

# Policy Document

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## Disciplinary

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**Statement on Trust Policies**

The latest version of 'Statement on Trust Policies' applies to this policy and can be accessed [here](#)

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## **1. INTRODUCTION**

This policy is designed to ensure that all disciplinary matters are dealt with in a fair and consistent manner. Misconduct is defined as a deliberate act, failure to follow instruction or an omission by an employee that is in breach of Trust policies, procedures, stated or expected requirements.

## **2. STATEMENT**

The Trust will encourage all employees to achieve and maintain the standards of conduct required within the Trust. This policy is a commitment by the Trust to operate a fair, consistent and non-discriminatory procedure in relation to all its employees. The University Hospitals of North Midlands promotes equality and diversity and values the benefits this brings. It is the Trust's aim to ensure that employees feel valued and have a fair and equitable quality of working life.

The main purpose of this policy and procedure is to encourage an employee whose standard of conduct is unsatisfactory, to improve. For many minor lapses of conduct, the first line manager may consider that recourse to a formal disciplinary process is inappropriate and that it is sufficient to discuss the issue with the member of staff. Such discussions are informal by nature and should take place privately with the aim of assisting the employee to achieve the required improvement in conduct.

## **3. SCOPE**

This policy applies to all members of staff employed by University Hospitals of North Midlands NHS Trust, and should be read in conjunction with all appropriate codes of conduct. Whilst this procedure applies to medical and dental staff, including those with honorary contracts, the Procedure for Maintaining High Professional Standards in the NHS (HR18) should be referred to and must be followed initially.

This policy will not apply to capability (attendance and/or performance) issues. These will be addressed under the Trust Sickness Absence Policy (HR 14) and the Capability Policy (HR29) for non-medical staff and Part 1, Part 4 and Part 5 of the Trust's procedure for Maintaining High Professional Standards in the NHS (HR18), for medical and dental staff.

This policy will not apply to non NHS staff (e.g. third party contracted staff). However it is expected that such staff should follow the principles laid down in this Disciplinary Policy whilst working on Trust premises.

## **4. ROLES AND RESPONSIBILITIES**

It is the responsibility of every Manager to ensure that all staff including those new to the Department are aware of the Disciplinary Procedure and of the standards of conduct and performance required of them.

The general principles will include:

- No disciplinary action will be taken against an employee until all the facts have been fully established. The employee should be informed that issues relating to them are being considered / investigated, as soon as reasonably possible.
- If suspension is considered essential, Human Resources support may be provided if required. The employee has no statutory right to be accompanied at this meeting, however if it is determined at the outset of the meeting that the employee wishes to be accompanied, such a request will not be unreasonably refused as long as the meeting can proceed without any undue delay.

- At all formal stages, the employee will have the right to be accompanied or represented by their staff side representative, trade union representative or work colleague. They must be advised of this right and may choose whether or not to exercise it. It is the employee's responsibility to make arrangements to be accompanied or represented. In extraordinary circumstances the employee could send a representative, or representation could be made in writing during the formal stages of the procedure. Advice should be sought from Human Resources in all such cases. The investigation should be carried out as quickly as possible, taking into account its complexity and scope.
- The process will not be unduly delayed if an employee's preferred representative is unavailable. Key meetings may only be re-scheduled once if the employee's representative is unavailable on the initial date.
- An employee will have the right to appeal against any formal disciplinary penalty imposed.
- No employee will be dismissed for a first breach of discipline except in cases of serious or gross misconduct. For cases of gross misconduct dismissal will usually be without notice or without payment in lieu of notice. This is also known as summary dismissal.
- Confidentiality as far as is reasonably practicable will be maintained at all times.
- Staff Counselling Services can provide individuals (both witnesses and the individual being investigated), with support in the strictest confidence.
- Where the issue involves medical and dental staff, initial referral must be made to the Trust's Procedure for Maintaining High Professional Standards in the NHS.
- It is the role of the Staff Side representative to negotiate, raise concern, or provide support on a member's behalf as necessary in relation to this Policy.
- Nothing in this policy or procedure will remove or alter a person's statutory rights.
- In exceptional circumstances any serious breaches of this procedure may render the action taken null and void.
- Employees who are registered with a professional body (e.g. HCPC, NMC, GMC) are reminded that employing authorities have a duty to report any incidents of professional misconduct to that body. The organisation may separately investigate the circumstances and take any necessary action.

## 5. EDUCATION/TRAINING AND PLAN OF IMPLEMENTATION

In order to ensure that all managers and Trade Union representatives operate this procedure in an appropriate and agreed manner, the Trust will provide information/ support/guidance on the disciplinary procedures as and when necessary.

Anyone asked to undertake a formal investigation into an allegation of bullying or harassment under the Disciplinary Policy, who has not had specific training in investigating this type of issue, will be required to undertake the online training module 'Undertaking an investigation into a Dignity at Work issue'.

## 6. ACTION IN PARTICULAR CASES

- **Trade Union Representatives:** Normal disciplinary standards should apply to the conduct of Trade Union Representatives but, in some cases, disciplinary action may be seen as an attack on the function of the Union and care should therefore be exercised. In all cases involving Trade Union Representatives, advice should be sought from the Human Resources Directorate and full time

officers should be informed. Where the suspension of a Trade Union Official is considered, the Full Time Officer should be notified and no disciplinary action should be taken until the circumstances of the case have been discussed with the Full Time Officer.

- **Criminal Offences:** Special care should be taken when dealing with employees who are alleged to have committed criminal offences, whether connected to their employment or not. Where an investigation establishes a suspected criminal action in the UK or abroad, this will be reported to the police. However in most cases their investigation will be decoupled from the Trust's internal investigation although employees will note that details of investigations will be shared between the various bodies involved. Before taking action in cases of this nature, advice should always be sought from the Human Resources Directorate. If such an alleged criminal offence relates to a Trade Union Dispute, the appropriate Full Time Officer should be consulted. Human Resources will liaise with our Local Security Management Specialist (LSMS) who will decide whether with Police need to be informed. Criminal offences involving medical and dental staff are to be addressed under part 3.0 of the Trusts Procedure for Maintaining High Professional Standards in the NHS.
- In cases of **fraud, theft and other criminal** activities the police and/or counter fraud officer will be informed. However in most cases their investigation will be decoupled from the Trust's internal investigation although all employees who give statements will note that details of investigations will be shared between the various bodies involved.
- **Sickness Absence:** If the member of staff becomes ill during the course of the investigation and is unable to attend an investigation interview or disciplinary hearing there is an expectation that medical evidence will be provided in support of this. If the absence is short term, the investigation/hearing may be deferred. If it is likely to be a long-term absence the hearing will be held and the employee must send written representation where possible or a decision will be made in the person's absence. If the person's absence is considered to be being caused by the matter in hand it is sensible to proceed with the hearing as soon as possible to remove the cause of absence. If the investigator becomes ill, it is reasonable for a new investigator to be appointed.
- Where an employee raises a **grievance** during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.
- Should an **employee resign** and leave prior to the disciplinary matter being concluded the Trust reserves the right to continue with the disciplinary process giving the employee an opportunity to contribute to the process.
- Should an **Investigating Officer or Case Manager** resign during the process and leave the Trust prior to the matter being concluded the Trust reserves the right to re-assign the case to a suitable alternative officer. The employee under investigation and any witnesses should be informed, as soon as is reasonable possible, of any such change and any associated delay.
- In certain circumstances it may be necessary and even essential to inform the **professional bodies** of employees such as the NMC of conduct that has taken place. Where this is the case the employee will be informed of that fact.
- Where a case involves **allegations of abuse against a child**, details of this can be found in Appendix 2. In instances where Child Protection is a consideration the procedure for managing allegations against people who work with children will supersede any of the Trust's internal procedures.
- Where a case involves **allegations of abuse against an adult** with care and support needs, details of this can be found in Appendix 3. In instances where Adult Safeguarding is a consideration the procedure for managing allegations will supersede any of the Trust's internal procedures.

- **Incremental Progression** will be frozen for the period of the sanction in instances when a formal disciplinary warning is issued.

## 7. MONITORING AND REVIEW ARRANGEMENTS

This policy will be reviewed and monitored on an on-going basis.

This policy may be amended at any stage by joint agreement. In any event the policy will be reviewed and updated in line with any changes to legislation in three years. or as deemed necessary

FOI ref 294-1920

## **THE PROCEDURE**

### **1. THE DISCIPLINARY PROCEDURE**

The Disciplinary Procedure is designed to help and encourage all employees to achieve and maintain the standards of conduct of the Trust. It should be seen as a corrective procedure ensuring all employees are treated fairly.

It is important that the following principles and procedures are read and understood, as they constitute an important part of employees Terms and Conditions of Employment.

The Trust believes that in order to resolve any problems relating to conduct fairly, the following Disciplinary Procedures should be followed.

#### **1.1 Informal Procedure – Recorded Discussion**

Cases of minor misconduct are usually best dealt with informally.

In the case of minor misconduct not reaching the required standard, the concern/problem will be discussed with the employee and they will be given the opportunity to provide an explanation. The discussion about the concern / problem should be constructive, with the emphasis being on finding ways for the employee to improve and for the improvement to be sustained.

This will normally result in agreed action being taken by the employee and/or the Trust to resolve the matter and will be noted by the Line Manager.

It is anticipated that the vast majority of problems will not progress beyond this stage. For purposes of clarity a brief record of the discussion will be made, for reference purposes, which will be placed on the individual's personnel file for a period of 3 months or longer if a Police matter. There should be informal reviews of progress (against the agreed actions) over relevant specified periods.

