

# Policy Document

Reference: HR01

## Disciplinary

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### Version Control Schedule

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15	March 2022	Introduction of 4 step Restorative Just & Learning Culture model, clarity on case escalation and suspension risk assessment review.
16	March 2023	Minor amendments to job titles in the Levels of Authority and role, policy and team names.

### 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 set out the standards of conduct expected of all Trust employees in line with the Trust values, and to provide a framework within which managers can work to maintain satisfactory standards of conduct.

In line with ACAS guidance and the Code of Practice on Disciplinary and Grievance Procedures this Policy aims to encourage cases of minor misconduct to be dealt with informally where possible, and to ensure that more serious matters are dealt with in a fair and consistent way. The compliance of the policy is the responsibility of all employees.

The Trust is committed to developing an open learning culture, with the aim to promote and uphold our values by encouraging a culture of fairness, openness and learning. Therefore, to encourage improvement where necessary and ensure the practice of lessons learnt is embedded in the Trust. Any decision to discipline an employee must be fair and reasonable in all circumstances and must not discriminate on any grounds.

The disciplinary process can have a significant detrimental impact on any individual, regardless of their previous health history and personal resilience. Therefore, the Trust is committed to maintaining our employee's dignity and safeguarding their health and well-being.

This policy applies to all employees equally and does not discriminate positively or negatively between protected characteristics (Appendix 1). The environmental impact of this policy has been considered and no further action is required at this time.

## 2. SCOPE

The Policy & Procedure applies to all trust employees on a permanent, temporary, fixed term or casual contracts, and supersedes any other Disciplinary Policy & Procedures currently in place in the Trust. It will not apply to non NHS staff (i.e third party contracted staff). However it is expected that such staff should follow the principles laid down in the Disciplinary Policy whilst working on Trust premises.

Whilst this procedure applies to medical and dental staff, including those with honorary contracts, the Procedure for Maintaining High Professional Standards in the Modern NHS (HR18) should be referred to and must be followed initially.

This policy will not apply to issues of capability, sickness absence or clinical competence. These issues will be dealt with under the Trust Sickness Absence Policy (HR14) 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.

## 3. DEFINITIONS

The relevant terms and their definitions (within the context of this policy document) are outlined below:

'the Trust'	University Hospitals North Midlands NHS Trust
'Trade Union/Staff Side'	locally recognised NHS negotiating body
'Misconduct'	is conduct which is unacceptable and may result in disciplinary action being taken. This may initially be a warning, but if there is insufficient improvement misconduct may ultimately result in dismissal. Please refer to Appendix 2 of this policy for examples of standards of conduct expected within the Trust.

'Gross Misconduct' is an act which is so serious that it justifies dismissal without notice, or pay in lieu of notice, for a first offence. Such conduct must be an act that destroys the relationship of trust and confidence between the employer and employee, making the working relationship impossible to continue. Please refer to Appendix 2 of this policy for examples of actions which would constitute as gross misconduct.

'the balance of probability' standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not.

#### 4. ROLES AND RESPONSIBILITIES

The **Chief Executive** has the overall responsibility for ensuring the Trust has adequate policies in place.

The **Chief People Officer** is the Lead Officer for the purpose of this Policy.

The **TJNCC Policy Review Group** will oversee the implementation, monitoring and effectiveness of this Policy.

The **Line Manager** will ensure that disciplinary matters are handled in accordance with this Policy.

The **Line Manager** should review the incident, error or allegation and contact People Operations (HR) to decide if informal resolution can be undertaken. If an informal resolution is not appropriate to the case, then the Line Manager should gather the facts to enable the application of the Just and Learning Principles (Appendix 3). The **Line Manager** should bring to the employee's attention the requirements and purpose of this procedure and their individual responsibilities to this respect.

The **Line Manager** is responsible for continued health and wellbeing support for employees who are subject to this Policy in any capacity. Cases of significant harm should be reported via the Trust's adverse incident reporting system (Datix) as per the Health and Safety Policy (HS01).

The **Case Manager** has the responsibility to consider the information regarding the incident by the Line Manager and to decide next steps using the Just and Learning Principles with a member of People Operations (HR). In conjunction with People Operations (HR), if required the Case Manager will commission an investigation of the allegation(s), appoint an Investigating Officer, and also consider whether suspension is necessary to safeguard the investigation.

The **Investigating Officer** will investigate and establish the facts in the case by holding fact finding interviews and gathering statements and data as appropriate. The Investigating Officer will produce an Investigation Report for the Case Manager.

**People Operations (HR)** will provide support and advice to Line Managers, Investigating Officers, Case Managers, Panels and employees in relation to disciplinary matters, guidelines and employment legislation. People Operations (HR) will also ensure that all policies and procedures in relation to disciplinary cases are adhered to consistently and fairly to ensure impartiality.

**People Operations (HR)** will regularly report statistical case information, including any health and wellbeing impacts to Professional Board.

**Employees** will understand and comply with the required standards of behaviour, conduct and performance expected of them at all times. Employees are required to participate fully in employee investigations in a timely and constructive manner.

**Trade Unions/Staff Side** is to act as an advocate and representative for the employee and to provide the employee with advice and support. They may also be asked to assist in sharing any learning that comes from the disciplinary and appeals process.

## 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 training/information/support/guidance on the disciplinary procedures as and when necessary.

## 6. ACTION IN PARTICULAR CASES

**The Restorative Just and Learning Culture:** The Trust is committed to having a Restorative Just and Learning Culture in which we keep an open mind when incidents occur and not seek to attribute blame. Our primary concern will always be to understand what went wrong and why with a view to improving our processes and supporting employees. This allows us to learn valuable lessons so that the same errors can be prevented from being repeated. By ensuring the fair treatment of our staff this supports a culture of fairness, openness and learning and helps employees feel confident to speak up if things go wrong.

