

## Disciplinary Policy & Procedure

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## **1. INTRODUCTION**

- 1.1. East London NHS Foundation Trust (herein referred to as 'the Trust') believes that in the vast majority of cases its employees come to work with the intention of doing a good job and it places a great deal of trust in its employees to do so, as such all people processes reflect this. To maintain good employee relations it is necessary to demonstrate that employees will be treated respectfully, reasonably, promptly, impartially and consistently in matters relating to conduct and behaviour. The Trust promotes high standards of behaviour and conduct for all employees and will support appropriate action where those standards are not met.
- 1.2. The intention of this policy is that potential conduct issues are dealt with at an early stage, with a view to resolving problems as quickly and fairly as possible; and that employees are encouraged and supported to improve their standard of work and/or conduct. The disciplinary process is not intended to be punitive in nature.
- 1.3. The Trust employs a respectful and considerate approach to managing potential allegations of misconduct. The Fair Treatment Process assist managers to decide on to the appropriate action to take with employees involved in an incident. The intention is to promote a consistent and fair approach and identify at an early stage the extent to which systems failures or procedural flaws are a contributing factor. (Appendix D4). Early resolution is encouraged to be considered up until the hearing stage, where possible.
- 1.4. This policy is designed to help East London NHS Foundation Trust to maintain a courteous, professional, and supportive environment in which employees can work for the benefit of patient care.
- 1.5. The Trust acknowledges that these processes are difficult to all involved therefore the Trust provides staff with a range of support mechanisms which includes the employee assistance programme, and Occupational Health. Full details of support available to all employees is detailed in Appendix A.

## **2. SCOPE**

- 2.1. The aim of this policy is to set out guidance to all employees including executive directors on expected standards of behaviour and to provide procedures for addressing instances where an individual fails to meet required standards of conduct/behaviour. This policy supports consistent and fair treatment for all.
- 2.2. This policy should be read in conjunction with other publications which reference expected standards of behaviour and performance including the Trust's Standards of Business Conduct, service codes and Professional Codes of Conduct.
- 2.3. This policy applies to all staff employed by the Trust including executive directors. In all circumstances relating to medical staff, this policy should be read in conjunction with the Trust's Policy for Maintaining High Professional Standards in the Modern NHS (MHPS).
- 2.4. 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.

- 2.5. To ensure consistency in line with the best practice under the Workforce Race Equality Standard (WRES) guidelines, all potential disciplinary cases will be reviewed using the Fair Treatment Process.

### **3. PRINCIPLES**

- 3.1. The intention of this Policy is that potential conduct and behaviour issues are dealt with at an early stage, with a view to resolving problems as quickly and fairly as possible; and those employees are encouraged and supported to improve their standards of work and/or conduct.
- 3.2. All employees are required to co-operate and participate fully with all the stages of the disciplinary procedure. This includes employees who may have experienced or been witness to allegations of unacceptable behaviours.
- 3.3. All employees who are the subject of investigation or action under this policy will be given the opportunity to be accompanied at all formal stages of the procedure by a Trade Union representative or work colleague.
- 3.4. At all stages in the procedure, unless related to an incident of Safeguarding or fraudulent nature, the employee will be fully informed of the nature of the allegation against them and given the opportunity to state their case before any decision is made; and notified in writing of any subsequent disciplinary hearing.
- 3.5. 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.
- 3.6. The strictest confidentiality will be preserved at all times throughout the application of this policy and following a formal hearing the employee will have the right of appeal against any formal disciplinary action taken against them.
- 3.7. For employee safeguarding, the use of CCTV may be relevant as part of the investigation process. Please refer to Section 19 for further guidance on the use of CCTV in disciplinary proceedings.
- 3.8. The People and Culture Team will provide advice and guidance on the application of this Policy to ensure that all employees receive the appropriate contact and support throughout the process.
- 3.9. The Trust is committed to providing equality and diversity in employment practice in ensuring no employees receives less favourable treatment on grounds of 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.

