.1. 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”.
- 1.2. As soon as he/she becomes aware of the alleged breach of discipline, the Commissioning Manager will decide whether temporary redeployment or suspension is necessary. Please note that suspension should only be instructed as a last resort.
- 1.3. If suspension is necessary, the Commissioning Manager should complete the Record of Suspension/Review Checklist (Appendix 6) using the Incident Decision Tree (Appendix 4) as soon as practicably possible.
- 1.4. If the employee is to be suspended, the Commissioning Manager should 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.
- 1.5. Following the suspension of the employee (whether paid or unpaid), the line manager will be required to complete a staff changes form to confirm the suspension, which will ensure that the employee’s smart card is de-activated during this process.
- 1.6. Once the preliminary documentation has been gathered, if there is a potential case to answer, the Commissioning Manager, in conjunction with the local HR Team will appoint either one or two investigating officers, depending on the complexity of the investigation. A planning meeting should then be held as soon as is reasonably possible with t the Commissioning Manager, the line manager, a member of the local HR Team and the investigating officer(s).
- 1.7. At the planning meeting, the Disciplinary Investigation Planner Tool (included as Appendix 3) will be completed to agree the scope of the investigation i.e. draft the allegations to be formally investigated, decide on what information will need to be gathered such as policies; who will need to provide a statement and/or be interviewed; and what paperwork will need to be collated such as rosters etc.
- 1.8. At the planning meeting, the allegations should be assessed against the Risk Management Matrix for Employment Cases (Appendix 18). If any cases are identified as being Red, further advice should be sought from the locality HR Manager and the Trust’s Corporate Lawyer.
- 1.9. The timescale of an investigation will vary, depending of the scope of the investigation. However at the planning meeting, 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.

- 1.10. 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.
- 1.11. The Commissioning Manager will then send a letter to the investigating officer to formally appoint them.
- 1.12. 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
- 1.13. 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 9.

## 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 HR (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 HR advice from the nominated HR 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 **HR Adviser** will provide specialist HR 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 HR 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 HR **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 HR if required) and identify inconsistencies			
Schedule 2 <sup>nd</sup> interviews (if required i.e. to clarify points after interviews):			
Send interview notes for 2 <sup>nd</sup> interviews (if applicable)			
Receive signed interview notes for 2 <sup>nd</sup> interviews (if applicable)			
Consider evidence and draft report			
Send first draft report to HR			
Consider HR amendments/suggestions and finalise report			
Scan all appendices and send these along with the report to HR Advisor			