The UHNM 4 Step Restorative Just & Learning Culture (RJLC) Model is a 4 step process for managing and improving our people practices (Appendix 3). The application of a Restorative Just Culture will inform how we learn and grow from incidents of potential misconduct in a supportive and compassionate way.

A compassionate approach is vital to supporting colleagues to remain connected, mentally healthy, and productive while we working through the challenges we face at work and beyond. The 4 Step approach will also help steer the Trust's response in the aftermath of an incident or event, and will play a larger part in our civility and respect culture change journey.

There will be some situations where the disciplinary procedure will clearly be appropriate; however, this model seeks in all other circumstances to provide an alternative and supportive mechanism.

**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 People 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 People Directorate. If such an alleged criminal offence relates to a Trade Union Dispute, the appropriate Full Time Officer should be consulted. People Operations (HR) will liaise with the Trust's Local Security Management Specialist (LSMS) who will decide whether the 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 (HR18).

In cases of **fraud, theft, bribery 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. In the case of fraud, this will be investigated in accordance with the Fraud Act 2006 and/or Bribery Act 2010.

**Sickness Absence:** The Trust aims to ensure that all matters relating to discipline are dealt with fairly and promptly. However, circumstances may arise when the ill health of an employee prevents the disciplinary procedure from being followed because the employee is too unwell to participate in the investigation, adequately prepare for a Disciplinary Hearing or attend the Hearing itself. When this is the case, the Trust will act consistently with the following principles:

- The ill health of the employee will not be grounds for abandoning any ongoing disciplinary process.
- Where the absence is likely to be more than two calendar days, the Trust will usually wait until the employee recovers and is able to take a full part in the process.
- When the absence is on-going and it appears to the Trust that the employee is likely to remain off sick for an extended period, the Trust will require the employee to co-operate with a referral to occupational health to help determine whether or not the employee is sufficiently fit to take part in the disciplinary process.

If following consultation with occupational health it appears to the Trust that the employee is fit to take part in the disciplinary process, then the process will continue. To ensure the effective participation of the employee, the Trust may at its discretion propose adjusting the standard delivery procedure by offering special measures such as:

- Written Representation – where the employee may have difficulty in explaining their case, consideration will be given to allowing the employee to rely on written representations, which may be prepared by their Trade Union Representative.
- Documentation – the Trust will take particular care to ensure that the employee receives all documentation relating to the disciplinary process sufficiently in advance to allow the employee to prepare fully, taking into account any effect that the employee's health may have on their ability to analyse the information and prepare a response.
- Timings – while the Trust is committed to the principle that matters should be dealt with promptly, the Trust may allow extra time for any stage of the disciplinary process to ensure that the employee can participate effectively. Particular attention will be given to the duration of any Disciplinary Hearing and its impact on the employee and the need to take appropriate breaks.

The Trust believes that in the vast majority of cases it should be possible by using any of the measures outlined in this Policy, to conduct a fair disciplinary process in which the employee fully participates. However, there may be exceptional circumstances when the employee will not be able to attend a Disciplinary Hearing. In such circumstances, the Trust reserves the right to proceed with a Disciplinary Hearing in the employee's absence.

Where this is the case, the employee (and their Trade Union Representative/work colleague) will be informed of the date, time and location of the Hearing and will remain free to attend. The Trade Union Representative will be free to attend, even if the employee is not present.

The outcome of the Hearing will be communicated in writing to the employee, paying particular attention to the need to explain the details of any factual findings made and the basis of the decision reached. The employees will be given a full opportunity to appeal against any decision in accordance with the Trusts Disciplinary Policy & Procedure.

Where an employee raises a **dispute** during a disciplinary process the disciplinary process will be temporarily suspended in order to deal with the dispute. Where the dispute and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

An employee may not challenge the evidence or findings of any disciplinary investigation, the content or correctness of any disciplinary Hearing decision or the decision as to any disciplinary action taken by the

use of the Resolution Policy (HR02), as these matters are dealt with by the way of a Disciplinary Appeal.

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 reasonably 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 or the Disclosing & Barring Service (in cases of safeguarding concerns) 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 4. 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 5. In instances where Adult Safeguarding is a consideration the procedure for managing allegations will supersede any of the Trust's internal procedures.

Any complaints in relation to **Bullying and Harassment** will be investigated in line with the Trust's Resolution Policy (HR02). If it is found that there is a case to answer or that the allegations are significantly serious, the normal disciplinary investigation process will be followed, as per this Policy.

**Incremental Progression** will be frozen for the period of the sanction in instances when a formal disciplinary warning is issued in line with HR60 Pay Progression Policy.

**Raising Concerns:** Where an employee is going through a disciplinary process that also encompasses potential safety issues or similar matters they have raised as a concern; the Trust will continue to provide the employee with appropriate support to speak up about those matters and also take all appropriate steps to maintain the workers confidentiality.

## 7. MONITORING AND REVIEW ARRANGEMENTS

This policy will be monitored and reviewed in line with organisational and legal requirements.

The use of video interviews and hearings will be reviewed in line with Government updates on the requirement for social distancing and travel restrictions.

This policy may be amended at any stage by joint agreement.

