Management of Conduct (Disciplinary) Policy

HH/HR/530/12

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| Previous policy(s) being replaced: |
| Where | Policy No | Policy Name |
| Basingstoke | HR-22-11 | Regulation of Conduct (Disciplinary) Policy |
| Winchester | OPr013 | Disciplinary Procedure |

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| --- | --- | --- |
| Owner  | Name | Jo Brooks |
|  | Job Title | Associate Director of Workforce |
| Final approval committee | Name  | Integration Consultative and Negotiation Committee |
|  | Date of meeting | 15.12.11 |
| Divisional Governance Boards (list date of approval) |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| Other specialist committee approval |  |  |
| Authoriser | Name  | Mary Edwards |
|  | Job title | Chief Executive Officer |
|  | Signature |  |
|  | Date of authorisation | January 2012 |
| Checklist completed by Patient Safety and Risk Manager  | Date: |  |
| Review date |  (maximum 3 years from date of authorisation) | January 2015 |
| Audience | (tick all that apply) | Trust staffNHSGeneral public |
| Standards | CQC |  |
|  | NHSLA | As on the intranet |
| Related policies | Policy numbers and names | Management of Capability PolicyMaintaining High Professional Standards in the NHS  |
| Equality Impact Assessment | Date signed off |  |

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| **Summary**This policy details the Trust’s policy and process for fairly and consistently managing cases where it is considered that an employee’s conduct has fallen below an acceptable standard.  |

**DOCUMENT CONTROL**

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| **Documents Amendments** |
| **No.** | **Details** | **Key amendments to note – all staff** | **By Whom** | **Date** |
|  | Review of BNHFT & WEHCT policies to produce a harmonised policy | * Full re-write of BNHFT and WEHCT policy
* Based on the ACAS *Code of Practice 1: Disciplinary and grievance procedures* (April 2009).
* New layout to comply with HHFT’s *Policy for Policy Management.*
 | Sarah Powell, HR Business Partner, WEHCT | December 2011 |

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| **Review Timetable** |
| **Date** | **Reason** | **By Whom** | **Date Completed** |
| January 2015 | Three year review | Associate Director of Workforce |  |

**DOCUMENT IMPLEMENTATION**

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| **Implementation plan – Action(s)** |
| **Action** | **Owner** |
| Publish the policy on the Trust’s intranet and communicate publication to staff | Trust Library |
| Brief managers on the policy following approval. | Human Resources Business Partners |
| Develop guidance material for employees and managers, as and when required and publish any guidance material on the Trust intranet.  | Associate Director of Workforce |

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#### POLICY STATEMENT

Hampshire Hospitals NHS Foundation Trust (“the Trust”) is committed to encouraging and supporting staff to achieve high standards of conduct. The Trust’s *Management of Conduct (Disciplinary) Policy* is one way to help achieve this aim by setting out a clear policy and process for fairly and consistently managing cases where it is considered by an employee’s manager that their conduct has fallen short of an acceptable standard.

This policy is based on the principles contained in the ACAS *Disciplinary and Grievance Procedures* Code of Practice (April 2009).

#### 2. PURPOSE

The purpose of this policy is to outline the disciplinary process that will be followed by the Trust in all cases where an acceptable standard of personal and/or professional conduct is not being met.

#### 3. SCOPE

This policy applies to all Trust employees. (For the purposes of this policy, the term “employees” also applies to workers on the Trust’s Temporary Staffing Bank.

For medical and dental staff, any initial investigation will be done under the Trust’s *Maintaining High Professional Standards in the NHS – Policy for Handling of Concerns about Doctors and Dentists in the NHS*. However, where, following an initial investigation, it is considered by the Trust that the alleged misconduct is not related to the employee’s work as a doctor or dentist, the matter may be referred back for consideration under this policy.

#### 4. MAIN PRINCIPLES

This policy will be applied fairly and consistently to all employees regardless of their protected characteristics as defined by the Equality Act 2010 namely, age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage or civil partnership, pregnancy and maternity, and regardless of length of service, whether full or part-time or employed under a permanent or a fixed-term contract.

Where an employee has difficulty in communicating, whether verbally or in writing, arrangements will be put in place as necessary to ensure that any allegations and the process to be followed are understood and that the employee is not disadvantaged in presenting their case during an investigation or at a disciplinary or appeal hearing.