### Incident Decision Tree

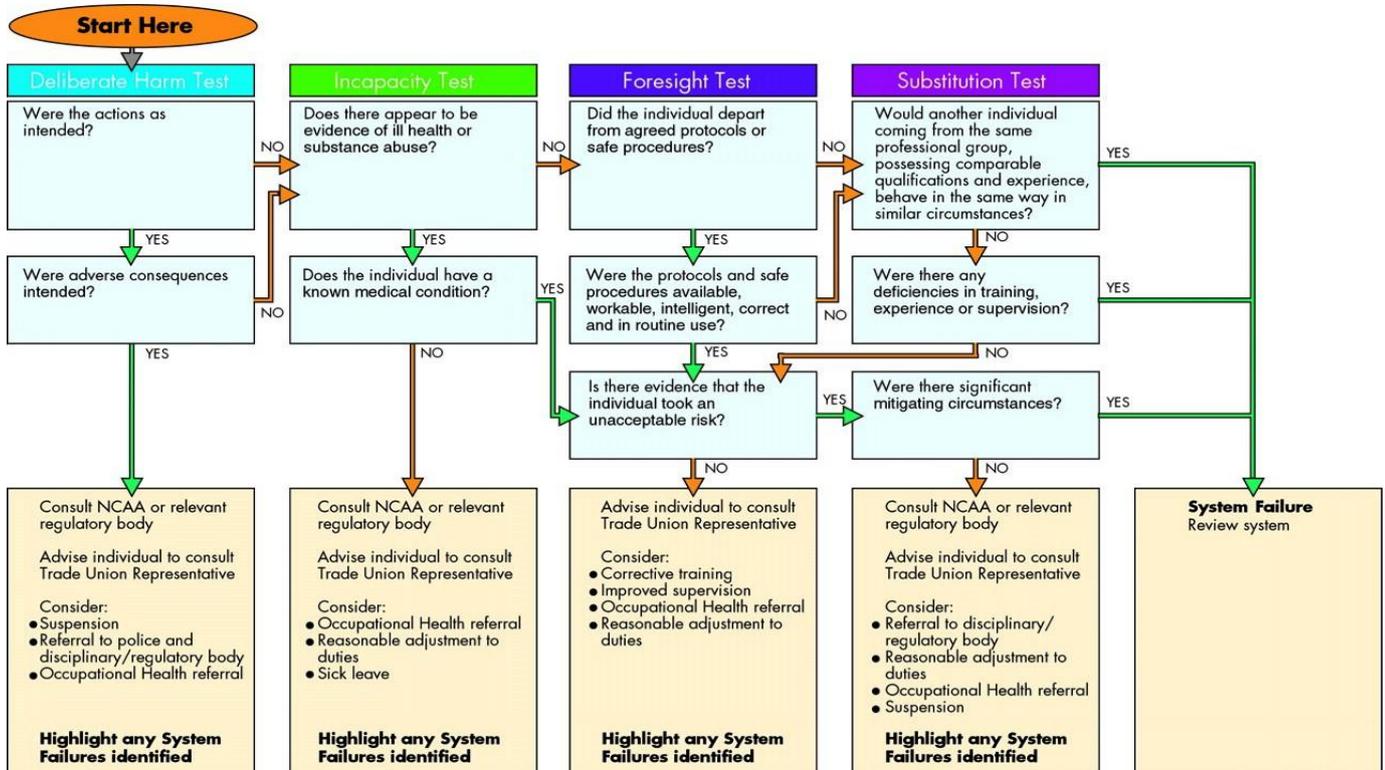
For alleged serious and/or gross misconduct, the Commissioning Manager must use this NHS Incident Decision Tree. The outcome must be included in the investigation. This can help establish whether a system review is required as opposed to disciplinary action.

The Incident Decision Tree helps NHS managers and senior clinicians decide initial action to take with staff involved in a patient safety incident, as a Line-Manager, it should be the first process undertaken as part of the planning meeting. It is intended to promote a consistent and fair approach, avoiding unnecessary and costly suspensions and exclusions. It aims to help the NHS move away from attributing blame and instead find the cause when things go wrong. The goal is to promote fair and consistent staff treatment.

Research carried out in the NHS has shown that systems failures are often the root cause of safety incidents. However, the most common response to a serious patient safety incident is to suspend and then discipline the staff involved. This can be unfair to employees and divert management from identifying contributory systems failures. Suspending key employees can also diminish the quality of patient care provided.

The [Incident Decision Tree](#) can help managers and senior clinicians:

- Decide whether it is necessary to suspend staff from duty following a patient safety incident;
- Explore alternatives to suspension, such as temporary relocation or modification of duties; and
- Consider other possible measures to be taken as the investigation progresses.



**Additional Guidance on Suspension**

- 1.1. 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;
- 1.2. All decisions to suspend should be reviewed every 4 weeks by the Commissioning Manager, who should then complete the Suspension/Review Checklist after every suspension review (Appendix 5), 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.
- 1.3. As soon as the decision is made to suspend an employee, the line manager should complete a Staff Changes Form immediately to ensure that the suspension is recorded on ESR and to ensure that the employee is paid their appropriate suspension pay.
- 1.4. Staff who are placed on paid suspension are not permitted to undertake any work during their contracted hours.
- 1.5. 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 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.
- 1.6. 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.

1.7. 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 3).

#### **1.8. Pay during Suspension**

1.9. 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. 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.

#### **1.10. Unpaid Suspension**

1.11. 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 will be stopped for the duration of unavailability.

1.12. 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 Finance Director 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)

1.13. In such instances, all reasonable steps will be taken to ensure that there are no delays in the process.

#### **1.14. Confidentiality**

1.15. 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.

#### **1.16. Entry to Trust Premises whilst Suspended**

1.17. 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.