## 8. REFERENCES

ACAS Code of Practice on Disciplinary and Grievance Procedures  
Procedure for Maintaining High Professional Standards in the Modern NHS (HR18)  
The UHNM 4-Step Restorative Just & Learning Culture 4-Step Model  
Fraud Act 2006  
Bribery Act 2010  
Pay Progression Policy (HR60)  
Resolution Policy (HR02)  
Health and Safety Policy (HS01)  
Alcohol and Substance Misuse Policy (HR21)  
Working Together to Safeguard Children (2015) 2018



## **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 – Informal Recorded Discussion**

In the course of day to day activities there will be occasions when line managers will need to advise employees informally of minor misconduct without using the formal disciplinary procedure. This may consist of guidance and or an Informal Recorded Discussion.

In some cases providing guidance, advice and support on an informal basis can be a more appropriate method of resolving issues than proceeding to formal disciplinary action. 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 approach would be to resolve the problem under consideration or correct the inappropriate behaviour as quickly as possible. Any delay can make the situation worse as the employee may not realise that their behaviour or conduct is below the required standard unless they are informed.

If during the discussion it becomes obvious that the matter maybe more serious, the meeting will be adjourned. The employee should be informed that the matter will be continued under the formal disciplinary procedure.

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 criminal 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 located on the MyHR pages of the intranet. 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. The Line Manager will warn the employee that failure to achieve the required standards of behaviour or conduct will lead to the formal part of the disciplinary procedure being implemented.

#### **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.

In using the Formal Procedure and determining whether the employee has committed 'misconduct' or 'gross misconduct', the burden of proof required on an objective assessment of the facts is the balance of probability.

At all formal stages of the procedure the employee will have the right to be accompanied by their Trade Union Representative or a work colleague. The chosen companion will also have the opportunity to support the employee on occasions where the investigatory meeting or disciplinary hearing has been arranged via video call in order for the matter to be dealt in timely manner.

The companion may address the Hearing, sum up the employee's case, respond on behalf of the employee to any views expressed at the Hearing, and confer with the staff member during the meeting. The companion does not have the right to answer questions on the employee's behalf or, address the Hearing if the employee does not wish it or prevent the employee from presenting their case.

## 2. SUSPENSION

In some circumstances, the Trust may need to take a decision to suspend an employee from work. This action may also occur at any point during the process. Suspension should not be regarded as disciplinary action. It is a precautionary measure and will be for no longer than necessary to investigate the allegations. These allegations and suspension arrangements will be confirmed in writing to the employee. HR advice should be sought by the Case Manager prior to a suspension and a risk assessment carried out to establish the necessity of a suspension, temporary transfer or adjustment to duties.

*(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 (HR18). This should be referred to in all incidents involving medical and dental staff).*

In accordance with the Trust's Just and Learning Culture principles, suspension will be considered as a 'last resort' action following consideration of any other alternatives which may be available such as alternative or restricted duties, relocation or temporary redeployment.

Ideally suspensions should happen in person, 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 and review the relevant risk assessment at no more than 4-weekly intervals to ensure that the period of suspension is kept to a minimum. The Case Manager must remain in contact with the suspended employee throughout the period of the investigation and provide regular updates on progress against agreed timeframes and record the reasons for either continuing or ending the suspension.

The employee may be reinstated at any point during the investigation if the Case Manager initiating the suspension is of the view that the reasons for suspension are no longer appropriate.

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.

The Trust recognises that suspension may be stressful therefore any suspended employee will be supported as practically as possible. In order to facilitate this, a 'Point of Contact' will be allocated to a

suspended employee who is responsible for ensuring the staff member continues to receive regular organisational communications and remains in contact with the Trust while they are suspended or restricted. The Trust's Staff Support and Counselling Service will also be offered to support the employee during the process, including access to occupational health. In addition, the Freedom to Speak Up Guardian can provide confidential advice and support.

During the period of suspension, the employee should ensure that they can be contacted. If they are going to be unavailable for periods over one calendar day then they must notify the Investigating Officer in advance.

Employees on suspension with annual leave commitments will be permitted to take them in most circumstances and this will be deducted from their annual leave entitlement. 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.

Employees who are suspended must discuss with the Case Manager if they hold a second job within the Trust, and wish to continue with this work during their suspension. This discussion needs to cover the type of work, what the role is and whether the reason for suspension would impact on this other workplace. Employees must not undertake additional work during what would have been their working hours during any period of suspension.

If an employee on suspension deliberately prevents or fails to participate fully in the investigation, any entitlement to salary may be suspended until the completion of the investigation and Disciplinary Hearing if appropriate.

## **2.1 Suspension (with pay including any regular enhancements)**

There may be instances where suspension with pay (including any regular enhancements) is necessary while investigations are carried out.

These include:

- 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 that there are risks to the employee, patients and/or other parties;
- Where there is reasonable belief that the employee may interfere with evidence or witnesses;
- The allegations raised are of a safeguarding nature; or
- If there is no workable alternative to suspension.

If it is considered that an employee on suspension has deliberately taken actions that prevent a full and proper investigation being undertaken, this will be viewed as gross misconduct. This will then form part of the investigation being undertaken, and if established included as an allegation against the employee.

## **2.2 Suspension (without pay)**

In most cases suspension is with pay. However, there are certain events that may lead to suspension without pay.

These include:

- When the employee has failed to maintain their professional registration which prevents them from fulfilling their contracted role;
- When an employee cannot evidence their right to work in the UK;
- When an employee has been remanded in legal custody or is serving a prison sentence (and they would not be available to fulfil their contractual obligations in any case); or
- When the employee who has been suspended on full pay, purposely delays or unreasonably refuses to co-operate with the investigation or disciplinary hearing.

### 3. INVESTIGATION

The purpose of an investigation is for the Trust to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee before deciding whether to proceed with a disciplinary hearing.