#### **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, ('Companion') The employee may not be accompanied by any other person or a legal representative. For employees with disability or has language barriers, other, suitable representatives may be considered.
- 4.2. The companion does not have the right to answer questions on the employee's behalf and address the hearing or prevent the Trust from explaining its case. Any companion who has been requested to accompany the employee will be given a reasonable amount of paid time off from duties, if they are a workplace colleague.
- 4.3. If a hearing is arranged but the employee's Companion/representative is not available, the employee must provide the chair with full details of alternative dates within 5 days of the original hearing date. If the employee fails to do so, the Trust may schedule the hearing on another date at its discretion. Alternatively, if the Companion is unavailable at the time a meeting is scheduled and will not be available for more than 5 days afterwards, the Trust may ask the employee to choose someone else.
- 4.4. It is the employee's responsibility to forward any relevant paperwork to their representative. Hard copies of the case documentation will be provided on request. The employee should also provide their representative's name and contact details to the Investigation Officers.

#### **5. MEDICATION ERRORS**

- 5.1 When a medication error or a breach in the Trust's Medicine Management Policy is identified it is important that the incident is appropriately risk assessed before any decision is made about whether or not formal action is necessary. The Line Manager must undertake an initial fact finding exercise to ascertain the nature of the error and contact People and Culture to discuss the incident. The relevant Lead Nurse must then be contacted in order to assess the case and outline any immediate action that is required in relation to the member of staff.
- 5.2 A number of factors will be taken into consideration before any formal action is taken including whether or not the individual was aware of the error and how they responded to this, whether or not the error has happened previously and any other contextual information such as systems and processes in that Department.
- 5.3 In the majority of instances if the error occurred deliberately or due to negligence then the issue will be dealt with through this Disciplinary Policy and the Fair Treatment Process should be followed, as detailed above. If however, the error was not done deliberately and as a result of a training need, this will be dealt with as a performance issue and managed in line with the Trust's Staff Performance and Capability Policy. Each case must be assessed individually to ensure the appropriate action is taken.

#### **6. INFORMAL APPROACH - STANDARD SETTING AND MEETING OF CONCERNs**

- 6.1. It is good practice for managers to deal with issues of minor misconduct informally. In such instances, an informal private conversation between a manager and the employee as soon as possible after the incident or occurrence will be enough. The Trust has also implemented the Respectful Resolution Pathway which aims to secure

constructive, timely, and lasting solutions to workplace concerns. Please refer to the Respectful Resolution Guidance and **Appendix D2** for further information.

- 6.2. Where informal discussions have not been successful, (i.e., there is no mutual agreement of the issue and acceptance from the employee, objectives have not been met or the issues have continued) 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 D2i** in the Disciplinary Guidance document).
- 6.3. This constitutes informal action under the Disciplinary Policy. The meeting of concern letter will remain live on an employee’s record for a period of 6 months and it may be taken into consideration in the event of further misconduct during this 6 months period. After this time, it will be removed and the employee notified of the fact.
- 6.4. Further action is only appropriate where informal action has not led to the necessary improvement or if the matter is more serious.