This action would not normally require a separate investigation and no right of appeal exists. A record of the discussion will be made using the form held on the HR intranet site. This recorded discussion does not form part of the formal disciplinary procedure. The content of the record kept should be agreed by both the manager and employee as an accurate reflection of the discussion that took place.

#### **1.2 Formal Procedure**

The Formal Procedure will be applied where an employee does not respond appropriately or adequately to informal action or the manager considers that the breach of conduct that is believed to have occurred (based on an initial collation of evidence) is too serious to be dealt with informally.

Examples of behaviour that may constitute misconduct resulting in disciplinary action are set out under section 5.7; including examples of behaviour which may constitute gross misconduct. In using the Formal Procedure and determining whether the employee has committed 'misconduct' or 'gross misconduct', the burden of proof required on a dispassionate and objective assessment of the facts is the balance of probability.

Once the initial brief facts surrounding an incident have been established and the Case Manager has taken a decision, with advice from relevant Human Resources representative, to proceed to an investigation, consideration should be given to:

- Check the core employment contract status of the employee and whether they are currently on any form of leave;

- Is this a matter that, prior to commencing an investigation, should be referred to / or advice sought from any of the following:
  - Police
  - Trust's Counter Fraud Services
  - Trust's Local Security Management Services [LSMS]
  - Trust's Safeguarding Team (see also Appendix 2 – Procedure for managing allegations against people who work with children and Appendix 3 - Procedure for managing allegations against people who work with adults with care and support needs)
  - Trust's in-house Legal Services
- Is it necessary to notify a relevant senior manager and/or Trust Communications lead of the issue?
- Is any action necessary at this stage in respect to relevant professional bodies?
- Is any action necessary at this stage in respect to relevant Trade Union officials?
- Setting out / phrasing the allegation[s] against the employee that are to be investigated;
- The appropriate form and degree of investigation required to establish the facts of the case;
- Who will carry out the investigation /collation of evidence?
- What Human Resources support may be required?
- Which support services, if any, may it be useful to link in with during the process e.g. Occupational Health services, Staff Counselling services;
- Whether or not the employee should remain in the workplace – see section 2 – Suspension
- Informing the employee of the problem;

## **2. SUSPENSION OR TEMPORARY TRANSFER (and informing the employee of the problem)**

Suspension is a neutral act, not disciplinary action, and should only be used where necessary and commensurate.

Consideration should be given to the implications of suspension for the employee and to possible alternatives to suspension, such as alternative or restricted duties, temporary redeployment etc.

Usually a decision is taken to suspend prior to the commencement of the investigation, however, the need for suspension may not be determined until part way through the investigation. In such circumstances, the Investigating Officer shall liaise with the Case Manager in order that the Case Manager may instigate a suspension as deemed to be necessary at any point of time during the investigation, or immediately subsequent to the investigation, dependent on outcome.

Suspension will be on full pay (including any regular enhancements).

A member of staff may take annual leave while suspended from duty. Annual leave should be booked with the employee's line manager. Prior to making the request, the employee should liaise with the Investigating Officer to ensure that the proposed leave dates do not hinder the investigation. Requests for annual leave should not be unreasonably refused.

Where it is necessary to suspend an employee, this will only occur:

- If a full and proper investigation cannot be undertaken with the employee remaining in the workplace;

- Where it is considered there are risks to the Trust's property;
- Where it is considered there are risks to the employee, patients and/or other parties;
- Where you have reasonable grounds for concern that evidence has been tampered with, destroyed or witnesses pressurised before investigation meetings

The use of the suspension option is at the discretion of the Case Manager / line manager. As far as is reasonably possible, HR advice should be sought by the Case Manager prior to a suspension. (This section does not apply to medical and dental staff for which the arrangements for the restriction of practice or exclusion of medical and dental staff are detailed in part 2.0 of the Trust's Procedure for Maintaining High Professional Standards in the NHS. This should be referred to in all incidents involving medical and dental staff).

In order to suspend an employee the Manager should aim to do so face to face on Trust premises via a brief meeting. The Employee will usually not be given advanced notice of the meeting, but this may vary depending on the nature and seriousness of the issue, and the employee has no statutory right to be accompanied at this meeting. However if it is determined at the outset of the meeting that the employee wishes to be accompanied, such a request will not be unreasonably refused as long as the meeting can proceed without any undue delay. In exceptional circumstances, alternatives to a face to face meeting may have to be considered.

When suspending an employee the Case manager should:

- Clearly advise the employee of the reason for the suspension in as much detail as possible.
- Advise the employee regarding the likely duration of the suspension, regularly update the employee and remove suspension as soon as possible.
- Confirm that the suspension is on full pay (i.e. payment will be made as if the person was in work).
- Advise the employee that the suspension will be confirmed in writing and that this letter will inform them of the allegations against them, and how the matter will proceed (i.e. investigation / collation of facts process) and the possible consequences.
- If at any time after the member of staff has been suspended from work, the investigation reveals that either the allegations are without foundation or that further investigation can continue with the person working normally or with restrictions or alterations, the Case manager must lift the suspension and make arrangements for the member of staff to return to work with any appropriate support as soon as practicable.
- At the meeting the Case Manager should remove access to the Trust, unless this has already been removed by the Police dependent on the circumstances
- During a period of suspension, employees may be refused access to their normal place of work, including access to electronic data and systems and Trust ID may be confiscated, without the prior consent of the employee and subject to such conditions as the Trust may impose. Access to Trust premises will be authorised for the member of staff to allow them to receive medical attention, or when a family member is receiving medical attention, or to attend a meeting with their Trade Union Representative.
- Suspended employees can contact the Trust Freedom to Speak Up Guardian if they have a genuine concern that they wish to raise, in accordance with the Trusts Raising Concerns at Work (Whistleblowing) Policy HR30. Permission is not needed from a Manager to do this.

In situations where a face to face suspension meeting is not possible then suspension can be done via a telephone call and then confirmed in writing. In exceptional circumstances, if neither a face to face meeting nor a telephone conversation is possible then the employee will be suspended by letter, clearly setting out in writing the details as above.

The period of suspension should be kept under review. During the suspension the Case Manager should obtain regular updates from the Investigating Officer to ensure that the period of suspension is kept to a minimum. The Investigating Officer must remain in contact with the suspended employee throughout the period of the investigation and provide regular updates on progress against agreed timeframes.

### **3. INVESTIGATION**

This section does not apply to Medical and Dental staff for whom the arrangements for investigating concerns about medical and dental staff are detailed in part 1.0 of the Trust's Procedure for Maintaining High Professional Standards in the NHS.

For all other cases please refer to Appendix 5 for a summary guide that outlines the investigation process.

#### **3.1 Deciding if an investigation is necessary**

When an incident occurs, the first step is to decide if an investigation is necessary.

Incidents and issues will arise in any workplace and ensuring that they are dealt with fairly and consistently may mean that they need to be investigated.

In the first instance, the manager should consider whether a quiet word or informal action via a recorded discussion may be all that is required to resolve a matter. Most problems that arise can be settled quickly and without undue process.

Where informal resolution is not practical or possible there are a number of considerations that a manager should bear in mind when deciding if an investigation is necessary:

- Do any policies or procedures require an investigation?
- Does the matter warrant further action?
- Will a preliminary investigation help? Where it is uncertain whether a full investigation is unnecessary or appropriate, a manager may benefit from trying to find this out first. Usually this would be limited to gathering appropriate evidence on the matter.

If an investigation is necessary, then a manager should act promptly. Unnecessary delay may cause memories to fade or give the perception of an unfair process. Importantly, an informal resolution of the matter should still be considered as an option at any stage of the process.

It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case.

In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing.

The method of transmission for any written communication (e.g. email and post) will be based on the specific circumstances, and will align to any data protection requirements as outlined in (IG10) Data Protection Policy.

#### **3.2 What is to be investigated?**

When instigating an investigation, the Case Manager should decide what the precise purpose, commissioning and scope of the investigation will be.

Terms of reference should be created that clearly explain what the investigator's role and responsibilities are for this investigation, precisely framing the allegations with reference to the misconduct examples in the policy, where possible

### **3.3 How long may an investigation take?**

A complicated matter may take several weeks to conduct properly and a relatively simple matter may only require a small amount of investigation for it to be reasonable.

While an investigation should be completed as quickly as is practical, it also needs to be sufficiently thorough to be fair and reasonable. In light of this, whilst the trust will endeavour to adhere to the specified timescales in this policy, where possible, they are indicative subject to complexity.

If a new matter comes to light during an investigation, the investigator and / or the Case Manager may need to agree changes to the terms of reference, or to authorise a further investigation. It will usually be preferable to incorporate any new matters into the existing investigation unless it will make an investigation overly burdensome or unduly complicated.

### **3.4 Deciding who will deal with the matter & choosing an investigator**

In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing.

This could involve the line manager carrying out an investigation who will act fairly and objectively or the Manager should appoint an independent and objective Investigating Officer who has the appropriate skills and experience in order to establish all the relevant facts to ensure that an informed decision can be made as to whether the disciplinary hearing should be held.

In cases where the line manager carries out the investigation, a different manager (Case Manager) will make the decision on whether to proceed to a disciplinary hearing and chair the hearing or consideration of early resolution.

If the employee has genuine concerns about the objectivity or appropriateness of the investigator, these should be raised prior to the commencement of the investigation with the case manager. The investigating Officer should be confirmed to the employee without delay by the Case Manager.

The investigator will be confirmed by the manager within 3 business days of the matter being brought to the Trusts attention. If there are problems in meeting this timescale, this should be communicated to the individual concerned.

The manager will ensure that the employee is given full details of the allegations being made against him/her in writing and confirming the investigator within 3 business days of appointing the investigator.