The Case Manager must have enough information to be assured that a formal investigation is appropriate in the circumstances. The decision should not be taken lightly as it may have a significant negative affect on those involved and can be a costly and time consuming process.

In all circumstances the Case Manager will benefit from referring to the Trust's Restorative Just & Learning Culture 4-Step Model when making a decision to commission an investigation (Appendix 3).

At the start of each investigation, the Case Manager will specify the terms of reference for the investigation and provide this to the appointed Investigating Officer along with any relevant documentation already gathered. The Case Manager will also notify the employee of the scope of the investigation and name the Investigating Officer at the earliest opportunity.

A letter confirming the appointment of an Investigating Officer will be sent to the employee by the Case Manager. The letter will state:

- that the employee is under investigation to establish the facts of the case, and in respect of what specific allegation(s) are against the employee;
- the reason why their conduct is unacceptable;
- the likely timescale in which the investigation will be concluded;
- that they may be accompanied at any investigatory meeting;
- a point of contact throughout the process and;
- any other conditions that are felt appropriate to the case.

The employee will also be supplied with a copy of the Trusts' Disciplinary Policy.

The Investigating Officer should aim to complete the investigation including the production and submitting of the report within 28 calendar 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.

The Investigating Officer may also consider conducting the investigation virtually via video call (the Trusts approved platform is Microsoft Teams). The employee will need to be in agreement with this approach.

If it is likely that the investigation will exceed the 28 calendar day's timescale, the Case Manager should review the case to mitigate against any further delay and communicate the delay to the individual concerned and their representative, indicating likely timescales. During the investigation, regular updates should be available if requested.

Monitoring by the HR support allocated to the disciplinary case will flag cases overdue by 2 weeks to the Case Manager for immediate action. Cases overdue by 4 weeks will be flagged to a Divisional Senior Manager as a stranded case.

The Investigating Officer should endeavour to reach conclusions about what did or did not happen, even when evidence is contested or contradictory. In these circumstances the Investigating Officer 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, the Investigating Officer 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 Investigating Officer 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 Case Manager decides to hold a disciplinary hearing the employee and their representative will be provided with a copy of the Investigating Officer's full report sent with the letter advising the employee there is a case to answer within 3 calendar days of the report being produced.
- Where there is a complainant, they should similarly be advised of the completion of the investigation within 3 calendar days of the report being produced but should not be given access to the investigation report.

In certain cases the outcome of the Investigation may be shared with the Local Counter Fraud Specialist.

For further details please see the My Employee Relations pages of the Trusts intranet.

*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 (HR18).*

#### **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/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 [i.e. not in cases of gross misconduct], when the individual does not dispute the allegations and 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 Gross Misconduct, where dismissal is a potential outcome, this approach cannot be utilised and the case will proceed to a formal disciplinary hearing. The Case Manager, using Appendix 2, will determine if the allegations could be constituted as Misconduct or Gross Misconduct.

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 which might also include a virtual MS Teams meeting between all parties

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 agreeing to use this process the employee is admitting to the misconduct and **agrees with the allegations**. Therefore, there is no recourse for appeal via this process. If an employee opts to use this process, this will result in a delay to their pay progression if a pay step point is due whilst the disciplinary sanction is live.

## 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 (HR18). 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.

In line with the scheme of delegated authority, the Case Manager (in conjunction with People Operations (HR)) will appoint an authorised officer to chair the panel (see Appendix 6) 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 calendar 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 provided:
  - the date, time and venue of the hearing
  - how the meeting will be conducted may include face to face, video call or a combination of virtual and face to face meetings
  - in cases of a video call arrangement a technical rehearsal will be offered in advance to familiarise all parties with the software and review their access to required equipment and the internet
  - 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 do not attend without good explanation or for a rearranged hearing that a decision will be made in their absence.
- Where witness statements are given, witnesses should 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. Video call would be considered where attendance in person is not practical, for example, if there was a medical reason preventing travel to site. Advice can be sought from Employee

## Relations for the suitability of a video interview.

- Consideration will 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 their 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.

For the procedure to be followed at a Disciplinary Hearing see Appendix 7

## 6. FORMAL DISCIPLINARY SANCTIONS

The following are levels of action available to the Chair of the Disciplinary Hearing: No action taken, the issue of an Improvement Notice, Written Warning, Final Written Warning and Dismissal. Where fraud, bribery or corruption has taken place within or against the Trust, the full range of available sanctions available are criminal, civil, disciplinary and/or regulatory. Such sanctions will be considered at the earliest opportunity, and any or all of these may be pursued where and when appropriate. Where employees are subject to any formal disciplinary sanction this will result in their pay progression being stopped until the sanction is no longer live on their record.

### **No Action – No Case to Answer**

The Chair may decide that no formal disciplinary sanction is necessary. In the event that it is determined that there is "no case to answer" this will be clearly documented and kept safe in a secure location held within People Operations (HR). The employee would have the right to see the case against them and who has spoken out against them.

### **Stage one – Improvement Notice (6 months)**

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 be kept for up to 6 months, but will then be considered spent - subject to achievement and sustainment of satisfactory improvement, and removed from the individuals employee file.

### **Stage Two - Written Warning (12 months)**

If the conduct does not meet acceptable standards the employee will normally be given a written warning, 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 the

specified period.

### **Stage Two - Final Written Warning (12 months)**

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).

### **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 Line Manager will be disregarded for disciplinary purposes after the agreed sanction period subject by achievement and sustainment of satisfactory conduct or performance.

## **7. APPEAL**

An appeal may be made after the imposition of a disciplinary sanction. The appeal will involve a review of the sanction imposed.