## **7. FAIR TREATMENT PROCESS - FOLLOWING ALLEGATIONS**

- 7.1. As soon as an alleged breach of discipline occurs and prior to any decision to instigate suspension or removal from duty, the line manager should conduct a preliminary investigation into the allegation and gather the relevant investigation documentation and inform the Head of Service for the relevant discipline, who would be classed as the “Commissioning Manager” or equivalent. For executive directors, the ‘Commissioning Manager’ may be a Non-Executive Director (NED) or the Trust Chair.
- 7.2. As part of the Fair Treatment process, the potential commissioning manager would need to complete the Pre-Investigation Form (Appendix D3-i) with support of the locality People Relations Advisor. This form must be assessed by the Locality Business Partner and the relevant Professional Lead. For Nursing Staff this would be the Chief Nurse (or appropriate deputy) and for medical staff this would be the Chief Medical Officer (or appropriate deputy). For Executive Directors, this process will be supported by the Chief People Officer (or appropriate deputy).
- 7.3. If there are suspension implications, the form will also be reviewed by the Chief People Officer (or appropriate deputy).
- 7.4. As part of the Fair Treatment Process, the Commissioning Manager should fully explore the extent to which systems failures or procedural flaws are a contributing factor. These factors should be taken into account when making the decision on whether there is a potential case to answer.
- 7.5. Following the outcome of the pre investigation checklist, if there is a potential case to answer, the Commissioning Manager, in conjunction with the local People Relations Advisor will appoint either one or two investigating officers, depending on the complexity of the investigation. A planning meeting should then be held with the People Relations Advisor and the investigating officer(s).
- 7.6. In some circumstances of straightforward cases (e.g. timekeeping, absence without leave – AWOL) it may be recommended that a shortened investigation is conducted by the line manager without following a full investigation. The People Relations team will ensure that the investigation is fair and balanced before proceeding to a hearing

## **8. EARLY RESOLUTION PROCESS**

- 8.1 In circumstances where an employee admits, acknowledges failure on their part or accepts the allegation(s) or in cases where before, during or after the investigation, the allegations and/or fact of the case are not disputed by the employee, the Commissioning Manager with the advice from the People and Culture representative, with the agreement of both the employee and their trade union may issue a disciplinary sanction.
- 8.2 If allegations are of misconduct and where informal action is not appropriate the Early Resolution Process must be considered
- 8.3 This process must be considered by the Commissioning Manager with the full agreement of the individual and their Trade Union Representative. The local People Relations Advisor will support the Commissioning Manager in this process.
- 8.4 The criteria for the Early Resolution Process is outlined in the procedure in Appendix D3.
- 8.5 The decision of the Early Resolution Process will be communicated in writing to the employee who will be given five working days to decide if they wish to accept the sanction. If the employee does not accept the warning, a Disciplinary Hearing will be convened where the employee will retain their right of appeal.
- 8.6 Early Resolution Process should be carefully considered in instances where there is overwhelming evidence of gross misconduct, or where the employee already has a 'live' final-written warning on file at the time of the incident.
- 8.7 If there is disagreement to the statements above then the formal procedure will be used. Please refer to Appendix D3 for the Early Resolution Process.

## **9. SUSPENSION / EXCLUSION FROM DUTY**

### **9.1 Suspension from work / Removal from Duty**

- 9.1.1 There may be circumstances where it is necessary to remove an employee from the workplace in order to facilitate an investigation or for some other reason. The Fair Treatment Process will be used to determine whether or not to suspend or remove an employee. When an investigation is required and the individual needs to be removed from their workplace or duties, temporary or restricted duties may be considered as alternative to suspension subject to employee's confidentiality. Circumstances where removal from the workplace may be appropriate include the following:

- The allegations are of such a nature they could, if proven, constitute gross misconduct;
- The allegations raised are of a safeguarding nature
- It would not be possible to carry out a full and proper investigation with the individual employee at work
- The employee could not continue to work normally whilst an investigation is undertaken
- The employee would have an opportunity to alter or tamper with the evidence relating to the incident
- Where the employee is considered to be at risk / unfit for duty (e.g. aggression/drunkenness);