### **3.5 An investigator's preparation & gathering evidence**

The investigator will endeavour to establish the facts before memories fade and, in some cases, obtain statements from the relevant witnesses, where required.

It is not always necessary to hold an investigation meeting (often called a fact finding meeting).

While investigation meetings will often be needed, some investigations will only require the collection of written and physical evidence.

In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing.

An investigator may sometimes decide that a witness statement can be supplied without a meeting in circumstances such as:

- If a witness is not a worker
- When the facts required from a witness are very simple
- Where a witness is ill and unable to attend an investigation meeting

An investigator should provide a reasonable deadline for completion and ask the witness to answer specific questions or to include in their statement:

- Their name and, where applicable, job title
- The date, place and time of any relevant issues
- What they saw heard or know
- The reason why they were able to see, hear or know about the issues
- The date and time of statement
- Their signature

A witness statement supplied in writing will be of limited use where there are doubts about the witness's account or the witness needs to be probed for further details. All persons providing a witness statement should be made aware that any information given may be used at a disciplinary hearing and they may be called as a witness, if it is decided that such a hearing should take place.

### **3.6 Handling an investigation meeting**

If the investigator decides that an interview is required, wherever possible, the interview should be arranged at a mutually convenient time. Although there is no statutory right for an employee to be accompanied at a formal investigation meeting, if it is determined in advance that the employee wishes to be accompanied, such a request will not be unreasonably refused as long as the meeting can proceed without any undue delay.

There is an expectation that any interview will be carried out during the employees' normal working hours, where possible.

Three business days' notice of the interviews will be given, from the date of the letter, unless it is agreed otherwise.

During the investigatory interviews, the employee should be given every opportunity to refute the allegations, to give his/her own account of events and/or to explain any mitigating circumstances.

If investigation meetings are necessary, an investigator needs to plan how they will be recorded. Typically, an investigator may record the meeting themselves or have someone act as a note-taker.

- If they opt for a note-taker, then the Case Manager needs to provide an appropriate person to support this activity.
- Having a note-taker for the meeting can allow an investigator to focus on exactly what the interviewee says and consider what additional enquiries are necessary to establish the facts of the matter.
- A note-taker can also be used to read back answers given during the meeting and check that what has been recorded is agreed as being accurate.
- The notes taken do not need to record every word that is said but they should accurately capture the key points of any discussion.
- If the interview is to be recorded, it is good practice to agree this with all concerned at the commencement. The investigator chairing the meeting should advise all participants at the outset that recording is only by mutual consent of all parties and participants will be asked whether they are recording the meeting.

- A copy of the interview notes will be made available to the employee/witnesses who will be asked to validate and sign the notes as an accurate record of the interview during the meeting.

All persons interviewed should be made aware at the beginning of the interview that any information given will be used at a disciplinary hearing and they may be called as a witness, if it is decided that such a hearing should take place.

Any persons interviewed as part of the investigation can no longer participate in any further process relevant to this case other than as a witness.

### **3.7 Completing an investigation & the investigation report**

The Investigating Officer should aim to complete the investigation including the production and submitting of the report within 28 business days of appointment or sooner or as soon as is reasonably practicable.

Whilst the trust will endeavour to adhere to the specified timescales, where possible, they are indicative subject to complexity.

If it is likely that the investigation will exceed the 28 business day's timescale, this should be communicated to the individual concerned and his/her representative, indicating likely timescales. During the investigation, regular updates should be available if requested.

An investigator should endeavour to reach conclusions about what did or did not happen, even when evidence is contested or contradictory. In these circumstances an investigator will need to decide whether, on the balance of probabilities, they could justifiably prefer one version of the matter over another and explain why.

Unlike criminal law, an investigator conducting an employment investigation does not have to find proof beyond all reasonable doubt that the matter took place. An investigator only needs to decide, that on the balance of probabilities, an incident is more likely to have occurred than not.

Having gathered all the relevant facts, the investigator will identify whether there is a case to answer or no case to answer. The report of the investigation should give the manager sufficient information to make a decision on whether there is a case to answer or not. Consideration will be given to the following:

- Where the manager decides to hold a disciplinary hearing the employee and his/her representative will be provided with a copy of the investigator's full report sent with the letter advising the employee there is a case to answer within 3 business days of the report being produced.
- Where there is a complainant, they should similarly be advised of the completion of the investigation within 3 business days of the report being produced but should not be given access to the investigation report.

## **4. EARLY RESOLUTION**

The Early Resolution process can be used once the individual has been informed after the collation of evidence. In the majority of cases, the decision will be reasonably taken after the appropriate initial collation of facts/preliminary investigation has been done and the facts are not in dispute, dependent on the nature and complexity of the alleged misconduct. In some cases, it may be that this decision is made after a full investigation has been completed.

This approach can be used, dependent upon the nature of the conduct, when the individual is willing to accept a sanction up to and including a final written warning in lieu of a formal disciplinary hearing.

The Case Manager may opt to offer Early Resolution to the individual and/or their Trade Union

representative and/or an approach may be made by the individual and/or their Trade Union representative.

In these instances, it is the responsibility of the Case Manager to make the decision after considering the full detail of the investigation report, any other recommendations made and after seeking advice from HR.

In cases of Serious or Gross Misconduct, where dismissal is a potential outcome, this approach cannot be utilised and the case will proceed to a formal disciplinary hearing.

If early resolution is used, then a 'meeting' will be conducted by the Case Manager with HR present. An invite to the early resolution meeting will be sent to the employee outlining the arrangements for the meeting.

The employee will have the right to be accompanied or represented by their staff side representative, trade union representative or work colleague. The individual will be advised of the proposed sanction prior to the meeting.

An outcome letter will be sent to the employee which will confirm the sanction applied and the length of the sanction.

By selecting to use this process an employee is admitting to the misconduct and accepting the investigation findings. Therefore there is no recourse for appeal via this process.

## **5. DISCIPLINARY HEARING**

Note: The principles and arrangements for conduct hearings for Medical and Dental Staff are referred to in Part 3.0 of the Trust's Procedure for Maintaining High Professional Standards in the NHS. This section should be read in conjunction with that procedure.

The purpose of a disciplinary hearing is to determine the facts and to enable the panel to come to a decision as to whether disciplinary action is justified and if so, at what level.

The disciplinary hearing should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case.

The Case Manager will appoint an authorised officer to chair the panel (see Levels of Authority) The authorised officer should not have been involved in the investigative or decision making process. From this point forward the Chair of the panel will be responsible for the process with procedural advice/support from an HR representative.

Arrangements for the hearing should include:

- The date for the hearing should be set, giving due regard to the need for timeliness and the expected duration of the hearing, but allowing sufficient time for the employee to arrange representation and for the employee and his/her representative to prepare for the hearing. A minimum of 5 business days' notice of the date of the hearing should be given, unless it is agreed otherwise. Where lengthy and complex investigations have occurred, time allowed for preparing for a hearing should be reasonable
- When confirming in writing the arrangements for the hearing the following details will be provide:
  - the date, time and venue of the hearing
  - the precise details of the allegations against the employee
  - the right to be accompanied

- who will be present at the hearing on behalf of management panel member
  - the fact that the meeting will be recorded and the individual has the right to object to this in advance
  - in cases of serious or gross misconduct which may attract an outcome of dismissal an indication of this should be given in the letter inviting the employee to the meeting
- They will also be advised if they don't attend without good explanation or for a rearranged hearing that a decision will be made in their absence.
  - Where witness statements are given, witnesses may be available for the hearing. Each side will be responsible for ensuring their own witnesses are available at the hearing. Where a patient is involved, attendance may not be possible. Such circumstances will be discussed with the employee and their representative prior to the hearing and the Chair of the Panel will take such steps as are reasonably practicable to ensure that the panel has the opportunity to still see all of the available evidence.
  - Consideration may also need to be given to the provision of an interpreter or facilitator if there are understanding or language difficulties. This person may need to attend in addition to the employee's representative. Arrangements for this would need to be agreed between the individual and the panel Chair in advance of the date of the hearing.
  - Provision should be made for any reasonable adjustments to accommodate the needs of a person (who is attending the hearing) with disabilities.
  - On being notified, if the employee has genuine concerns about the objectivity of any member of the panel the employee should raise his/her concerns in writing, within 2 calendar days of being informed of the arrangements of the hearing, to the HR representative who is supporting the Panel who will take steps to address those concerns.
  - In all cases the employee/management representatives will be requested to share with the panel and management side their statement of case including any documents, witness statements etc. that they intend to use at the hearing as soon as possible within a minimum of 7 calendar days prior to the date of the hearing. It is recognised that complex cases may require longer for preparation.
  - It will only be acceptable for a postponement to take place once and for good reason.
  - Should an employee not attend the hearing without explanation, or for the rearranged time, a decision will be made on the evidence available in their absence.

## 6. LEVELS OF AUTHORITY Non-Medical Staff

The table below indicates the Managers authorised to conduct hearings. It takes into consideration the scheme of delegation over levels of authority to take the decision to terminate employment. This is the minimum level of authority and numbers required at each stage. In particular cases it may be necessary for others to join the panel e.g. technical experts, or where an employee works for a number of people.