The appeal must be lodged to the Chief People Officer within ten calendar days of the receipt of the sanction, notification of the termination on disciplinary grounds or written advice of other disciplinary action. This must be in writing stating the grounds of the appeal and must fall into one of the categories below:

- That the disciplinary procedure has not been followed properly;
- That all the evidence was not considered at the Hearing;
- That the employee has been unfairly treated due to the Chair conducting the Hearing showing unfair bias against the employee;
- That the severity of the disciplinary action is too severe for the offence(s).
- New evidence.



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 calendar 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)

\* Where the outcome of an appeal process is that a decision is rescinded, this will result in the re-opening of an employee's pay step point and will be back dated

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

For the procedure to be followed at an Appeal Hearing see Appendix 8

## **8. JUST & LEARNING ASSURANCE FRAMEWORK**

In order to help the Trust learn from the disciplinary process, a formal debriefing session may be convened by the Chair of the Disciplinary or Appeals Panel.

The remit of the Just & Learning Assurance Panel is to review cases whereby:

- the outcome from a Disciplinary Hearing was no case to answer;
- the Appeal stage overturned the original Disciplinary Hearing sanction;
- length of the process;
- proportionality of disciplinary sanctions (including taking into account mitigating factors in setting penalties).

The Just & Learning Assurance Panel should comprise of some/all the following stakeholders:

- the Chair (Disciplinary/Appeals),
- Case Manager,
- Investigating Officer,
- People Operations (HR),
- Raising Concerns & Equality Manager,
- Deputy Chief Nurse,
- Safeguarding Leads,
- Other panel members as appropriate, and
- Staff Side Representatives.

The Just & Learning Assurance Panel should meet quarterly as a minimum requirement. A report will be produced by People Operations (HR) to demonstrate that a learning review has taken place.

## **9. RETENTION OF DOCUMENTS**

All documentation regarding any initial collation of facts / fact finding exercise, 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.

All 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).

FOI REF 636-2423

## Equality Impact Assessment (EIA) Form

The Trust aims to design and implement services, policies and measures that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. The Equality Impact Analysis Form is designed to help consider the needs and assess the impact of each policy. To this end, EIAs will be undertaken for all policies.

<b>Title of policy being assessed</b>	The Disciplinary Policy & Procedure		
<b>Policy reference &amp; version number</b>	HR01 Version 16		
<b>Please list which service users, staff or other groups have been consulted with, in relation to this</b>	PRG/TJNCC		
<b>Does this policy have the potential to affect any of the groups listed below differently - please tick <i>the appropriate box</i>.</b> Prompts for consideration are provided, but are not an exhaustive list			
	<b>Yes</b>	<b>No</b>	<b>Unsure</b>
<b>Age</b> (e.g. are specific age groups excluded? Would the same process affect age groups in different ways?)		X	
<b>Gender</b> (e.g. is gender neutral language used in the way the policy or information leaflet is written?)		X	
<b>Race</b> (e.g. any specific needs identified for certain groups such as dress, diet, individual care needs? Are interpretation and translation services required and do staff know how to book these?)		X	
<b>Religion &amp; Belief</b> (e.g. Jehovah Witness stance on blood transfusions; dietary needs that may conflict with medication offered)		X	
<b>Sexual orientation</b> (e.g. is inclusive language used? Are there different access/prevalence rates?)		X	
<b>Pregnancy &amp; Maternity</b> (e.g. are procedures suitable for pregnant and/or breastfeeding women?)		X	
<b>Marital status/civil partnership</b> (e.g. would there be any difference because the individual is/is not married/in a civil partnership?)		X	
<b>Gender Reassignment</b> (e.g. are there particular tests related to gender? Is confidentiality of the patient or staff member maintained?)		X	
<b>Human Rights</b> (e.g. does it uphold the principles of Fairness, Respect, Equality, Dignity and Autonomy?)		X	
<b>Carers</b> (e.g. is sufficient notice built in so can take time off work to attend appointment?)		X	
<b>Socio/economic</b> (e.g. would there be any requirement or expectation that may not be able to be met by those on low or limited income, such as costs incurred?)		X	
<b>Disability</b> (e.g. are information/questionnaires/consent forms available in different formats upon request? Are waiting areas suitable?) Includes hearing and/or visual impairments, physical disability, neurodevelopmental impairments e.g. autism, mental health conditions, and long term conditions		X	

e.g. cancer.			
<b>Are there any adjustments that need to be made to ensure that people with disabilities have the same access to and outcomes from the service or employment activities as those without disabilities?</b> (e.g. allow extra time for appointments, allow advocates to be present in the room, having access to visual aids, removing requirement to wait in unsuitable environments, etc.)		X	
<b>Where you have identified that there are potential differences, what steps have you taken to mitigate these?</b> (what action has been taken or will be taken, who is responsible for taking a future action, and when it will be completed by – may include adjustment to wording of policy or leaflet to mitigate)	N/A		
<b>Where you have identified adjustments would need to be made for those with disabilities, what action has been taken?</b> (what action has been taken or will be taken, who is responsible for taking a future action, and when it will be completed by – may include adjustment to wording of policy or leaflet)	N/A		
<b>Will this policy require a full impact assessment and action plan? Yes / No</b> (a full impact assessment will be required if you are unsure of the potential to affect a group differently, or if you believe there is a potential for it to affect a group differently and do not know how to mitigate against this - please contact the Corporate Governance Department for further information)	<b>Yes</b>	<b>No</b>	
		X	

## **Examples of Misconduct and Gross Misconduct**

Detailed below are examples of Misconduct and Gross Misconduct, which will normally justify the use of the Trusts Disciplinary Policy and Procedure. This list is not exhaustive and further advice can be obtained from People Operations (HR).