In line with the Equality Act 2010, the Trust will make reasonable adjustments to the process to be followed and the arrangements for disciplinary investigations and hearings, where not doing so would:

* Disadvantage an employee with a disability in attending or taking part in a investigation meeting or presenting their case at a disciplinary hearing.
* Disadvantage a pregnant employee or an employee on maternity leave.

Managers are responsible for the supervision of their staff, including assessing their general conduct.

All matters relating to conduct should be dealt with as promptlyas possible consistent with fairness to the employee.

The time scales referred to in this policy are guidelines and maybe subject to mutually agreed reasonable extension.

At all stages in the disciplinary process, where action is considered to be appropriate, the reason for the disciplinary action will be made clear to the employee, as will the likely consequences any repetition of unacceptable conduct.

Where an employee is alleged to have committed a criminal offence which arises from, or has bearing on, his/her employment, disciplinary action, where appropriate, may be taken independently of any legal action.

Employees subject to discipline by professional bodies are reminded that the Trust is required to report any act of misconduct which may then become the subject of separate investigation by the professional body.

The administration of this policy will normally commence with the immediate line manager instigating the disciplinary process. They will not however, be able to dismiss the employee even if they have the authority to dismiss.

The full range of disciplinary action outlined in this policy may not be applicable in every case. The action taken in any particular case will depend on the circumstances, but will conform to the appropriate stage of this policy.

Investigation reports and information produced by Local Counter Fraud Specialists and as made available to the Trust, will be used as information within the investigation process and considered as part of the documents being relied upon or referred to in a disciplinary hearing by a manager or employee.

Any written notice to the employee to attend a formal disciplinary hearing will include all details of the alleged offence and a reminder of their right to representation. The employee will always be given the opportunity to state his/her case before any decision is made. No disciplinary action will be taken against any employee until the case has been investigated.

Employees have the right to be accompanied by a representative of an accredited trade union or by a colleague employed by the Trust at al formal meetings and hearing shelf under this policy. Adequate opportunity for consultation between the employee and the representative or colleague will be given prior to any formal hearing.

Workplace colleagues are not obliged to accept a request to accompany a worker and may not be pressurised into doing so.

Workplace colleagues who agree to accompany an employee at a disciplinary hearing are entitled to take a reasonable amount of paid time off to prepare for and to attend the hearing.

The Trust reserve the right for the Line Manager, with HR Business Partner support, to review an individuals overall conduct/performance that may be reviewed under more than one policy and choose to address the issues under a single policy.

Employees who consider the disciplinary sanction imposed at a disciplinary hearing to be unfair may appeal against the sanction, following the process outlined in this policy.

Disciplinary action will not be taken against an accredited trade union representative until the circumstances have been discussed with the relevant full-time officer of the trade union in question by a Human Resources manager, except where the employee withholds permission for the matter to be discussed with their union.

**5. DEFINITIONS**

**Chairing Manager** – the manager responsible for determining whether a case of alleged misconduct should proceed to a disciplinary hearing, based on the investigation report and for chairing the subsequent disciplinary hearing. The Chairing Manager will normally be the grandparent manager. (See below).

**Colleague** – An employee of the Trust other than:

* A family member or relative of the employee, or
* Someone appearing as a representative (see definition below), or
* Someone appearing in a legal capacity, e.g. a practising solicitor or barrister,

asked by an employee to accompany them to any formal hearings held under this policy.

When accompanying an employee at any formal hearings held under this policy a colleague may address the chair of the hearing to put and sum up the employee’s case, respond on behalf of the employee to any views expressed at the hearing and confer with the employee during the hearing. They may not answer questions on the employee’s behalf, address the chair of the hearing if the employee does not wish it, or prevent the manager from explaining their case.

**Grandparent Manager** –The manager of an employee’s line manager.

**Gross Misconduct** – An alleged offence that is considered so serious that, if proven, could result in dismissal or summary dismissal regardless of whether or not the employee has a current warning for.

**Investigating Officer** – the line manager of an employee being investigated under this policy, responsible for formally investigating the alleged incident(s) or, where the line manager is not the appropriate person to undertake the investigation (e.g.. they have prior involvement in the case or they may be unable to be seen to be unbiased) the person appointed by the line manager to undertake the formal investigation.