Type of Meeting/Sanction	Authorised Manager
Disciplinary Hearing: Improvement Notice	Appropriate Manager
Early Resolution Meetings	Appropriate Manager + HR Rep if necessary

Disciplinary Hearing: Written Warnings and Final Written Warnings	Senior Manager + HR Rep.(Technical expert available if required)
Disciplinary Hearing: Dismissal	Senior Manager (inc Directorate or Department Manager) + HR Rep (Technical expert available if required)
Appeals	Associate Director/Assistant Director (Chair) + Executive / + HR Rep not previously involved

## 6.1 LEVELS OF AUTHORITY Medical and Dental Staff

Medical and Dental Staff in Training, Consultant and all other Career Grade Medical and Dental Staff and Clinical Directors (where Medical Staff)

Action	Authorised Manager
Improvement Notices	Clinical Director
Disciplinary Hearing: Written Warnings, Final Written Warnings and Dismissal (for all medical staff inc senior medical staff)	Divisional Chairs / Medical Director (or delegated representative) + Associate Director + HR Rep. For senior medical staff only: Chief Executive may need to be involved if Medical Director is the case manager.
Appeals	Chief Exec + Medical Director (or delegated representative) + HR rep not previously involved

## 6.2 General Considerations for Levels of Authority for all Grades of Employees

It is important at the initial stage of the process that consideration is given to ensure that suitable levels of neutral staff are available at subsequent disciplinary stages and appeal stages

- Where the alleged misconduct relates to matters of a professional nature, the panel will include a member who is appropriately qualified or experienced to give professional advice. In the cases of Doctors or Dentist Staff the panel must include a member who is medically qualified (in the case of doctors) or dentally qualified (in the case of dentists) and who is not employed in the Trust. The arrangements for this will be discussed with the chair of the Local Negotiating Committee
- All formal panels will consist of at least 2 members, one of whom will be a Human Resources representative to provide support on procedural issues and to ensure a consistent and equitable approach is followed. Such support will be given at lower stages if requested
- These disciplinary structures are designed to ensure that as a general rule no employee can be dismissed by their immediate manager without reference to a more senior management level.

## 7. CONDUCT OF DISCIPLINARY HEARINGS

At the hearing, the following procedure shall be observed:

- The chairperson of the panel will:
  - Introduce themselves and all present, including why they are there;

- Explain the purpose of the hearing;
  - Ensure that all parties are aware of the procedure to be followed i.e. how the meeting will be conducted.
  - Inform that the hearing will be recorded. Advise the employee that if they want to record the hearing, consent must be obtained.
  - The Chair will clarify the role of the accompanying person / representative if present.
- The management representative shall state the allegations made against the employee that were investigated and outline the management case in the presence of the employee and the employee's representative and may call witnesses.
  - The employee or the employee's representative shall have the opportunity to ask questions of the management representative and witnesses.
  - The Chair / members of the panel shall have the opportunity to ask questions of the management representative and witnesses.
  - The management representative shall have the opportunity to re-examine his or her witnesses on any matter referred to in their examination by members of the panel, the employee or the employee's representative.
  - The employee or the employee's representative shall put his or her case in the presence of the management representative and may call witnesses.
  - The management representative shall have the opportunity to ask questions of the employee and the employee's representative and witnesses.
  - The members of the panel shall have the opportunity to ask questions of the employee and the employee's representative and witnesses.
  - The employee or the employee's representative shall have the opportunity to re-examine his or her witnesses on any matter referred to in their examination by members of the panel or the management representative.
  - Witnesses, if called will only be present at those parts of the hearing during which they are required to give evidence or be subject to questioning. At all other stages, they should withdraw. Witnesses should be prepared to answer challenging questions by both management and staff side, and as a consequence, by prior agreement they may be supported but not represented during the hearing by a colleague or trade union representative.
  - The management representative and the employee or the employee's representative shall have the opportunity to sum up their cases if they so wish. The employee or the employee's representative shall have the right to speak last. In their summing-up, neither party may introduce any new matter.
  - Nothing in the foregoing procedure shall prevent the members of the panel from inviting either side to elucidate or amplify any statement they may have made; or 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.
  - The panel or either party may ask for an adjournment the hearing.
  - The panel will always adjourn to consider what if any action is necessary and both the management representative, the employee, and the employee's representative shall withdraw.
  - The panel shall deliberate/carefully consider the points made in private only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties shall

return notwithstanding only one is concerned with the point giving rise to doubt. In cases where dismissal is an option the panel will consider all actions short of dismissal.

- Once the panel has reached a decision, all parties should be recalled for the Chairperson to notify them of that decision. This should under normal circumstances take place on the same day as the hearing concludes, unless there are exceptional circumstances.
- Notes will be taken during formal hearings. These will either be taken as notes by a note taker or recorded on a voice recorder. Notes will only be transcribed should an appeal be lodged. If the interview/hearing is to be recorded, it is good practice to agree this with all concerned at the commencement.

## **8. FORMAL DISCIPLINARY SANCTIONS**

A disciplinary sanction is also known as a disciplinary penalty. For the purposes of this policy it will be called a disciplinary sanction.

## **9. DISCIPLINARY STAGES**

### **9.1 Stage one – Improvement Notice**

If conduct does not meet acceptable standards the employee will normally be given an improvement notice. This will set out the problem, the improvement that is required, the timescale and any help that may be given. The individual will be advised that it constitutes the first stage of the formal procedure. A record of the improvement notice will typically be kept for up to 6 months, but will then be considered spent - subject to achievement and sustainment of satisfactory improvement.

### **9.2 Stage Two - Written Warning**

If the conduct does not meet acceptable standards the employee will normally be given a written warning, typically for 12 months however this may vary in some circumstances. This will set out the nature of the misconduct and the change in behaviour required. The warning should also inform the employee that a final written warning may be considered if there is no sustained improvement or change. A record of the warning should be kept, but it should be disregarded for disciplinary purposes after a specified period.

### **9.3 Stage Two - Final Written Warning**

If the offence is sufficiently serious, or there is a failure to improve during the currency of a prior warning for the same type of offence, a final written warning may be given to the employee, typically for 12 months however this may vary in some circumstances. This will give details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to action under Stage 3 (dismissal or some other action short of dismissal) and will refer to the right of appeal. A copy of this written warning will be kept by the supervisor but will be disregarded for disciplinary purposes after agreed sanction period subject to achievement and sustainment of satisfactory conduct.

In addition to a final written warning the Trust may impose the following as an alternative to dismissal:

- a) Down-banding without protection (for the duration of the final warning)
- b) A transfer without protection (for the duration of the final warning). Such down-banding or transfer will always be within one band or equivalent of the employees existing post and the period of down-banding will be kept under review for a length of time to be agreed at the hearing

(a) and (b) are not considered to be ordinarily applicable to medical and dental staff.

(c) Any other sanction deemed appropriate by the disciplinary panel will be considered, as an

alternative to dismissal, in appropriate cases (e.g. a change in working pattern or suspension without pay as a direct alternative to dismissal).

#### **9.4 Stage Three - Dismissal**

If there is still a failure to improve or if the allegation is sufficiently serious the final step in the procedure may be dismissal or some other action short of dismissal such as demotion or disciplinary suspension or transfer (as allowed in the contract of employment). Dismissal decisions can only be taken by the appropriate senior manager, and the employee will be provided, as soon as reasonably practicable, with written reasons for dismissal, the date on which the employment will terminate, and the right of appeal. The decision to dismiss will be confirmed in writing.

If some sanctions short of dismissal are imposed, (as outlined in Stage Two) the employee will receive details of the complaint, will be warned that dismissal could result if there is no satisfactory improvement, and will be advised of the right of appeal. A copy of the written warning will be kept by the supervisor but will be disregarded for disciplinary purposes after the agreed sanction period subject by achievement and sustainment of satisfactory conduct or performance.

#### **9.5 Statutory disciplinary and dismissal procedure**

If an employee faces dismissal - or certain action short of dismissal such as loss of pay or demotion - the minimum statutory procedure will be followed. This involves:

- Step one: a written note to the employee setting out the allegations and the basis for it
- Step two: a meeting to consider and discuss the allegation
- Step three: a right to appeal including an appeal meeting

The employee will be reminded of their right to be accompanied. NB: - If an employee is dismissed as a result of an act of gross misconduct, they will be dismissed with no notice and no pay in lieu of notice.

As soon as reasonably practicable and within no later than 7 calendar days, reasons for dismissal will be provided, in writing, the date the employment will terminate on and the name of the person to whom they may submit the appeal in writing (see Appeals Procedure). They will also be told whether or not there is an intention to refer any individual to external professional bodies, e.g. NMC, GMC/GDC, HCPC.

### **10. CATEGORIES OF MISCONDUCT**

All organisations must have certain standards of behaviour and discipline in order to ensure the smooth operation of its activities. It is not possible to draw up an exhaustive list of rules, however the following is a guide as to what constitutes misconduct and the likely disciplinary action, which may be taken. Please note: bullying and harassment are included in all category levels subject to the severity of the issue. Deliberate sexual, religious beliefs, racial, age or disability harassment, victimisation or serious bullying all potentially constitute gross misconduct and will normally result in summary dismissal.

#### **10.1 Improvement Notice**

Types of conduct for which improvement notices will be given in the first instance:

- Failure to comply with the required standards of personnel hygiene/appearance
- Failure to maintain good patient relations
- Failure to maintain good working relationships with colleagues
- The use of inappropriate language
- Unsatisfactory timekeeping

- Poor attendance
- Failure or unwarranted delay in carrying out lawful instructions
- Displaying private notices without authority
- Failure to follow a reasonable management request e.g. Attendance at Occupational Health

This list is not exhaustive.

## 10.2 Written Warnings

Types of conduct for which written warnings will be given:

- Repetition of behaviour occasioning improvement notices
- Failure to improve standards for which improvement notices have been given
- Insolence to patients or colleagues
- Storing personal property in unauthorised places
- Misuse of UHNM property
- Unauthorised communication with press, radio, and television on UHNM matters
- Gambling on UHNM premises
- Practical jokes and horseplay which will cause offence
- Entering unauthorised areas without permission

This list is not exhaustive.