**Misconduct** (depending on the severity or degree these could also constitute Gross Misconduct)

- Minor breaches of policy.
- Minor cases of improper use of telephones, mobile phones, email, and the internet
- Repeated poor time keeping.
- Absenteeism (leaving work early, arriving late, leaving work to go home without permission).
- Unauthorised absence (AWOL).
- Minor acts of insubordination or refusal to follow a reasonable management instruction.
- Bad language or other offensive behaviour.
- Oppressive or abusive conduct towards a fellow employee or a member of the public.
- Failure to declare and authorise outside employment.
- Negligence or lack of care in the performance of an employee's duty.
- Being an accessory to a disciplinary offence (when an employee is knowingly an accessory to any misconduct carried out by another employee).

**Gross Misconduct**

- Theft, fraud, dishonesty or falsification of records both during the course of employment or outside employment where this damages the basis of mutual trust and confidence on which the contract of employment relies.
- Misuse of Trust property or resources for an employee's own purpose and connected with their duties for the Trust.
- Corrupt or improper use of an employee's official position for their own private advantage or for the private advantage of some other person.
- Disclosure of confidential information without proper authority.
- Misuse of the Internet / e-mail / electronic media to access inappropriate material (e.g. pornography), circulate offensive or damaging material, damage or interfere with the Trust's computer systems or to obtain access to confidential records.
- Assault, including threatened assault (verbal or physical).
- Failure to disclose any criminal conviction, caution or reprimand, warning or bind over received whilst employed.
- Indecent or offensive behaviour or sexual misconduct or harassment towards a colleague either face-to-face, over the phone, by email or text or on social networking sites.
- Unauthorised Absence (AWOL).
- Bullying, Harassment and or Victimisation.
- Any actions bringing the Trust's reputation into disrepute.
- Serious breaches of Health and Safety, Hygiene Regulations and / or Security policies endangering the employee or others or Trust property.
- Attending work under the influence of alcohol, drugs or substance (Please also refer to the Trust's Alcohol and Substance Misuse Policy HR21).
- Knowingly or negligently entering false or misleading statements in, or unauthorised alteration or deletion of Trust records.
- Knowingly or negligently providing false information in support of an application for any post in the employment of the Trust, or any expenses, allowances or benefit.
- Deliberate and persistent refusal to carry out duties and / or serious insubordination.

# Restorative Just & Learning Culture Guidance (A 4 Step Model Approach)

**Employee Name:** [Insert Employee Name]  
**Division:** [Insert Division]  
**Department:** [Insert Department]  
**Line Manager:** [Insert Line Manager]  
**HR Advisor/Representative:** [Insert HR Representative]

## Introduction

The UHNM 4 Step Restorative Just & Learning Culture (RJLC) Model is a 4 step process for managing and improving our people practices. The application of a Restorative Just Culture will inform how we learn and grow from incidents of potential misconduct in a supportive and compassionate way. A compassionate approach is vital to supporting colleagues to remain connected, mentally healthy, and productive while we working through the challenges we face at work and beyond.

The 4 Step approach will also help steer the Trust's response in the aftermath of an incident or event, and will play a larger part in our civility and respect culture change journey.

As an organisation we are unable to disregard incidents of potential misconduct. However, we should ensure that we a taking a holistic view by looking at the bigger picture and contributing factors which led to a particular incident. By focusing on the stabilisation of the situation and following a fair evaluation of a preliminary fact find. This will support with the restoration and recovery pathway of emotional healing, moral re-engagement and repair.

The Model aims to safeguard an individual's health and wellbeing throughout an adverse event or incident. This guidance is not a replacement for an investigation and is not a substitute for HR advice. It is also not about an absence of responsibility and accountability. After reviewing the RJLC approach, accountability and possible consequences are applied in conjunction with formal HR policies.

**This form should be completed for ALL incidents of potential misconduct and as soon as practically possible (with the support of Human Resources).**

<p><b>Whose obligation is it to meet that need?</b> Someone especially assigned to ensure the restorative process is properly applied.</p>	
<p><b>What is the understanding of what happened?</b> Does it make sense? Do we need more information about the trigger event?</p>	
<p><b>What is the resource requirement?</b> What resources are required to assist with the preliminary fact find and restoration process? Who has the capacity to undertake this process? Is a comms required to the team?</p>	

### STEP 3a – GATEWAY TO DECISION MAKING (The Preliminary Fact Find and Root Cause)

A formal investigation into an employee's individual actions is only warranted if all of the below are true. Look at the root cause.

Step by Step Assessment of the Situation	Comments
<p><b>Is there a general awareness, understanding of and acceptance of the rule/protocol/guideline/custom and practice (both written and unwritten)?</b></p> <p><b>Is there a rule/protocol/guideline/custom and practice?</b></p> <p>If so, provide information where this is applied and stated (i.e contractually, training records, or in Trust policy etc).</p>	
<p><b>Are the rules workable and or achievable?</b></p> <p>Do they make sense in the context of the working environment? Consider work as done versus work imagined? Are the rules routinely followed?</p>	
<p><b>Were the rules knowingly departed from? Has the individual deviated from what they know?</b></p> <p>Is there a general awareness that people's actions were deviating from what is described/alleged?</p>	
<p><b>Exception to peers (custom and practice)?</b></p> <p>Is the behaviour different to what colleagues/peers with comparable experience and skills would do in similar circumstances? If the answer is yes, then it is in exception to peers.</p>	
<p><b>Was training available? If so, was the individual trained (provide details)?</b></p>	



## STEP 1 – TRIGGER POINT (An Incident of Potential Misconduct)

### The adverse event/incident

Be clear and satisfied on the trigger point. An event or incident that did result in harm to individuals, patients, colleagues, or property and a breach(s) of Trust policy. This can include psychological and physical harm (i.e bullying and harassment), reputational damage and criminal activity.