#### **1.18. Medical Treatment Whilst Suspended**

1.19. 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.

#### **1.20. Annual Leave during Suspension**

1.21. 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.

1.22. 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.

1.23. Staff who are granted annual leave during a period of suspension will be entitled to fully pay – therefore the line manager of a person suspended without pay should liaise with HR to ensure the appropriate steps are taken for the employee's pay to be reinstated during this period of annual leave.

#### **1.24. Sickness during Suspension**

1.25. 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.

1.26. 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.

1.27. 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.

#### **1.28. Study Leave during Suspension**

1.29. 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.

### 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		
HR representative consulted & date		
Date of suspension		
Date suspension to be reviewed & by whom		
<b>Consideration</b>	<b>Y/N</b>	<b>Comments</b>  <b>Continue on a separate sheet as necessary</b>
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		
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**1<sup>st</sup> Suspension Review (4 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):	

**2<sup>nd</sup> Suspension Review (4 weeks after 1<sup>st</sup> 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):	

**3<sup>rd</sup> Suspension Review (4 weeks after 2<sup>nd</sup> 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):	

**4<sup>th</sup> Suspension Review (4 weeks after 3<sup>rd</sup> 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):	

## Investigation Procedure

### 1. INVESTIGATION

Where a formal investigation is necessary, the Commissioning Manager will consult with the local HR Department 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, witnesses and Trade Union Representative must be informed. Staff suitable for undertaking investigations will be selected from the list of accredited Investigating Officers held by the HR Department.

#### 1.1. 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 a timely and thorough investigation is completed as soon as reasonably possible. 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.

#### 1.2. 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.

#### 1.3. The Responsibility of the Investigating Officer(s)

##### 1.3.1. Step One: Initiating the Investigation

The Investigating Officers should:

- Complete the Investigation Planner Tool included in their guidance pack with support from the local HR Advisor Seek advice from the local HR 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.

### **1.3.2. 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;
- 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;

### **1.3.3. 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
- Invite the necessary witnesses to the disciplinary hearing.
- Be responsible for ensuring that witnesses attend the disciplinary hearing
- To inform the member of staff concerned who the witnesses are.

## **1.4. 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 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.

### **1.5. 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.

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.

### **1.6. User involvement within the Disciplinary process**

If an allegation is made by a User or a User is witness to an incident that is subsequently investigated under the Trust Disciplinary Procedure, 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 Disciplinary 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.

### **1.7. 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 Human Resources Department as to whether these should form part of the same or a separate investigation. The Trade Union representatives will be consulted if required.

### **1.8. Investigation Report**

Following the investigation the Investigating Officer(s) will produce a report, this will be sent to the relevant HR 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.

**Additional Guidance on Informal Procedure for Minor Misconduct and Standard Setting**

- 1.1. 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.
- 1.2. Through 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.
- 1.3. 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 him/her, 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.
- 1.4. 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 2).
- 1.5. Further action is only appropriate where informal action has not led to the necessary improvement or if the matter is more serious.

### Additional Guidance on 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 HR advice 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 HR 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.

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 and 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**

**Additional Guidance on the Agreed Outcomes Process**

If, before, during or following an investigation, an employee admits, acknowledges and/or accepts the allegations made against them regarding their conduct, the Commissioning Manager may, with the agreement of the member of staff, proceed to issue a disciplinary sanction. This does not apply in cases of gross misconduct when the sanction is potentially dismissal.

This situation would only apply when the employee accepts that the allegations made against them are accurate. If this is the case, the Commissioning Manager would establish with HR advice what they think the disciplinary outcome would most likely be. The employee would need to confirm their admission and acceptance of the agreed outcome in writing. If they do not agree, the case will continue to the next stage of this policy i.e. a formal disciplinary hearing.

This process must be considered by the Commissioning Manager with the full agreement of the individual and their Trade Union Representative. The HR Department will support the Commissioning Manager in this process.

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. 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 an HR 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 7).
- 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 Human Resources and the Trade Union representative.

**Agreed Outcome 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:

After an investigation you agreed 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 (type of 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 HR Department.