**Misconduct** – An action or behaviour, either within the work environment, or outside of the work environment where the employee is representing the Trust, that is contrary to that expected of an employee or is directly opposed to an agreed standard of conduct, or, where an individual is identifiable as being a Trust employee and their action or behaviour impacts on their ability to undertake their duties or on the reputation of the Trust.

**Representative** –An employee of the Trust who is appointed by their trade union or professional association to represent the interests of the union's members within the Trust, under the terms of the Trust's *Trade Unions Recognition and Facilities Agreement.* (Should an independent trade union not be recognised under the terms of the Agreement,a full-time officer of that union may undertake the role of representative as set out in this procedure). A representative will not normally be a family member or have a personal relationship to the individual.

When accompanying an employee at any formal hearings held under this policy a representative may address the chair of 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. They may not answer questions on the employee’s behalf, address the chair of the hearing if the employee does not wish it, or prevent the manager from explaining their case.

**Summary Dismissal** – Dismissal without notice and without pay in lieu of notice. Pay will include any accrued but untaken statutory annual leave allowance.

**Temporary Redeployment** –The moving of an employee to another post in situations where the nature of an alleged incident is such that, whilst not necessitating suspension, it would be unreasonable for the employee to remain in their own post or to work unsupervised pending the outcome of an investigation and or disciplinary hearing.

### RESPONSIBILITIES

**6.1 Line Managers**

* To determine, in consultation with their Human Resources Business Partner, whether any alleged misconduct requires formal investigation under this policy
* To inform the employee verbally and in writing of the reasons for any disciplinary investigation, the process that will be followed and who will be carrying out the investigation.
* If acting as the Investigating Officer to take the actions listed below
* If an alternative Investigating Officer is appointed to ensure they have the time and resources to complete an investigation, are fully briefed, understand the process and best practice for conducting investigations and have a confirmed completion date for the investigation report.
* Where required, to inform the employee of the requirements for a formal hearing including the nature of the allegations, date, place and attendees of hearing, the procedure to be followed and the right to be accompanied.
* Manage the exchange of reports and further documentation throughout the disciplinary process.

**6.2 Investigating Officer**

* To conduct a fair, impartial and timely investigation.
* To provide a report outlining the facts of the case and the evidence produced including copies of all witness statements as necessary.
* To arrange and conduct interviews with witnesses as necessary.
* To present a report and case to the disciplinary panel if felt necessary.

**6.3 Chairing Managers**

* Following receipt and consideration of an investigation report and in consultation with their Human Resources professional, to determine the appropriate actions to be taken and to inform the employee accordingly.
* If a disciplinary hearing is to be held to:
	+ Provide the employee with all information to be considered at the hearing
	+ To chair the disciplinary hearing
	+ To determine whether or not to award any disciplinary sanction
	+ To inform the employee of the decision of the hearing and of their right to appeal against any disciplinary sanction and to confirm this information in writing.

**6.4 Human Resources Department**

* To provide advice and employment law advice to line managers to help ensure the fair and consistent application of this procedure across the Trust.
* To provide support and guidance to Investigating Officers
* To attend formal disciplinary hearings, as required under this policy.
* To provide support to an appeals panel and to the presenting manager in an appeal hearing.
* To attend the initial suspension or temporary redeployment meeting, where practical.
* To ensure that any time-expired warnings for any employees are removed from employees’ personnel files and confidentially destroyed.

**6.5 Employees**

* To attend any disciplinary investigation interviews as requested by the Investigating Manager’.
* To give a full account of the circumstances of any case during the investigation.
* To arrange representation, if desired, by a representative or by a colleague

**6.6 Trade Union Representatives**

* To advise their trade union members on this policy and process as requested.
* To provide support to members at investigations, hearings and appeals, if required to do so by their member.

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# INFORMAL PROCESS – MINOR MISCONDUCT

Cases of minor misconduct are usually best dealt with informally. The employee’s line manager should deal with cases of minor misconduct informally, this usually taking the form of informal advice. Informal advice in this context refers to an informal activity that is part of the normal line management relationship, and is outside of the formal disciplinary process. Managers should explain clearly when, and why, conduct has been unacceptable and the improvement required; discuss appropriate methods of improvement and, where considered necessary, arrange review dates to check progress. Employees should be informed that if unacceptable conduct continues or is repeated, that this could lead to formal disciplinary action being taken.