Questions to Consider	Comments
<ol style="list-style-type: none"> <li>1. <b>What is the trigger incident/event?</b>(for cases whereby a Datix has been raised, include the Datix Number):</li> <li>2. <b>What has happened?:</b></li> <li>3. <b>What parties/individuals are involved?:</b></li> </ol> <p><b>Issues to consider/area for concern:</b></p>	

## STEP 2 – ALWAYS REMEMBER (Stabilise and Seek Advice within 72 hours)

Always Remember	Comments
<p><b>Stabilise the situation within 72 hours of the adverse event/incident occurring</b></p> <p>Unless the safety of patients and the organisation requires it, this does not include temporarily removing anyone from their workplace or restricting their duties.</p> <p>Always seek advice from Human Resources.</p>	
<p><b>Ask, who is hurt? And who is involved in the incident?</b></p> <p>This can include service users (the public), service providers, other staff and/or people external to our organisation.</p>	
<p><b>What is their need?</b></p> <p>Establish a clear communication plan, regular and timely.</p> <p>Consider staff wellbeing support interventions (OH Referral, counselling, an allocated welfare point of contact/pastoral support), Coaching etc.</p>	

Consider the quality and regularity of the training, and whether that was appropriate for our workforce and the situation.	
<b>Are there any health considerations/personal issues?</b> Detail any known health considerations/personal issues declared.	
<b>Was there sufficient line management support?</b> Detail any management/supervisory support provided to the individual?	

### STEP 3b - HOW DO WE PROCEED?

Next Steps	Comments and Decision of Informal/Formal Action
<ul style="list-style-type: none"> <li>Once the 'checks and balances' are in place, the alleged event/ incident may require no further formal action, and UHNM will not investigate any individual or pursue formal disciplinary action.</li> <li>Consider whether mediation or a similar intervention is required to help resolve any workplace issues.</li> <li>On occasions, whereby formal action may still be required, follow HR01 Disciplinary Policy, and consult with Human Resources.</li> <li>In cases whereby gross misconduct is alleged, it may be necessary to exclude the employee from duty. Suspension should only take place where there is a risk to patient safety, the member of staff or colleagues and/or to ensure the investigation can be completed unhindered and adjustments to role/temporary transfer is not a reasonable alternative.</li> <li>The Case Manager, an operational manager and a member of Human Resources team will review, 'sense check', and determine collectively if temporary clinical/ workplace suspension/temporary redeployment is warranted. This is called a 'Triumvirate Approach', and avoids the plurality of decision making.</li> <li>A Risk Assessment for the Suspension or Temporary Transfer/Adjustment of Duties must be completed <a href="http://uhnm/media/14275/risk-assessment-for-suspension-or-temporary-transfer-or-adjustment-to-du.docx">http://uhnm/media/14275/risk-assessment-for-suspension-or-temporary-transfer-or-adjustment-to-du.docx</a> prior to any decision been taken. This document will be collectively reviewed every 28 days, and welfare support will be put in place.</li> <li><b>During the RJLC process it is important to consider and review the employee's welfare at all times and to also evaluate the psychological safety of the parties involved in the case.</b></li> </ul>	

## STEP 4 – RESTORATION & RECOVERY PATHWAY

<p>Have we been successful in applying the RJLC? This can be during Steps 2 &amp; 3 and in the aftermath of a formal disciplinary case. Remember that multiple individuals can be 'hurt' when there is a potential /actual misconduct issue. The focus on restoration for those affected is fundamental.</p>	<p>Comments</p>
<p><b>Moral Engagement:</b> Were we able to engage all parties mentioned under <b>STEP 2</b> in considering the right thing to do? Were we able to bring all parties together to work collaboratively?</p>	
<p><b>Emotional Healing:</b> Were we able to help cope with the hurt? Did we offer empathy to all parties involved?</p>	
<p><b>Reintegration:</b> Were we able to do what was needed to get the employee integrated back into the workplace/into their job role?</p>	
<p><b>Broader Organisational Learning/Board Level Oversight:</b> Explored and addressed systemic causes of harm. Whilst maintaining confidentiality, this is best enabled through an assurance review process with multiple key stakeholders (including the Case Manager, HR and our Staff Side colleagues) and having board level oversight.</p>	

## 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 'Settlement 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. 'Settlement 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 DBS 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 679819 or the Operational lead for safeguarding.

### **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 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 Operational lead for safeguarding 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 under safeguarding procedures 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 Operational lead for Safeguarding, the Chief Nurse/ Chief Operating Officer and Chief People Officer 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 Chief People Officer) and the Trust Operational lead 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 Designated Officer will immediately inform the police and convene a similar discussion, involving Trust representatives, including the Chief People Officer, 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 Chief People Officer/Deputy Chief People Officer 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, DBS 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 'Settlement 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. 'Settlement 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 DBS 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. Director of Nursing with the operational lead for Safeguarding. The Director of Nursing 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 Director of Nursing with an operational lead for Safeguarding 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

15. The Local Authority will discuss the matter with the Director of Nursing / Senior Nurse for Safeguarding the Chief Nurse/ Chief Operating Officer and Chief People Officer 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.
16. 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 / Director of Nursing, People Operations (HR) representative or the Senior Nurse for Safeguarding
17. 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

18. 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.
19. Where further investigation is required to inform consideration of disciplinary action, Trust representatives will discuss who will undertake that with the Local Authority.
20. The investigation will be conducted in accordance with the Trust's Disciplinary Policy and Procedure.
21. 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.