- Where the continued presence of the employee could put other employees or patients or the general public at risk;
- 9.1.2 Where it is necessary to suspend an employee, this will be on a full pay. Suspension pay will be based on an average earning over the previous three-month period, taking into account any enhancements or bank shifts undertaken during that period. If the previous three months does not reflect the individuals normal working pattern i.e. there have been significant absences, then a more reflective three month period will be chosen.
- 9.1.3 Whilst on paid suspension an employee must remain contactable and must be available to attend investigatory interviews or disciplinary hearing during normal office hours unless there are specific circumstances which prevent this. They are not permitted to undertake or engage in any bank work at a Trust site and must not engage in agency shifts or secondary employment during the hours they would normally work for the Trust. If they are working via the Trust's bank service, they must be informed to cease shifts.
- 9.1.4 Any planned / pre booked bank or agency shifts of annual leave must be discussed and confirmed with the commissioning manager.
- 9.1.5 All suspension should be for the minimum necessary period of time and decisions to suspend should be reviewed by the Deputy Chief People Officer and the Head of People Relations before suspension occurs. If the suspension continues beyond four weeks' period, then a suspension review should be carried out every 4 weeks by the Commissioning Manager, and the outcome recorded (**Appendix D6**) and employee informed in writing and reported quarterly to the SDB.
- 9.1.6 Suspension from duty is not a disciplinary action, nor is it a presumption of guilt.
- 9.1.7 Employees must maintain confidentiality and not discuss any element of the investigation or suspension with any other staff. Although where they belong to a professional body, they would be required to inform them.
- 9.1.8 It is a condition of paid suspension that staff makes themselves available to attend meetings including OH appointments and comply with reasonable management instructions.

## **9.2 Suspension of an Accredited Trade Union Representative**

- 9.2.1 If an 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 People Relations Advisor prior to any disciplinary action being taken and given reasonable opportunity to represent the employee at any disciplinary meeting and/or hearing.
- 9.2.1 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 People Relations Advisor prior to the suspension taking place.

## **9.3 Suspension of an Executive Director**

- 9.3.1 If an employee is subject to a disciplinary investigation is an executive director, the same procedure will apply as detailed in the policy. However, the decision to suspend

could be made by a NED, the Senior Independent Director or the Trust Chair. If appropriate, HR support may be provided by an external HR professional.

#### **9.4 Suspension without Pay**

- 9.4.1 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. Therefore, if an employee is not available and does not have authorised leave their pay may be stopped for the duration of unavailability.
- 9.4.2 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 Chief Finance Officer 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)

### **10 DISCIPLINARY HEARING PROCEDURE**

- 10.1 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.
- 10.2 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 10 working days' notice to allow them to arrange representation if they wish. Further guidance disciplinary hearing procedure is attached in **Appendix D11** of the Disciplinary Guidance document.

### **11 DISCIPLINARY OUTCOMES**

- 11.1 The Disciplining Officer's (the Chair) conclusion should take into account all of the information gathered in the investigation and heard during the disciplinary hearing. The Chair 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.
- 11.2 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.
- 11.3 Following consideration of all the information at the disciplinary hearing, the Chair may conclude the following:

- Allegation unsubstantiated;
- Misconduct substantiated;
- Gross misconduct substantiated

## **12 SANCTIONS**

The following levels of warnings are available and will remain active for the following periods:

### **12.1 First Written Warning – 12 months**

This will usually be appropriate for a first act of misconduct where there are no other active written warnings on the employee's disciplinary record. Confirmation of the outcome will be forwarded to the employee's file. 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.

### **12.2 Final Written Warning – 12 - 24 months**

This will usually be appropriate for:

- Misconduct where there is already an active first written warning on the employee's file for similar misconduct, or
- Misconduct that is considered sufficiently serious to warrant a final written warning even though there are no other active warnings on employee's file. If the chair should feel that there has been gross misconduct but that doesn't warrant dismissal, then a final written warning may be issued as an alternative to dismissal.

A final written warning will be issued from a minimum period of 12 months to a maximum period of 24 months.

Spent, inactive warnings shall be disregarded for disciplinary purposes and removed from an employee's formal record upon their expiry and the employee notified that this has happened.

### **12.3 Dismissal**

This is only appropriate for:

- Further misconduct where there is already a live final written warning on the employee's file for same or similar issue.
- Any gross misconduct in the absence of mitigating, personal, or systemic circumstance could lead to dismissal. Records of disciplinary action will be held on the employee's file. These will be disregarded for disciplinary purposes after the expiry date of the warnings as shown above.