Examples of the expected standards of conduct can be found in Appendix B.

Where an alleged case of minor misconduct has been identified, an informal meeting should take place, normally between the employee and their line manager. The purpose of this meeting is to discuss the issues, for the manager to outline the required standards of conduct as well as to provide advice, guidance and support on how this can be achieved. The objective is one of encouraging and helping the employee to improve.

Following the informal meeting, the manager should write to the employee clarifying the purpose of the meeting, what was discussed and any action resulting from the meeting, including the standards of conduct required and any actions to monitor the employee or to support them. The letter must confirm that this was an informal meeting and that no disciplinary sanction has been imposed. The Human Resources Department can provide advice on the wording of such letters.

A copy of the meeting outcome letter will not be placed on the employee’s personnel file held by the Human Resources Department record but a copy may be kept by the line manager as evidence of their informal going management of the employee.

It is hoped that in most cases of minor misconduct, application of the informal process will be sufficient to foster future good conduct. However, there may be occasions where individual employees do not respond to the informal process. In these situations it may become necessary to invoke the formal disciplinary process outlined in this policy. The policy does not define when this point may be reached; it will be for the employees’ line managers to make the decision, taking all the circumstances into account, if and when to move onto the formal disciplinary process.

There is no right for an employee to be accompanied by a representative or by a colleague at an informal meeting.

# DISCIPLINARY INVESTIGATION PROCESS

**8.1 Main Principles**

Formal investigations in respect of medical and dental staff will take place under the *Maintaining High Professional Standards in the NHS: Policy for the Handling of Concerns about Doctors and Dentists in the NHS.*

The purpose of a disciplinary investigation under this policy is to establish what happened and to inform the decision on whether there is a case to be answered at a disciplinary hearing. The disciplinary hearing, should it be required, is to decide whether or not there is a case to answer and, if there is, the disciplinary sanction to be awarded.

The investigation will normally be undertaken by the employee’s line manager except where indicated otherwise by:

* The complexity and/or technical nature of the event(s) to be investigated, and/or
* The anticipated difficulty of the line manager completing the investigation within a reasonable timescale
* In exceptional cases due to the specific nature of the event(s) to be investigated, potentially compromising their ability to undertake a fair and unbiased investigation.

In these situations an alternative investigating officer will be appointed by the line manager.

Should the employee or, on their behalf, their representative, have any concerns regarding the ability of the investigating officer to undertake a fair and unbiased investigation, these concerns should be raised with the appropriate Human Resources Business Partners at the earliest possible opportunity. Any such concerns will be considered by the Human Resources Business Partner who will advise the line manager whether or not an alternative investigating officer should be appointed to undertake/complete the investigation.

Where the investigating officer is not the employee’s line manager, they must have the competence and capacity to undertake a fair and professional investigation and must be unconnected to the employee or to the alleged incident.

# 8.2 Confidentiality

During the course of an investigation, questions of confidentiality and sharing of information may arise. 3 Principles are useful in determining whether information should be released concerning Trust employees or the allegation,

* Any employee against whom formal allegations are made, has the legal right to have a written copy of these allegations
* Does the individual need to know i.e. in order to be able to fully cooperate with the investigation
* Will it enable important facts to be gathered which could not have been otherwise?

If required, further guidance can be sought from the Human Resources Department.

# 8.3 The Investigation Process

Prior to commencing an investigation, the line manager should make contact with their Human Resources Business Partner for advice and guidance as to the approach to be taken, as different allegations will warrant different levels and types of investigations. (e.g. in some cases, a modified approach is required as the circumstances may not warrant the commissioning of extensive investigation interviews and therefore the investigation may be limited to the collation of evidence to establish the facts of the case). The line manager will also need to determine whether there is any reason why they cannot be the investigating Officer.