## 10.3 Dismissal

Types of serious misconduct:

- Any repetition of behaviour for which previous warnings have been given, provided the employee has been advised that the consequences of his/her action would be dismissal
- Loss of UHNM property, stock, cash, vehicle through negligence
- Failure to hand in UHNM cash at the appointed time
- Acts of indecency
- Presence at work whilst under the influence of drink or drugs
- Unauthorised leaving place of employment during working hours
- Smoking in prohibited areas
- Breach of the Trusts smoking Policy
- Unauthorised consumption of alcohol on UHNM premises
- Refusal to obey lawful instructions
- Unlawful discrimination
- Failure to adhere to UHNM employment policies
- Serious breach of health and Safety rules and procedures
- Misuse of IT equipment
- Abuse of IT policy
- Serious breach of the Trust's employment policies or procedures
- Being absent without explanation
- Inappropriate conduct outside work environment
- Failure to maintain working relationships

This list is not exhaustive

## 10.4 Summary Dismissal

Types of Gross Misconduct:

- Falsifying accounts
- Falsifying attendance record
- Fraudulent recording of work activity
- Being absent without authorisation
- Theft, embezzlement or fraudulent conversion
- Abuse of patients, visitors or members of staff on UHNM premises
- Bribery and Corruption
- Disclosure of confidential information
- Misuse or failure to safeguard confidential information and/or patient data
- Gross or wilful negligence
- Deliberate mishandling of patient records
- Actions liable to bring UHNM into serious disrepute
- Private trading

This list is not exhaustive

## 11. APPEALS PROCEDURE

The purpose of appeal is to review any formal penalty imposed at the Disciplinary Hearing. Appeals should be heard without any unreasonable delay. The basis for appeals is around process errors at hearing stage, or severity of sanctions. The appeal stage is not an opportunity to re-hear hearings.

At each formal stage of the Disciplinary Procedure, if the employee feels the disciplinary action taken against them is wrong or unjust, the employee will have the opportunity and right to appeal against the decision. If they wish to do so it should be in writing, clearly setting out the grounds for their appeal, to the HR Director within 10 business days of the date on the letter confirming the Disciplinary decision taken against them.

The HR Director will appoint an appropriate Manager to hear the appeal and will make arrangements for the appeal to be heard.

When submitting an appeal the individual will need to provide full written evidence of where they believe they have substantial grounds to appeal: These are:

- The decision was unfair and / or
- That a piece of factual information was not put forward or was not available at the hearing or, if heard, was not properly taken into account; and / or
- The disciplinary action is too severe given the nature of the misconduct; and / or
- That the disciplinary hearing was not conducted in accordance with the Disciplinary procedure

They should also detail any new information or evidence that will support the appeal, including the names of any witnesses they may wish to call to attend the appeal. This is to ensure the Trust will have sufficient time to investigate any new information before the Appeal meeting. The appeal should be fully documented on the appeal form stored on the HR intranet site and should be submitted to the HR Director within 10 business days of the date of the letter confirming the Disciplinary decision taken against them.

The employee of course will have the right to be accompanied by a work colleague or Trade Union Official. The Trust does not allow employees to be represented by other representatives other than those stated.

The employee's statement of case is submitted when making their appeal. A management statement of case should be shared with the employee at least 5 business days before any appeal hearing is scheduled to take place. The appeal chair reserves the right to refuse additional character statements in the employee's appeal.

An appeal may result in one of the following outcomes:

- The original decision is upheld; or
- The original decision is rescinded; or
- A different level of disciplinary warning is administered (including either increasing or decreasing the level of the sanction)

A letter confirming the outcome of the appeal will be sent to the individual within 5 business days following the hearing. The individual will be informed that they will have exhausted all internal processes available to them within the Trust.

### **11.1 CONDUCT OF APPEAL HEARINGS**

The following stages will apply to appeal hearings. It is important that this procedure is followed carefully to ensure fairness to all parties and that all information and facts pertinent to the case are gathered.

a) The management statement of case together with any supporting information must be submitted to the employee and the panel at least 5 business days prior to the hearing taking place.

b) The designated Chairperson for the hearing will introduce all parties, outline the procedure and principles that will govern the hearing and briefly outline the issue under discussion. The designated chairperson will advise all parties of the acceptance / refusal of additional character witness statements.

c) The employee will then be invited to state his/her case, outlining the reasons for the appeal, either personally or through their representative.

d) The management representative and the panel will have the opportunity to ask any questions relating to the employee's case

e) The management representative will then state the management case.

f) The employee(s) and/or the representative and the panel will then have the opportunity to ask any questions relating to the management case.

g) The panel will then ask any final questions before asking the parties to sum up their cases. No new evidence should be introduced at this stage.

h) The panel will then adjourn to make a decision ensuring they consider all sanction options available. Parties may be recalled by the panel to clear points of uncertainty on evidence already given.

If recall is necessary, both parties shall return notwithstanding only one is concerned with the point giving rise to doubt.

The length of time of the closed session should be recorded.

i) When ready, the Chairperson will reconvene the hearing and give the decision to the parties involved. A decision will be given on the same day where possible however the panel reserve the right to reconvene the following day in order to reflect on the evidence and have appropriate time to make their decision.

j) The decision will be confirmed in writing to the employee(s) within 5 business days of the hearing.

k) It should be noted that this level is the final stage to which an appeal can be taken.

l) This procedure will not affect the statutory rights of employees to take forward a case under any employment legislation, including statutory provisions.

## **12. Retention of Documents**

All documentation regarding any initial collation of facts / fact finding exercise, preliminary or full investigation, disciplinary and appeal hearings will be retained in a secure folder on the Trust's hard drive that can only be accessed by personnel in the HR Department. A clear and comprehensive summary of any allegations written by the manager should be made and details of the outcome will be documented in the employee's confidential personnel file clearly stating any sanction imposed. In the event that it is determined that there is "no case to answer" this will be clearly documented and the case manager will ensure that the documentation is placed in a sealed envelope in the employee's confidential personnel file. Documentation should be retained for 10 years. The primary purpose of retaining the documentation is to assist the Trust in defending any subsequent litigation that might arise or as part of sharing information with regulatory bodies as appropriate. This information may also be helpful in relation to any serious allegations, e.g. sexual assault, where the Trust has determined that there is no case to answer and there is a subsequent Police investigation which relates to the same or similar matter(s).

## **13. Access to Personal Files**

A member of the HR team (as distinct from the HR member of the panel) may have access to the personal file, where relevant and as appropriate.

### **13.1 Investigation**

During the investigation, the investigator will not be given access to the personal file, but can make a specific request to a member of the HR team only for information that may be relevant to the investigation, for example, evidence of training records if the individual has stated that they were not aware of a policy, which is related to the allegation.

### **13.2 Panel**

The employee's personal file may be accessed by a member of the HR team (as distinct from the HR member of the panel) as appropriate in considering the sanction. This is the second stage of a two stage process for the panel. Stage one involves reviewing whether there is sufficient evidence to reach a reasonable belief for each allegation. This is where the panel concludes what reasonably happened and why (key evidence) for each allegation.

## PROCEDURE FOR MANAGING ALLEGATIONS AGAINST PEOPLE WHO WORK WITH CHILDREN

### Scope

1. This procedure applies to a wider range of allegations than those in which there is reasonable cause to believe a child is suffering, or is likely to suffer, significant harm. It also applies to cases of allegations that might indicate that the alleged perpetrator is unsuitable to continue to work with children in his or her present position, or in any capacity. It should therefore be used in respect of all cases in which it is alleged that a person who works with children has:

- behaved in a way that has harmed, or may have harmed, a child
- possibly committed a criminal offence against, or related to, a child; or
- behaved towards a child or children in a way that indicates s/he is unsuitable to work with children.

2. There may be up to three strands in the consideration of an allegation:

- a police investigation of a possible criminal offence;
- enquiries and assessment by children's social care about whether a child is in need of protection or in need of services
- consideration by the Trust, as the employer, of disciplinary action in respect of the individual.

3. This procedure applies to all staff and volunteers.

### Supporting those involved

4. Parents, or carers of a child or children involved, should be informed of the allegation as soon as possible. They should also be kept informed about the progress of the case, and advised that action has been taken where there is no criminal prosecution. This includes the outcome of any disciplinary process.

**Note:** the deliberations of a disciplinary hearing, and the information taken into account in reaching a decision, cannot normally be disclosed, but those concerned should be told that action has been taken.

5. The Trust will also keep the person who is the subject of the allegations informed of the progress of the case, and arrange to provide appropriate support to the individual while the case is on-going. (That support may be provided via occupational health or the Staff Support Service). If the person is suspended/excluded, the Trust will also make arrangements to keep the individual informed about developments in the workplace. If the person is a member of a union or professional body, they should be advised to contact that body at the outset.

### Confidentiality

6. Every effort will be made to maintain confidentiality and guard against publicity while an allegation is being investigated / considered. The police do not normally provide any information to the press or media that might identify an individual who is under investigation, unless and until the person is charged with a criminal offence.

### Resignations and 'compromise agreements'

7. The fact that a person tenders his or her resignation, or ceases to provide their services, will not prevent an allegation being followed up in accordance with this procedure. Every effort will be made to reach a conclusion in all cases of allegations bearing on the safety or welfare of children, including any in which the person concerned refuses to co-operate with the process. Wherever possible,

the person should be given a full opportunity to answer the allegation and make representations about it. If a person's period of notice expires before the process is complete, the process of investigation will need to continue, on the basis of all the information available, and it is important to reach and record a conclusion wherever possible.