The dismissal must be confirmed in writing within 5 working days indicating:

- The reasons why the employee is being dismissed;
- Any previous warning still live;
- 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.

#### **12.4 Action Short of Dismissal – Transfer or Demotion**

In addition to warnings and/or in place of other disciplinary outcomes, a decision may be made to consider transfer/redeployment or demotion as an alternative to dismissal.

An employee who agrees to work at the downgraded position will accept that their salary will be adjusted accordingly (i.e. pay protection will not apply).

#### **12.5 Summary Dismissal**

In cases where gross misconduct is substantiated, the employee may be liable to be summarily dismissed. Summary dismissal is termination of the contract without notice or pay in lieu of notice. In these circumstances, only pay in lieu of statutory holiday entitlement will be made.

#### **12.6 Fraud Cases:**

For fraud cases where the allegation is upheld, each case will be reviewed by the Chief Finance Officer and if it is possible to quantify the value of the fraud, the Chair will inform the employee at the hearing and in the hearing outcome letter that the Trust will seek to recover the amount via Payroll and/or through other means i.e. through the civil or criminal courts.

### **13 RIGHT OF APPEAL**

13.1 Employees 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.

13.2 The time limit for lodging any appeal is 15 working days from the date of the disciplinary hearing outcome letter.

13.3 Written notice of the appeal should be lodged with the Chief People Officer with sufficient details of the reasons for the appeal using the appeal pro-forma (appendix D11a). The appeal should be based on one or more of the following grounds:

- The disciplinary policy and procedures were not followed and was not taken into consideration by the panel
- Disciplinary panel outcome decisions
- Breach of Natural Justice

In cases where it would not be suitable to send the appeal to the Chief People Officer, the appeal should be lodged with the Chief Executive Officer.

### **14 RESIGNATION**

14.1 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. For a referral to a professional body or DBS the

Chair/Commissioning Manager will need to discuss the referral with the appropriate professional lead.

- 14.2 In all other cases where the employee has resigned, the investigation will cease, and 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. If, however the employee decides to return to employment in the Trust, the investigation process will be re-commenced.
- 14.3 Where a staff member is due to retire special efforts should be made (where possible) to complete the investigation before the retirement date and any decisions or agreements affecting retire and return or bank contracts should not be impacted or finalised until an investigation is completed.

## **15 ADDITIONAL INFORMATION**

### **15.1 CRIMINAL OFFENCES**

#### **15.1.1 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.

#### **15.1.2 Outside Employment & Reporting**

Employee who are arrested on any charge; and/or cautioned; and/or convicted of a criminal offence; and/or issued with a reprimand letter for an offence committed outside of work, must inform their manager of the circumstances immediately. Failure to report or disclose such information may render the employee liable to disciplinary action.

#### **15.1.3 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. 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 which could be disciplinary action, up to and including dismissal may be taken.

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

## **16 SERIOUS INCIDENTS (SIs)**

- 16.1 Where serious incidents have disciplinary implications, the disciplinary investigation may be undertaken at the same time but separate to the SI investigation.

## **17 PROFESSIONAL CONDUCT / DISCLOSURE AND BARRING SERVICE**

- 17.1 Employees who are governed by professional codes of conduct through a professional body (e.g. the Nurses and Midwifery Council - NMC) will be aware that the Trust has a duty to report incidents which may involve possible professional misconduct to those bodies. The Trust may separately investigate the circumstances and take any necessary internal disciplinary action in accordance with this procedure.
- 17.2 Where it becomes necessary to report conduct of the employee to their professional body, it is the responsibility of the Chair to inform the professional lead e.g. Chief Medical Officer or Chief Nurse, 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.
- 17.3 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 People Business Partner and the professional lead.
- 17.4 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 B12).
- 17.5 Where a DBS check reveals undeclared convictions, the employee will likely be subject to an investigation under the Disciplinary Policy and this may potentially result in Disciplinary Action. Failure to correctly declare known criminal convictions may also be subject to criminal and/or civil sanctions being pursued by the Trust together with potential referral to any relevant professional body.