Both where the line manager is the Investigating Officer, and in cases where they need to appoint someone to undertake this role,they must ensure that the investigation is conducted applying the following principles of good practice:

* Is carried out without unreasonable delay
* Is conducted in a fair and transparent manner
* Is conducted using techniques that are sensitive to the individual situation of all employees involved
* Is undertaken in a logical and rigorous manner
* Is purely seeking to establish the facts
* Is recorded in full and comply with the principles of the Data Protection Act

The employee under investigation should be invited to an investigation interview by letter with at least 2 calendar days notice (excluding weekends and public holidays), the letter being hand delivered to the employee or sent recorded delivery. The written invitation should contain sufficient information about the alleged misconduct to enable the employee to prepare to fully answer questions asked by the Investigating Officer at the investigation interview. The letter will also remind the employee of their right to be accompanied at the interview by a representative or by a colleague. (A suggested interview format is included in Appendix C).

The Investigating Officer will ensure that employees are provided with a copy of the notes made at their investigation interview(s). Where there is a dispute regarding their accuracy, which cannot be resolved, both the original and the amended versions will included in the final report and the differences should be highlighted in the Investigating Officer’s report. All agreed statements should be signed by the manager and the employee.

The Investigating Officer will then prepare a report of their investigation for the grandparent manager (who will normally take on the role of Chairing Manager, should the case proceed to a disciplinary hearing). The purpose of the report is to provide a factual summary of the evidence obtained in relation to the allegations and should draw out the key findings, based on the evidence obtained from the investigation.

The grandparent manager will, in consultation with the Human Resources Department, decide whether or not the evidence presented indicates that the case should proceed to a formal disciplinary hearing, The employee will be advised in writing by the grandparent manager of their decision.

If the investigation identifies that a criminal act may have occurred this will need to be reported to the police and/or the employee’s professional body (Advice should be sought from the appropriate Human Resources Business Partner at the earliest opportunity).

If the investigation identifies that there is an incidence of possible fraud, the matter must be reported immediately to the Trust’s Local Counter Fraud Specialist for further investigation. Findings from such investigations may be used to support a formal disciplinary investigation both internally and by professional bodies.

The manager undertaking an investigation will not subsequently be a member of any panel convened to hear the case at a disciplinary hearing.

# 8.4 Failure to Attend an Investigation Interview

Where an employee is being investigated for alleged misconduct, they are expected to attend an investigatory interview(s), as deemed necessary by the Investigating Officer.

On the rare occasion that an employee finds themselves unable or unwilling to attend an investigation interview they will need to contact the Investigating Officer in advance to discuss their reason for not intending to attend.

If the employee maintains that they are unfit to attend due to a medical condition, an immediate referral will be made to the Occupational Health (OH) Department to determine if they are fit to attend. On receipt of the OH guidance the Investigating Officer will decide how to proceed.

If the reason given is not related to the availability of a representative or colleague or fitness to attend, the Investigation Officer will determine whether they wish to delay the interview or proceed on the basis of the information available. If they decide to proceed, the individual should be invited to make written representations as an alternative.

If the individual fails to attend OH or the meeting without good reason the investigating officer should consider proceeding with the information available.

# 8.5 Witnesses at Investigation

Witnesses are a valuable and essential part of an investigation. Witnesses are expected to cooperate with the Investigating Officer and attend meetings / hearings as required. Reasonable time off will be afforded to witnesses in discussion with their line manager.

The employee who is alleged of misconduct may recommend witnesses to be interviewed by the Investigating Officer, who may support their case.

In exceptional circumstances and where requested by the employee concerned, consideration will be given to protecting the anonymity of Trust witnesses so far as is possible.

# SUSPENSION AND TEMPORARY REDEPLOYMENT

(See the *Maintaining Professional Standards Policy* in respect of the exclusion of medical and dental staff).

Suspension is not a disciplinary sanction.

Suspension means suspension from all employments with the Trust including bank contracts.

In some circumstances it may be appropriate to suspend the employee under investigation from duty until the investigation is complete. Suspension will be without detriment to the employee’s normal pay entitlement.

Circumstance where suspension may be appropriate are where:

* There is risk to patients or to the Trust’s property
* There is a risk of intimidation, harassment or abuse to the employee under investigation
* There is risk of intimidation, harassment or abuse to other employees
* The employee’s presence at work could prevent or prejudice the investigation
* The allegation is one of gross misconduct

The decision to suspend should be made by the employee’s line manager (or by a more senior manager if the manager is below pay band 8) following advice from the Human Resources Department. Suspension meetings should be held by the line manager (or a more senior manager) supported by a member of the Human Resources Department. Where practicable, the employee may be accompanied by a representative or colleague. The line manager’s Divisional Manager, the Chief Operating Officer & Director of Nursing and the Associate Director of Human Resources must be informed of the suspension, wherever possible prior to the suspension taking place.