Yours sincerely

Disciplinary Officer

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

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

## **Additional Guidance on Disciplinary Hearings**

### **1.1. Purpose of the Hearing**

1.2. 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.

1.3. The procedure to be followed in a disciplinary hearing is attached as Appendix 13.

### **1.4. Notice Period of a Disciplinary Hearing**

1.5. 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 HR Advisors/Managers 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.

1.6. All disciplinary hearing panel members will have had no previous involvement in the case.

1.7. 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 5 working days' notice to allow them to arrange representation if they wish.

1.8. Two dates for a disciplinary hearing will be offered in the invite letter. The employee will be asked to confirm which date they are able to attend. 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.

1.9. 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).

1.10. The Chair reserves the right to change the panel members as necessary.

### **1.11. Documentation**

1.12. 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.

### **1.13. Disciplinary Panel**

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

### **1.15. Witnesses**

1.16. Both the investigating officers and the employee and/or their representative will have the opportunity to call and question witnesses at the hearing. It is the responsibility of the person who wishes to question that witness to arrange their attendance at the hearing. Management will facilitate time-off from duty as appropriate.

1.17. 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.

1.18. 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.

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

### **1.20. Notification of Outcome**

1.21. 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.

1.22. 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; and
- The employee's right of appeal and guidance on how the right may be exercised.

## **Formal Disciplinary Hearing Procedure**

### **Preparation**

The employee should be given a minimum of 5 working days' notice of the date, time and location of the disciplinary hearing S/he should be forwarded the management case in writing a minimum of 5 working days prior to the date of the hearing. 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. 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 his/her 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 his/her Representative can question the Investigating Officer(s)
- 10) The employee's case is presented
- 11) The employee or his/her 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 his/her 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 he/she wishes 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.

**Additional Guidance on Appeal Rights and Process**

- 1.1. 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.
- 1.2. 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.
- 1.3. An appeal hearing will not usually be used to re-hear the evidence unless the Investigating Officer, or the employee or his/her 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.
- 1.4. The time limit for lodging any appeal is 15 working days from the date of the disciplinary hearing outcome letter.
- 1.5. Written notice of the appeal should be lodged with the Director of Human Resources with sufficient details of the reasons for the appeal using the appeal proforma (Appendix 15). 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
- 1.6. The Director of Human Resources will decide whether the reasons for Appeal warrant an Appeal Hearing. Where the Director of Human Resources decides there are no grounds for appeal the employee will be informed in writing within 10 working days or receipt of the letter.
- 1.7. Where an Appeal hearing is required the Trust will endeavour to hold an appeal hearing as soon as reasonably practicable.
- 1.8. Please refer to the separate Appeals Procedure for details of the process at the Appeal Hearing (Appendix 16). This procedure may be varied at the discretion of the panel to take account of exceptional circumstances (e.g. witnesses protected by the need for anonymity, patients/clients giving evidence)

**2. Appeal Panels**

- 2.1. In cases where the appeal is against a written warning, an appeal hearing will be arranged locally within the relevant Directorate. The panel members will have had no previous involvement in the case.

- 2.2. In cases where the appeal is 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.
- 2.3. 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.

**Appeal Proforma**

If you are appealing the outcome of a formal disciplinary sanction you should complete this proforma and send it to the Director of Human Resources 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):	<input type="checkbox"/> First Written Warning <input type="checkbox"/> Final Written Warning <input type="checkbox"/> Dismissal
---	--

On what grounds are you appealing (please tick all that apply) and evidence the details in full below:	<input type="checkbox"/> The disciplinary policy and procedures were not followed and was not taken into consideration by the panel <input type="checkbox"/> Disciplinary panel outcome decisions (refer to the policy and be clear why you believe the sanction is in breach) <input type="checkbox"/> 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.*

## Disciplinary Appeals Procedure

### 1. Appeals Panel Preparation

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

The employee must submit the appeal proforma to the Director of Human Resources within 15 working days from the date of the disciplinary hearing outcome letter. If the appeal proforma 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 PA to the Human Resources Director will, within 3 working days, forward it to the Chair of the disciplinary panel so that he/she can write their management case. They will have 15 working days before the appeal hearing to submit their management case to the Director of Human Resources, 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 proforma and supporting documents) and the management side case will be forwarded by the PA to the Human Resources Director, 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.