8. 'Compromise agreements\*' must not be used in these cases. It should be noted that, if such an agreement was used it will not prevent a thorough police investigation where appropriate, nor can it override an employer's statutory duty to make a referral to the Protection of Children Act List or DfES List 99 where circumstances require it. (See paragraphs 12.29 and 12.33 of the document 'Working Together to Safeguard Children': a guide to interagency working to safeguard and promote the welfare of children 2006 for more information). [www.everychildmatters.gov.uk](http://www.everychildmatters.gov.uk)

\* (i.e. whereby a person agrees to resign, the Trust agrees not to pursue disciplinary action, and both parties agree a form of words to be used in any future reference.)

### **Record-keeping**

9. The Trust will keep a clear and comprehensive summary of any allegations made, details of how the allegations were followed up and resolved, and of any action taken and decisions reached. These should be kept in a person's confidential personnel file and a copy should be given to the individual. Such information should be retained on file, including for people who leave the organisation, at least until the person reaches normal retirement age, or for 10 years if that is longer. The purpose of the record is to enable accurate information to be given in response to any future request for a reference. It will provide clarification in cases where a future CRB Disclosure reveals information from the police that an allegation was made but did not result in a prosecution or a conviction. It will also prevent unnecessary re-investigation if, as sometimes happens, allegations resurface after a period of time.

The Trust has an obligation to share information with the Local Authority Designated Officer (LADO).

### **Timescales**

10. It is in everyone's interest to resolve cases as quickly as possible, consistent with a fair and thorough investigation. Every effort will be made to manage cases to avoid any unnecessary delay. The time taken to investigate and resolve individual cases depends on a variety of factors, including the nature, seriousness and complexity of the allegations.

### **Oversight and monitoring**

11. In line with the Trust's Whistleblowing Policy, allegations or concerns that a member of staff or volunteer may have abused a child can be reported to the Chief Nurse or in her absence, the Trust's Chief Operating Officer. These officers are responsible for providing advice and liaison and monitoring the progress of cases, to ensure that cases are dealt with as quickly as possible and that they are consistent with a fair and thorough process. Specialist advice is available from the Trust's Child Protection leads who can be contacted on extension (55) 2156 and who will act as Trust Senior Manager for child protection in these procedures.

### **Suspension/Exclusion**

12. The possible risk of harm to children posed by an accused person needs to be evaluated and managed effectively – in respect of the child(ren) involved in the allegations, and any other children in the individual's home, work or community life. In some cases this requires the Trust to consider suspending the person. Suspension/exclusion should be considered in any case where there is cause to suspect a child is at risk of significant harm, or the allegation warrants investigation by the police, or is so serious that there may be grounds for dismissal. People must not be suspended / excluded automatically or without careful thought. The Trust will consider carefully whether the circumstances

of a case warrant a person being suspended from contact with children until the allegation is resolved.

**Note:** Neither the Local Authority, nor the police, nor children's social care can require the Trust to suspend a member of staff or a volunteer. The power to suspend is vested in the Trust alone. However, where a strategy discussion or initial evaluation discussion concludes that there should be enquiries by social care and/or an investigation by the police, the Local Authority's Designated Officer (LADO) will canvass police / social care views about whether the member of staff needs to be suspended / excluded from contact with children, to inform the Trust's consideration of suspension/exclusion.

### **PROCESS (See Attached Flowchart) Allegation made to Trust**

13. The allegation should be reported immediately to the Chief Nurse/Chief Operating Officer as identified in the Trust's Whistleblowing Policy (i.e. Trust Senior Officer). The Trust Senior Manager for Child Protection will be informed.

14. If the allegation meets any of the criteria set out in paragraph 1 of this procedure, the allegation will be reported to the Local Authority Designated Officer within one working day.

#### **Allegation made to the police or children's social care**

15. If an allegation is made to the police, the officer who receives it will report it to the force's designated liaison officer without delay, and the designated liaison officer should, in turn, inform the Local Authority Designated Officer. Similarly, if the allegation is made to children's social care, the person who receives it should report it to the Local Authority Designated Officer without delay.

#### **Initial consideration**

16. The Local Authority Designated Officer will discuss the matter with the Trust Senior Manager for Child Protection, the Chief Nurse/ Chief Operating Officer and Human Resources Director as appropriate and, where necessary, obtain further details of the allegation and the circumstances in which it was made. The discussion should also consider whether there is evidence/information that establishes that the allegation is false or unfounded.

17. If the allegation is not patently false and there is cause to suspect that a child is suffering, or is likely to suffer, significant harm, the Local Authority Designated Officer will immediately refer to children's social care and ask for a strategy discussion to be convened straightaway. In these circumstances, the strategy discussion should include the Local Authority Designated Officer and representative of the Trust e.g. (Chief Nurse and Human Resources Director) and the Trust Senior Manager for Child Protection.

18. If there is no cause to suspect that 'significant harm' is an issue, but a criminal offence might have been committed, the Local Authority Designated Officer will immediately inform the police and convene a similar discussion, involving Trust representatives, including the Director of Human Resources, to decide whether a police investigation is needed.

#### **Action following initial consideration**

19. Where the initial evaluation decides that the allegation does not involve a possible criminal offence, the allegation will be dealt with by the Trust. In such cases, if the nature of the allegation does not require formal investigation an appropriate response should be instituted within three working days.

20. Where further investigation is required to inform consideration of disciplinary action, Trust representatives will discuss who will undertake that with the Local Authority Designated Officer.

21. The investigation will be conducted in accordance with the Trust's Disciplinary Policy and Procedure.

22. In any case in which children's social care has undertaken enquiries to determine whether the child or children are in need of protection, the Trust will take account of any relevant information obtained in the course of those enquiries when considering the need for action in accordance with the Trust Disciplinary Policy.

23. The Local Authority Designated Officer will continue to liaise with the Trust representatives to monitor progress of the case and provide advice/support when required or requested.

### **Case subject to police investigation**

24. If a criminal investigation is required, the police will aim to complete their enquiries as quickly as possible, consistent with a fair and thorough investigation, and will keep the progress of the case under review. They should, at the outset, set a target date for reviewing progress of the investigation and consulting the Crown Prosecution Service (CPS) about whether to proceed with the investigation, charge the individual with an offence, or close the case. Wherever possible that review should take place no later than four weeks after the initial evaluation, and if the decision is to continue to investigate the allegation, dates for subsequent reviews should be set at that point.

25. If the police and/or CPS decide not to charge the individual with an offence, or decide to administer a caution, or the person is acquitted by a court, the police are expected to pass all information they have which may be relevant to a disciplinary case to the Trust without delay. In these circumstances the Trust and the Local Authority Designated Officer will proceed as described in paragraphs 19-23 above.

26. If the person is convicted of an offence, the police will inform the Trust straightaway so that appropriate action can be taken. The Director of Human Resources/Deputy Director of Human Resources must be contacted in these circumstances.

### **Protection of Children Act List/DfES List 99/Referral to PoCA list or regulatory body**

27. If the allegation is substantiated, and on conclusion of the case the Trust dismisses the person or ceases to use the person's services, or the person ceases to provide his/her services, the Trust will consult the Local Authority Designated Officer (LADO) about whether a referral to the PoCA list and/or to a professional or regulatory body is required. If a referral is appropriate, the report will be made within one month.

### **Learning lessons**

28. At the conclusion of a case in which an allegation is substantiated, the Trust will review the circumstances of the case to determine whether there are any improvements to be made to the organisation's procedures or practice to help prevent similar events in the future.

### **Action in respect of false or unfounded allegations**

29. If an allegation is believed to be unfounded, the Trust will refer the matter to children's social care to determine whether the child concerned is in need of services, or may have been abused by someone else. In the rare event that an allegation is shown to have been deliberately invented or malicious, the police should be asked to consider whether any action might be appropriate against the person responsible.

## PROCEDURE FOR MANAGING ALLEGATIONS AGAINST PEOPLE WHO WORK WITH ADULTS WHO HAVE CARE AND SUPPORT NEEDS

### Scope

1. This procedure applies to a wider range of allegations than those in which there is reasonable cause to believe an adult is suffering, or is likely to suffer, significant harm. It also applies to cases of allegations that might indicate that the alleged perpetrator is unsuitable to continue to work with adults in his or her present position, or in any capacity. It should therefore be used in respect of all cases in which it is alleged that a person who works with adults has:

- behaved in a way that has harmed, or may have harmed, an adult or child in a professional role
- behaved in a way that has harmed, or may have harmed, an adult or child in a personal relationship
- possibly committed a criminal offence against, or related to, an adult or child; or
- behaved towards an adult / child in a way that indicates s/he is unsuitable to work with adults.

2. There may be up to three strands in the consideration of an allegation:

- a police investigation of a possible criminal offence;
- enquiries and assessment by adult social care about whether an adult is in need of protection or in need of services
- consideration by the Trust, as the employer, of disciplinary action in respect of the individual.

3. This procedure applies to all staff and volunteers.

### Supporting those involved

4. The family or carers of the adult involved should be informed of the allegation as soon as possible where the patient is able to consent to the sharing of this information. If the patient lacks capacity then sharing of this information can be undertaken if it is deemed appropriate. They should also be kept informed about the progress of the case, and advised that action has been taken where there is no criminal prosecution. This includes the outcome of any disciplinary process.

**Note:** the deliberations of a disciplinary hearing, and the information taken into account in reaching a decision, cannot normally be disclosed, but those concerned should be told that action has been taken.

5. The Trust will also keep the person who is the perpetrator of the allegations informed of the progress of the case, and arrange to provide appropriate support to the individual while the case is on-going. (That support may be provided via occupational health or the Staff Support Service). If the person is suspended/excluded, the Trust will also make arrangements to keep the individual informed about developments in the workplace. If the person is a member of a union or professional body, they should be advised to contact that body at the outset.