Where a decision to suspend an employee needs to be made out of normal working hours, the decision to suspend can be made by an appropriate senior manager. The On-Call Trust Director should be informed of any decision to suspend and the decision must be reviewed by the employee’s line manager and the appropriate Human Resources Business Partner on the next normal working day.

Suspension will always be confirmed in writing as soon as practicable; normally on the next working day, including:

* The reasons for the suspension
* That the period of suspension will be on normal full pay
* That the suspension is not a disciplinary sanction and is not an indicator of guilt or wrong doing.
* That the suspension will be kept under review.

The suspension will normally continue until a decision has been made following an investigation on the action to be taken concerning the allegation. If necessary, a formal review of the suspension will take place after four weeks and thereafter at periods of no longer than eight weeks. The employee will be informed of the outcome of the review.

Further meetings with the line manager may be mutually arranged to keep the employee updated on the progress of the disciplinary process, any significant announcements in the workplace and to maintain the employee’s knowledge and skills whilst suspended.

A suspended employee is expected to be available to attend meetings for further interview or investigation during normal working hours unless any other arrangement has been agreed at the time of suspension or during the period of suspension (e.g. honouring holiday commitments).

During a period of suspension an employee may only visit Trust property with the permission of their line manager, the Human Resources Department, for the purposes of a disciplinary investigation, or where they are attending the Trust as a patient or as a member of the public visiting a patient.. Such permission shall not be unreasonably withheld or delayed where the purpose of the visit is to meet with the suspended employee’s representative.

When an alleged offence is such that it is considered reasonable for the employee to remain at work but not for them to remain in their own post or to work without close supervision the employee may be temporarily redeployed on the same rate of pay, as an alternative to being suspended on full pay. The responsibility for determining whether or not re-deployment is appropriate and the arrangements for reviewing the redeployment are the same as for suspension, as described above.

# FORMAL DISCIPLINARY PROCESS

**10.1 Main Principles**

Where informal action has brought about no or only negligible improvement in an employee’s conduct or the alleged misconduct is considered to be too serious to be classed as minor, formal disciplinary action may be taken.

Formal action taken in the form of written warnings or other sanctions can only be taken following the completion of a disciplinary investigation and the decision of a panel at a formal disciplinary hearing.

A formal disciplinary hearing will normally be chaired by the grandparent manager of the employee, who has not been directly involved in the investigation.

If the employee is a Doctor an independent third party advisor, not from HHFT, will be appointed to support the hearing panel. The panel will normally have access to this advisor and be able to request their attendance at the hearing if relevant.

**10.2 Invitation to the hearing**

Where, following an appropriate investigation, the decision has been made, to move to a formal disciplinary hearing, the employee will be given at least 7 calendar days written notice of the following:

* That the hearing will be of a disciplinary hearing under this policy
* The nature of the allegations or matters of concern which will be the subject of the hearing
* Their right to be accompanied by a representative or a colleague
* Their right to submit written evidence and bring witnesses
* The date, time and venue of the hearing.

In the event that an employee chooses to be represented at a disciplinary hearing, it is their responsibility to inform the manager prior to the hearing who their representative is and who the manager should contact thereafter.

It is recognised that, on occasion, the disciplinary hearing may be assisted by the input of an independent expert who is able to offer an opinion on issues relevant to the facts of the case. In this situation, the member of the Human Resources Department dealing with the case may, at the request of either party and with agreement of both parties to the hearing, invite a subject expert to attend. This ‘independent expert’ will not be part of the decision making process. The employee or their representative/colleague may not seek to object to the appointed expert, without good reason.

**10.3 Sharing Information**

The manager chairing the hearing must ensure that the employee is provided with copies of the investigation report and any other documents that will be relied upon or referred to during the disciplinary hearing and the names and job titles of any witnesses to be called. This information should be provided at least 7 calendar days prior to the hearing.

Any documents or names of witnesses that the employee or their representative wishes to refer to, or call upon, should be given to the manager chairing the hearing at least 2 working days (Monday to Friday) prior to the hearing.

Any documents provided by either side outside of these guidelines will only be considered at the discretion of the manager chairing the hearing.