22. 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**

23. 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.
24. 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.
25. If the person is convicted of an offence, the police will inform the Trust straightaway so that appropriate action can be taken. The Chief People Officer/Deputy Chief People Officer must be contacted in these circumstances.

### **Referral to regulatory body**

26. 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 DBS or regulatory body is required. If a referral is appropriate, the report will be made within one month.

### **Learning lessons**

27. 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**

28. 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.

SCHEME OF DELEGATED AUTHORITY

LEVELS OF AUTHORITY (Non-Medical Staff)

The table below indicates the Managers authorised to conduct hearings. It takes into consideration the scheme of delegation and principle of plurality 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
Disciplinary Hearing: Written Warnings, Final Written Warnings and Dismissals	Senior Manager, (Band 8A and above) + an additional manager + People Operations Rep (Technical expert available if required)
Appeals	Divisional Directors/Divisional Heads of Service (Chair) + Executive / + People Operations Rep not previously involved

LEVELS OF AUTHORITY (Medical and Dental 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 Medical Director / Medical Director (or delegated representative) + Divisional Directors/Divisional Heads of Service + People Operations 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) + People Operations Rep not previously involved

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

## **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 3 members, one of whom will be a People Operations (HR) 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.

**Procedure to be followed at a Disciplinary Hearing**

- 1) At the Disciplinary Hearing the Chair will:
  - Introduce those present (a member from the People Operations (HR) team must be present);
  - Remind the employee of their right to be accompanied by a work colleague or Trade Union Representative, and to clarify the role of the accompanying person;
  - Advise the employee that the Hearing will be recorded to ensure clarity and consistency;
  - Advise the tape recording will only be transcribed should an appeal be lodged;
  - In cases where the Hearing is held virtually, the MS Teams recording function will not be used. Instead the only legitimate recording will be the physical recording device as used by the panel. No covert recordings are permitted as per IT02 Personal Information Security and Acceptable Use Policy.
  - Explain the purpose of the Hearing and how it will be conducted;
  - Advise that the Panel or either party may ask for an adjournment during the Hearing;
  - On conclusion of the Hearing consider whether disciplinary action should be taken in accordance with the Trust's Disciplinary Policy and Procedure and if so the level of sanction.
- 2) The Investigating Officer will present the case to the Disciplinary Hearing, and both the employee (and or their Representative) and the Chair are able to ask questions of the Investigating Officer.
- 3) The employee will be entitled to state their case, call witnesses, ask questions and make an explanation.
- 4) The Chair will ask any questions to the employee (employee's representative cannot answer on the employee's behalf). The Chair may also call witnesses.
- 5) The Trade Union Representative/work colleague should be allowed to address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case.
- 6) The Chair will sum up the case and the employee and their representative will then have the opportunity to sum up their case.
- 7) The HR Representative supporting the Chair will present the employee's service record to the Hearing (includes the employees start date and job role(s) within the Trust, and whether there are any live disciplinary sanctions on the employees personnel file.
- 8) Where the Chair considers the case upheld, they will, in the presence of the employee and their work colleague/Trade Union Representative (if any), consider the employee's service record and any plea in mitigation before deciding on the action to be taken.
- 9) All parties will adjourn for the Chair supported by the HR Representative to consider the appropriate disciplinary penalty. They will take into consideration the employee's service record, penalties issued in similar cases, any mitigating or special circumstances, and the seriousness of the offence.
- 10) When a decision on a disciplinary sanction (if any) has been reached, the employee will be informed in the presence of their work colleague/Trade Union Representative and the Investigating Officer. Where the Hearing has been carried out virtually, arrangements for the participants to re-join

after the adjournment will be agreed in advance. The Chair will also advise on the employees right of appeal against the sanction imposed).

- 11) Written confirmation of the disciplinary sanction (if any) will be handed to the employee personally, or delivered direct to the employee's home address within 5 calendar days of the Hearing taking place.
- 12) Should an employee fail to attend a disciplinary hearing without a justifiable reason then the hearing may take place in their absence. The decision will then be formally notified to the employee and their representative.

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**Procedure to be followed at an Appeal Hearing**

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.

- 1) The management statement of case together with any supporting information must be submitted to the employee and the panel at least 5 calendar days prior to the hearing taking place.
- 2) 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.
- 3) The employee will then be invited to state his/her case, outlining the reasons for the appeal, either personally or through their representative.
- 4) *If the employee puts forward any new evidence/issues that were not put forward at the Disciplinary Hearing, it will be necessary for the Panel to consider the nature of new evidence/issues and why they were not originally raised. The Panel may wish to adjourn to consider if the new matters need investigating. Once these have been thoroughly explored, the Chair should summarise the facts and inform the employee of the decision.*
- 5) The management representative and the panel will have the opportunity to ask any questions relating to the employee's case
- 6) The management representative will then state the management case.
- 7) The employee(s) and/or the representative and the panel will then have the opportunity to ask any questions relating to the management case.
- 8) 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.
- 9) 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.
- 10) If recall is necessary, both parties shall return notwithstanding only one is concerned with the point giving rise to doubt.
- 11) The length of time of the closed session should be recorded.
- 12) 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.
- 13) The decision will be confirmed in writing to the employee(s) within 5 calendar days of the hearing.
- 14) It should be noted that this level is the final internal stage to which an appeal can be taken.
- 15) This procedure will not affect the statutory rights of employees to take forward a case under any employment legislation, including statutory provisions.