### Confidentiality

6. Every effort will be made to maintain confidentiality and guard against publicity while an allegation is being investigated / considered. The police do not normally provide any information to the press or media that might identify an individual who is under investigation, unless and until the person is charged with a criminal offence.

### Resignations and 'compromise agreements'

7. The fact that a person tenders his or her resignation, or ceases to provide their services, will not prevent an allegation being followed up in accordance with this procedure. Every effort will be made to reach a conclusion in all cases of allegations bearing on the safety or welfare of adults, including

any in which the person concerned refuses to co-operate with the process. Wherever possible, the person should be given a full opportunity to answer the allegation and make representations about it. If a person's period of notice expires before the process is complete, the process of investigation will need to continue, on the basis of all the information available, and it is important to reach and record a conclusion wherever possible.

8. 'Compromise agreements\*' must not be used in these cases. It should be noted that, if such an agreement was used it will not prevent a thorough police investigation where appropriate, nor can it override an employer's statutory duty to make a referral to the Disclosure and Barring Service where circumstances require it.

\*(i.e. whereby a person agrees to resign, the Trust agrees not to pursue disciplinary action, and both parties agree a form of words to be used in any future reference.)

### **Record-keeping**

9. The Trust will keep a clear and comprehensive summary of any allegations made, details of how the allegations were followed up and resolved, and of any action taken and decisions reached. These should be kept in a person's confidential personnel file and a copy should be given to the individual. Such information should be retained on file, including for people who leave the organisation, at least until the person reaches normal retirement age, or for 10 years if that is longer. The purpose of the record is to enable accurate information to be given in response to any future request for a reference. It will provide clarification in cases where a future CRB Disclosure reveals information from the police that an allegation was made but did not result in a prosecution or a conviction. It will also prevent unnecessary re-investigation if, as sometimes happens, allegations resurface after a period of time.

### **Timescales**

10. It is in everyone's interest to resolve cases as quickly as possible, consistent with a fair and thorough investigation. Every effort will be made to manage cases to avoid any unnecessary delay. The time taken to investigate and resolve individual cases depends on a variety of factors, including the nature, seriousness and complexity of the allegations.

### **Oversight and monitoring**

11. In line with the Trust's Whistleblowing Policy, allegations or concerns that a member of staff or volunteer may have abused an adult should be reported to the designated lead officer for managing issues relating to positions of Trust i.e. Deputy Chief Nurse. The Deputy Chief Nurse is responsible for providing advice and liaison and monitoring the progress of cases, to ensure that cases are dealt with as quickly as possible and that they are consistent with a fair and thorough process. Specialist advice is available from the Trust's Adult Safeguarding Team who can be contacted on extension 75477.

### **Suspension/Exclusion**

12. The possible risk of harm to an adult or child posed by an accused person needs to be evaluated and managed effectively – in respect of the adult involved in the allegations, and any other adults with care and support needs or children in the individual's home, work or community life. In some cases this requires the Trust to consider suspending the person. Suspension/exclusion should be considered in any case where there is cause to suspect an adult is at risk of significant harm, or the allegation warrants investigation by the police, or is so serious that there may be grounds for dismissal. People must not be suspended / excluded automatically or without careful thought. The Trust will consider carefully whether the circumstances of a case warrant a person being suspended from contact with adults with care and support needs until the allegation is resolved.

**Note:** Neither the Local Authority, nor the police, nor adult social care can require the Trust to suspend

a member of staff or a volunteer. The power to suspend is vested in the Trust alone. However, where a strategy discussion or initial evaluation discussion concludes that there should be enquiries by social care and/or an investigation by the police, then the lead agency will canvass police / social care views about whether the member of staff needs to be suspended / excluded from contact with adults / children, to inform the Trust's consideration of suspension/exclusion.

### **Process**

13. The allegation should be reported immediately to the Deputy Chief Nurse as identified in Trust Policy C36 – Protection of Adults from Abuse and Neglect who have Care and Support Needs.

14. If the allegation meets any of the criteria set out in paragraph 1 of this procedure, the allegation will be reported to the Local Authority under safeguarding procedures within one working day.

### **Initial consideration**

16. The Local Authority will discuss the matter with the Deputy Chief Nurse / Senior Nurse for Safeguarding the Chief Nurse/ Chief Operating Officer and Human Resources Director as appropriate and, where necessary, obtain further details of the allegation and the circumstances in which it was made. The discussion should also consider whether there is evidence/information that establishes that the allegation is false or unfounded.

17. If the allegation is not patently false and there is cause to suspect that an adult is suffering, or is likely to suffer, significant harm, the Local Authority will immediately ask for a strategy discussion to be convened straightaway. In these circumstances, the strategy discussion should include the Local Authority and representative of the Trust e.g. (Chief Nurse / Deputy Chief Nurse, Human Resources representative or the Senior Nurse for Safeguarding

18. If there is no cause to suspect that 'significant harm' is an issue, but a criminal offence might have been committed, the Local Authority will immediately inform the Police and convene a similar discussion, involving Trust representatives to decide whether a police investigation is needed.

### **Action following initial consideration**

19. Where the initial evaluation decides that the allegation does not involve a possible criminal offence, the allegation will be dealt with by the Trust. In such cases, if the nature of the allegation does not require formal investigation an appropriate response should be instituted within three working days.

20. Where further investigation is required to inform consideration of disciplinary action, Trust representatives will discuss who will undertake that with the Local Authority.

21. The investigation will be conducted in accordance with the Trust's Disciplinary Policy and Procedure.

22. In any case in which adult social care has undertaken enquiries to determine whether the adult/s are in need of protection, the Trust will take account of any relevant information obtained in the course of those enquiries when considering the need for action in accordance with the Trust Disciplinary Policy.

23. The Local Authority will continue to liaise with the Trust representatives to monitor progress of the case and provide advice/support when required or requested.

### **Case subject to police investigation**

24. If a criminal investigation is required, the police will aim to complete their enquiries as quickly as possible, consistent with a fair and thorough investigation, and will keep the progress of the case under review. They should, at the outset, set a target date for reviewing progress of the investigation and consulting the Crown Prosecution Service (CPS) about whether to proceed with the investigation,

charge the individual with an offence, or close the case. Wherever possible that review should take place no later than four weeks after the initial evaluation, and if the decision is to continue to investigate the allegation, dates for subsequent reviews should be set at that point.

25. If the police and/or CPS decide not to charge the individual with an offence, or decide to administer a caution, or the person is acquitted by a court, the police are expected to pass all information they have which may be relevant to a disciplinary case to the Trust without delay. In these circumstances the Trust and the Local Authority will proceed as described in paragraphs 19-23 above.

26. If the person is convicted of an offence, the police will inform the Trust straightaway so that appropriate action can be taken. The Director of Human Resources/Deputy Director of Human Resources must be contacted in these circumstances.

### **Referral to regulatory body**

27. If the allegation is substantiated, and on conclusion of the case the Trust dismisses the person or ceases to use the person's services, or the person ceases to provide his/her services, the Trust will consult the Local Authority about whether a referral to the regulatory body is required. If a referral is appropriate, the report will be made within one month.

### **Learning lessons**

28. At the conclusion of a case in which an allegation is substantiated, the Trust will review the circumstances of the case to determine whether there are any improvements to be made to the organisation's procedures or practice to help prevent similar events in the future.

### **Action in respect of false or unfounded allegations**

29. If an allegation is believed to be unfounded, the Trust will refer the matter to adult social care to determine whether the adult concerned is in need of services, or may have been abused by someone else. In the rare event that an allegation is shown to have been deliberately invented or malicious, the police should be asked to consider whether any action might be appropriate against the person responsible.

## Unauthorised Absence Procedure

The purpose of this procedure is to assist managers in dealing with employees whose absence is not authorised and to ensure that all staff within the Trust are treated consistently and fairly. Should a person be prevented from attending work for any reason they should inform the manager as outlined elsewhere in this policy.

There may be occasions when line managers are not informed that an employee will not be attending work. In most cases this will be dealt with via this unauthorised absence procedure. If there are mitigating circumstances these should be taken into consideration

Unauthorised absence means that an employee is absent from work without permission, notification or explanation.

On the first day of unauthorised absence, the employee must be contacted by telephone immediately, and the time and date of this telephone call should be documented for future reference.

If contact cannot be made with the employee they should be written to asking them to make contact within 5 business days from the date on the letter. If the employee has previously had an episode(s) of unauthorised absence this should be documented in the letter sent to them by adding in the relevant details. (Before issuing any letters it is recommended that the following checks are done):

- Has the employee been made aware of the Attendance policy and procedure and is this documented i.e. through the employee's local induction and is there a copy of their attendance at local induction on their personal file.
- The address of the employee needs to be checked to see if it is correct, to ensure the employee receives all the relevant paperwork

If the employee makes the relevant contact a discussion should take place about the unauthorised absence and a way forward established. This may result in a meeting at which the employee will be entitled to be represented in the usual way. The discussion (meeting or otherwise should then be documented in a follow up letter) Dependent upon the circumstances, consideration should be given to instigating a disciplinary investigation. If this is the case then the disciplinary procedure should be followed.

If the employee does not make the relevant contact a further letter should be issued. Again this letter should ask them to make contact within 5 business days from the date on the letter.

If the employee makes the relevant contact a discussion should take place about the unauthorised absence and a way forward established. This may result in a meeting at which the employee will be entitled to be represented in the usual way. The discussion (meeting or otherwise should then be documented in a follow up letter issued) Dependent upon the circumstances consideration should be given to instigating a disciplinary investigation. If this is the case then the disciplinary procedure should be followed.

If the employee does not make the relevant contact then the disciplinary procedure should be followed.