## **18 USE OF CCTV FOR DISCIPLINARY PURPOSES**

- 18.1 Any breach of the CCTV Code of Practice by staff will be reported via the datix system, graded and reported as deemed appropriate in line with the breach.
- 18.2 CCTV footage should generally only be used for disciplinary purposes if the potential staff misconduct is very serious and relates directly to the safety of patients or staff. CCTV should not be used to investigate minor infringements. It should not be used for monitoring staff. For disciplinary purposes CCTV should only be used retrospectively after an event has taken place that has raised significant concerns.
- 18.3 Where there is an allegation of a breach in disciplinary rules as outlined in this policy, the relevant CCTV footage may be considered during the investigatory stages of the disciplinary processes, and later used in formal disciplinary hearings, if relevant to the allegations raised against the employee.
- 18.4 If such CCTV footage is identified, it will be presented to the employee during the course of the investigation, where possible, and pursuant to the Disciplinary or Dignity at Work Policy and Procedures. The employee will be given the opportunity to review the CCTV footage and explain or challenge its content. The employee and investigating officers will also be permitted to make reference to the CCTV footage in any subsequent disciplinary hearings if applicable.

- 18.5 If the Trust identifies CCTV footage relevant to formal proceedings, then the timescale (31 days) for the retention of CCTV footage shall not apply. CCTV footage retained for the purposes of disciplinary processes will be retained until the expiry of two years following completion of all disciplinary procedures, including any appeals process and statutory reporting to professional bodies.
- 18.6 Activity where CCTV can be provided requested by the People Relations Team may include:
  - Acts which constitute Gross Misconduct in accordance with the Trust Disciplinary Policy
  - Practices which seriously jeopardise the health and safety of others
  - Inappropriate treatment of people who use our services
- 18.7 The Trust understands the inherent limitations of CCTV capture and a need for caution when interpreting footage.

## **19 Learning from Disciplinary Cases**

- 19.1 The Head of People Relations and Locality People Business Partner will organise regular learning sessions following disciplinary cases within the Directorates to which staff side representatives will be invited. Staff side representatives can initiate learning sessions when necessary. This will support the analysis of trends and hotspots. The sessions would look to any systematic issues that may have arisen from the investigations and look for ways to improve this through process, policy, or training.
- 19.2 The learning lesson sessions will also review how recommendations for the directorate or changes to systems/practices have been implemented.
- 19.3 Regular Trust wide learning sessions will be organised in conjunction with Staffside to review trends, implementation of recommendations, changes to systems and practices.
- 19.4 The sessions will also focus on building and strengthening positive practice and how that can be embedded across the Trust.

## **20 Impact Assessment**

This policy has been impact assessed in accordance with the East London NHS Foundation Trust Impact Assessment Tool.

## **21 Policy Review**

It is the responsibility of the Chief People Officer to monitor and review this policy, and to present any necessary changes, after negotiation with the Joint Staff Sub-Policy Committee to the Service Delivery Board and the Trust Board or relevant committee.