### 2. 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.

### 3. 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.

#### **4. Appeal Hearing**

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

#### **5. 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

#### **6. 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 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 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.

#### **7. Management's Case**

- The Chair of the Disciplinary Hearing 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 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 his/her witnesses on any matter referred to in their examination by members of the Appeal Panel, the appellant or his/her representative.

#### **8. Summing Up**

- The Chair of the Disciplinary Hearing will have the opportunity to sum up their case if they wish.
- The appellant or his/her 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 employees case above.
- The Panel may ask questions or points of clarification at any time during this procedure.

## **9. 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.

## **10. 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.

## Guidance Notes: 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 eg 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:

- a) 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
- b) 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157242/dbs-factsheet-05.pdf)

## **2. 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.

## **3. 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 Locality HR Manager. In addition to this the Associate Director of HR (who is the nominated HR officer responsible for Safeguarding)

should be copied in to any notifications and the relevant column should be completed in the Employee Relations spreadsheet.

**(i) 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 HR support
- Whether the staff member has been suspended or removed from contact with children or vulnerable adults
- Initial timeframes for conclusion

**(ii) 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.

**(iii) 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.

**(iv) 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 Deputy Director of HR 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 HR officer 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.

**(v) 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 HR support to the investigation 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.

**(vi) 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 HR and Service Director

**(vii) 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 HR Managers should discuss with Associate Director for Safeguarding Children or Associate Director for Safeguarding Adults and Associate Director of HR and OD any cases where the referral criteria are not met but which there is serious concern; legal advice may be sought relation to these cases.

## Risk Management Matrix for Employment Cases

Risk Matrix	Red	Amber	Green
Financial	<ul style="list-style-type: none"> <li>• More than 40k costs</li> <li>• Over 15k damages</li> </ul>	<ul style="list-style-type: none"> <li>• 15-40k costs</li> <li>• Under 15k damages</li> </ul>	<ul style="list-style-type: none"> <li>• Under 15 k costs</li> <li>• Under 5k damages</li> </ul>
Litigation	<ul style="list-style-type: none"> <li>• High profile/ Equalities Act / test case</li> <li>• Whistleblowing</li> <li>• Automatically unfair dismissal</li> <li>• Board level significance</li> <li>• Less than 50% chance of success</li> </ul>	<ul style="list-style-type: none"> <li>• Equalities Act case</li> <li>• 60% chance of success</li> </ul>	<ul style="list-style-type: none"> <li>• More than 60% chance of success</li> </ul>
<b>Reputational</b>			
External	<ul style="list-style-type: none"> <li>• Involves protected characteristic</li> <li>• Involves issue of patient safety</li> <li>• Allegation brought by service user</li> <li>• Issue of Board level significance</li> <li>• Involves issue of stakeholders concern</li> <li>• Involves current NHS issue</li> <li>• Likely to have national press coverage</li> </ul>	<ul style="list-style-type: none"> <li>• Involves protected characteristic</li> <li>• Stake holder concerns</li> <li>• Low level general press interest</li> </ul>	<ul style="list-style-type: none"> <li>• No protected characteristic</li> <li>• Low stakeholder concern</li> <li>• Unlikely to be press interest</li> </ul>
Internal	<ul style="list-style-type: none"> <li>• Staff with over 10 years' service</li> <li>• Board member /senior manager</li> <li>• No previous discipline/complaint</li> <li>• Sanction viewed as disproportionate</li> <li>• Issue raised with Service Director by other staff</li> <li>• Policy not followed</li> <li>• Sanction disproportionate</li> </ul>	<ul style="list-style-type: none"> <li>• Staff with 5-10 years' service</li> <li>• Manager</li> <li>• Previous complaints upheld in staff favour</li> <li>• Some policy followed</li> <li>• Proportionate sanction</li> </ul>	<ul style="list-style-type: none"> <li>• Staff with under 1 years' service</li> <li>• Non manager</li> <li>• Serial complaints not upheld in staff favour</li> <li>• Policy followed</li> <li>• Sanction proportionate</li> </ul>