## **Appendix 4 – Complaints of Bullying and Harassment**

The Trust encourages that wherever feasible attempts to resolve dignity at work complaints are made at the lowest possible level as outlined in the Dignity at Work Policy HR02. It is recognised that it is in the best interests of all parties to attempt to resolve matters quickly and informally. However there may be occasions when this is not appropriate, for example where:

- The seriousness of the allegation is deemed to be unsuitable for informal resolution (e.g. an allegation of physical or sexual assault or stalking)
- Inappropriate conduct continues after an informal approach has been attempted
- Retaliatory behaviour is experienced following a complaint being raised

### **Formal Process**

The Manager will request that the complainant submit their complaint in writing confirming the identity of the alleged harasser/bully, the nature of the harassment or bullying, dates and details of the incidents and any approaches already made asking the person being complained against to stop. Details of witnesses to the incidents should be included, if there are any. The Manager who has been informed of the allegation must appoint an Investigating Officer and they must inform the person who the complaint is against, of the detail of the allegation.

There may be occasions when a member of staff makes a complaint and action has commenced but does not want to take it further. The Trust has a common law duty of care for the health and safety of all its employees and must address the issue. The reasons why the person does not want to take it further must be established and attempts made to allay any fears of the individual. They will be told of the Trusts duty of care to all its employees and if they still do not want to take it further the employee will be advised that the complaint will be forwarded to the HR Department, who will then advise the manager of the appropriate action, if any.

### **Separation**

If the complainant and the person being complained against are Trust employees who work together, and the HR team and Manager consider that the situation warrants such action, the parties may be separated, subject to service needs, whilst an investigation takes place. It is acknowledged that this may not always be possible or practicable.

Separation may involve changing work patterns e.g. using opposite shifts, moving either the complainant or the person being complained against to another work location, or if necessary suspending/excluding the person complained about (suspension/exclusion is not a disciplinary measure) as a temporary measure pending the outcome of the investigation.

Suspension/exclusion should only be considered as a last resort after due consideration has been given to the effect the action may have on the working relationships concerned or if it is not possible to move one of them to another work area.

If the allegation involves a patient, relative or other member of the public, the Manager should take reasonable steps to ensure that the parties do not come into contact during the course of the investigation.

### **Communication**

The person who made the complaint and the person complained about will be kept informed on a regular basis of the status of the investigation and the length of time it is likely to take. This is particularly relevant if either of the individuals concerned has been suspended/excluded or moved to another department as this increases their feeling of isolation from work.

### **Action**

Once a final decision has been reached, the Manager who initiated the investigation must inform the complainant and the person complained about, in writing, of the outcome of the investigation, and the reason(s) why that decision has been reached.

The Staff Counselling Service can provide support to all those involved, including other staff in the working area, if it has been identified that this is needed.

Whether or not the complaint is upheld, the line manager or his or her immediate manager will meet with the person who made the complaint on a regular basis after the complaint has been resolved to ensure that there are no further issues that need to be addressed.

**If, following the investigation, the allegation is not upheld and no hearing will be held**

If either party was moved or suspended/excluded, they should be returned to the workplace as soon as possible. A facilitated return to work and mediation may be appropriate.

If the working relationship between the two parties has broken down irretrievably one of them may wish to be transferred to another working area. Discussions should take place and the Redeployment Register used as a means of identifying suitable alternatives. Any transfer should be to a post considered to be a suitable alternative for the individual concerned with full consultation which should involve a representative from HR and a Trade Union representative if appropriate. Whilst endeavouring to seek alternatives, the Trust cannot guarantee that a post will become available. If at the end of three months no alternative has been identified, the opportunity to remain on the Redeployment Register will lapse and individuals concerned will be expected to remain in their substantive post and work in a professional manner at all times.

The Manager who instigated the investigation must check that there is no victimisation or retaliation by either/all parties, and facilitate a return to normal working.

This Manager must also work with the line manager to identify why the allegation was made and what can be done to remedy the situation - and to avoid similar situations in the future.

If it was demonstrated during the investigation that the allegation was raised maliciously it will be regarded as a disciplinary matter and may result in summary dismissal.

If the allegation involves a patient, relative or other member of the public, the Manager should take reasonable steps to ensure that the parties do not come into contact.

As the allegation has not been upheld any witnesses must be informed that they will not be required to attend a hearing.

**If, following the investigation, the allegation of harassment or bullying is upheld**

The Manager who instigated the investigation should convene a formal disciplinary.

Deliberate sexual, religious beliefs, racial, age or disability harassment, victimisation or serious bullying all constitute gross misconduct and will normally result in summary dismissal.

If not dismissed, it is important that this Manager works with the line manager to identify why the allegation was made and what can be done to ensure such an allegation is not brought again. This may involve working with the person complained against and they may be encouraged to approach the Staff Counselling Service, seek coaching, mentoring or other support available from the People and Organisational Development Department to help them identify the causes of their behaviour and help correct it. This will, of course, always be voluntary.

The Manager must check that there is no victimisation or retaliation by either/all parties, and facilitate a return to normal working. This may involve the Staff Counselling Services and/or HR.

## **Right of Appeal**

The person being complained against has the right to appeal against any disciplinary sanction or process errors, as outlined in Section 6: Appeals Procedure.

The complainant can appeal the decision by lodging a grievance through the Trust Grievance Policy. Such grievances will be limited to concerns about how the investigation was carried out and how this might have influenced the outcome, rather than the outcome itself.

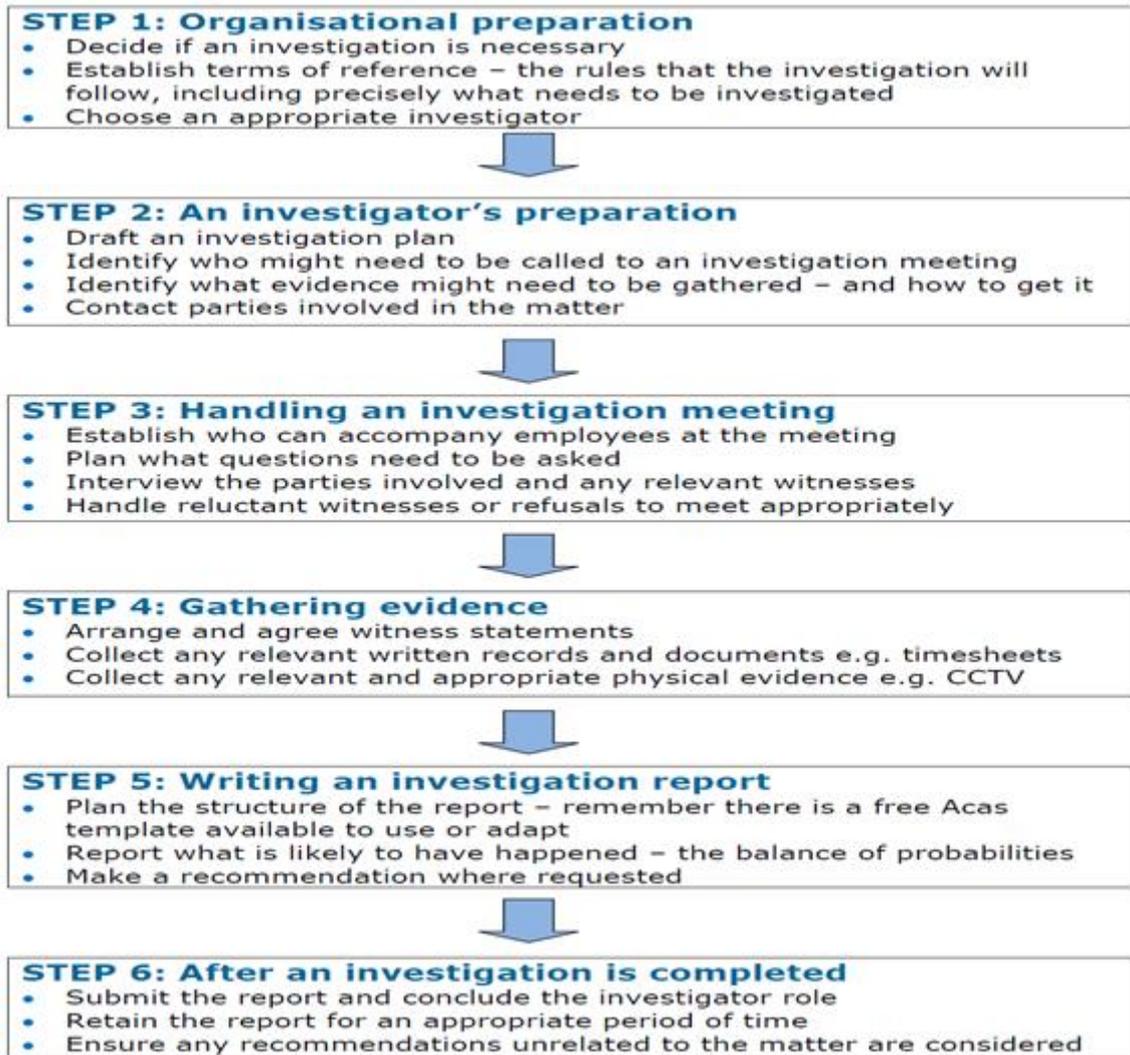
## **The Legal Framework**

Certain types of harassment or bullying are regarded as unlawful discrimination underpinned by legal framework, and the victim can seek legal redress. For further advice staff are advised to contact their Trade Union representative or HR.

FOI ref 294-1920

## Appendix 5 – ACAS Investigation Summary Guide

(Accessed via [www.acas.org.uk](http://www.acas.org.uk) on 03 February 2017 from 'Conducting workplace investigations', dated October 2015)



**Please note that the order of the steps may vary subject to the case specifics and complexity and the recommendation made by the investigator is to identify whether there is a case to answer or no case to answer.**