## Appendix A - Support for Staff

<b>Internal Support</b>	<p>ELFT's Emotional Support Call-Back Service can be accessed by emailing <a href="mailto:elft.communications@nhs.net">elft.communications@nhs.net</a></p> <p>Occupational Health can be contacted on 01327 810777 or email: <a href="mailto:elft@teamprevent.co.uk">elft@teamprevent.co.uk</a></p> <p>Carefirst, a 24-hour staff helpline, can be contacted on 0800 174 319 or by logging in online <a href="http://www.carefirst-lifestyle.co.uk">www.carefirst-lifestyle.co.uk</a> : <b>Username: ELFT; Password: employee</b></p> <p><b>IAPT/Talking Therapies Services.</b> Staff who refer themselves to IAPT services run by ELFT will be given priority so make it known that you are a member of staff.</p>
<b>External Support</b>	<p>KeepingWellNEL Hub - <a href="https://keepingwellnel.nhs.uk">https://keepingwellnel.nhs.uk</a></p> <p>KeepingWellBLMK Hub – <a href="https://keepingwellblmk.nhs.uk">https://keepingwellblmk.nhs.uk</a></p> <p>NHS People online guides <a href="https://people.nhs.uk/all-guides/">https://people.nhs.uk/all-guides/</a></p> <p>Access Thrive LDN toolkits: <a href="https://thriveldn.co.uk/resourcecategory/toolkit/">https://thriveldn.co.uk/resourcecategory/toolkit/</a></p> <p>Silver Cloud is free to access for all staff to a CBT online platform by using the access code: <b>NHS2020</b> <a href="https://www.silvercloudhealth.com/uk">https://www.silvercloudhealth.com/uk</a></p> <p>Butterfly Hug is an online resource for traumatic stress relief using the 'butterfly hug' technique <a href="https://1stcontact.net/">https://1stcontact.net/</a></p> <p>Headspace provides mindfulness and mediation tools. Free for NHS staff. <a href="https://www.headspace.com/nhs">www.headspace.com/nhs</a></p> <p>'NHS in Mind' is a free platform containing interventions to help combat high anxiety, panic and fatigue <a href="https://www.nhsinmind.co.uk/">https://www.nhsinmind.co.uk/</a></p> <p>If you would like to contact a Samaritan, please call <b>116 123</b> for free 24/7, there is also a free web chat service which can be accessed on <a href="https://www.samaritans.org">www.samaritans.org</a></p> <p>Hawk Training offer courses on emotional resilience and managing stress in the workplace. Free for NHS staff <a href="https://info.hawktraining.com/short-courses/managing-workplace-stress">https://info.hawktraining.com/short-courses/managing-workplace-stress</a></p>

## **Appendix B**

### **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**

- 2.1 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 (This list is not Exhaustive)**

- Failure to follow reasonable instructions or insubordination
- Acting outside of professional code of conduct
- Inappropriate use of a personal phone
- 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. Gross Misconduct**

- 4.1 The following list, although by no means exhaustive, summarises examples of Gross Misconduct which may lead to summary dismissal. This would be misconduct which effects all further working relationship making it impossible between the employer and employee. This list is not exhaustive or complete.

- 4.1.1 **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.
- 4.1.2 **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)).
- 4.1.3 **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.
- 4.1.4 **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.
- 4.1.5 **Providing False Information** - This rule may be breached when an employee knowingly or 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.
- 4.1.6 **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))
- 4.1.7 **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
- 4.1.8 **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.

- 4.1.9 **Breach of Security** - Any act or violation of a security regulation which compromises the safeguarding of Trust property, staff or service users.
- 4.1.10 **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.
- 4.1.11 **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.
- 4.1.12 **Unauthorised or Unlawful Possession of Property** - Any unauthorised or unlawful possession of property of the NHS, patients or members of the public.
- 4.1.13 **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)).
- 4.1.14 **Breach of Confidence** - Any failure to treat sensitive Trust, patient or employee information with the utmost confidence.
- 4.1.15 **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.
- 4.1.16 **Bullying, Harassment, Victimation 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)).
- 4.1.17 **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.
- 4.1.18 **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.
- 4.1.19 **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.

- 4.1.20 **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.
- 4.1.21 **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.
- 4.1.22 **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.
- 4.1.23 **Refusal to Carry out a Reasonable Management Instruction** - This includes gross or repeated insubordination to a line manager and/or senior manager.
- 4.1.24 **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
- 4.1.25 **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.
- 4.1.26 **Covert recording** – Any inappropriate recording includes that which is covert in its nature, or where the permission of those parties recorded is not sought prior to the recording.
- 4.1.27 Any other breach of discipline or other matter not covered above which in law or the opinion of the Trust justifies dismissal.

## Appendix C: Flowchart of Disciplinary Process