Where, due to the highly sensitive or highly confidential nature of these documents it is not possible to provide copies, suitable arrangements will be made for the employee and their representative or colleague to view the documents on Trust premises. Data protection issues will always be considered where documents are made available.

# 10.4 The Disciplinary Hearing

Whilst responsibility for determining action rests with the Chairing Manager, a Human Resources Business Partner (or other Human Resources professional), must be present at all disciplinary hearings.

The Chairing Manager and the Human Resources Business Partner (or other Human Resources professional) should conduct the hearing in accordance with the procedure set out at Appendix D. An independent will be appointed and should normally be available for advise and/or attendance at a hearing.

The Investigating Officer should attend the hearing to present their findings and be available to answer any questions regarding the investigation report.

Where dismissal is a possible outcome, the Chairing Manager must be an authorised dismissing officer. If during the hearing of a case a recommendation for dismissal is considered a possible outcome and the manager hearing the case does not have authority to dismiss, the case must be adjourned and be re-convened before a Chairing Officer with the authority to dismiss.

At the hearing the manager chairing the meeting should:

* Indicate the reason why it is thought necessary to enter into formal disciplinary proceedings, giving the employee and their representative every opportunity to reply and to present their case.
* Take into account all the circumstances of each individual case. (Previous unrelated disciplinary offences should not enter into this consideration). Similarly, any related disciplinary offences which are “spent” must not be referred to.
* Determine whether disciplinary action is appropriate or not and if so the nature of the sanction(s) to be applied.
* Determine the duration of the warning.
* Identify, as clearly as possible, what correction(s) must take place.
* Make clear that failure to correct behaviour; will result in further disciplinary action.
* Advise the employee that all the above points will be confirmed in writing and that a copy will be retained by the Trust on the individual’s personnel file held in the Human Resources Department
* Advise the employee of their right of appeal, by when any appeal must be made and to whom it should be addressed.

At any point during the hearing the hearing may be adjourned by the Chairing Office, including where requested by the employee or their representative.

**10.5 Failure to attend the disciplinary hearing**

Should the employee be unable to secure a representative for the date of the hearing or need to re arrange the hearing for any other reason, a one-off reasonable deferment of up to a maximum of 7 calendar days may be agreed by the panel Chairing Manager. This 7 calendar day limit may be extended by mutual agreement.

If the employee fails to attend the disciplinary hearing through circumstance outside of their control and unforeseeable at the time the hearing was arranged, an alternative date for the hearing should be proposed. However, should the employee fail to attend the re-arranged hearing, the hearing may go ahead, and a decision taken, in their absence.

**10.6 Outcome of the hearing**

Disciplinary action will only be taken after consideration of all the relevant information and circumstances, each case being treated on its own merits.

Where appropriate and after the panel conducting the hearing has reached a decision in respect of the case before it, the panel may request details of any existing relevant warnings on file in order to inform its decision on what sanction(s) to apply.

A formal letter confirming the outcome of the hearing will be delivered to the employee at work or posted to the last known home address within 7 calendar days of the hearing. A copy will also be sent to the employee’s representative at the request of the employee. A formal written record of the hearing should be made available to the employee or their representative upon request and within a reasonable time following the hearing.

Written records made during the disciplinary process will be treated as confidential and kept in accordance with the Data Protection Act 1998 in the Human Resources Department.

# 10.7 Witnesses at hearings

Witnesses should not be pressurised into attending disciplinary hearings where it is against their wishes.

The individual who is alleged to have committed an act of misconduct or gross misconduct will be able to call witnesses who may support their case. The Chairing Manager will assess the relevance of a witness called to attend a hearing and reserves the right to deny the presence of a witness if it is not deemed appropriate.

In exceptional circumstances and where requested by the employee concerned, consideration will be given to protecting the anonymity of Trust witnesses so far as is possible.

# 11 DISCIPLINARY SANCTIONS

**11.1 First Written Warning**

A first written warning will be appropriate where the employee has failed to achieve or maintain the standards of conduct required following the informal disciplinary process or where the case being heard is, in isolation, sufficiently serious to justify this level of warning being given.

A letter confirming the warning will be sent to the employee by the Chairing Manager within 7 calendar days of the hearing. The letter will state:

* The reason for the warning
* The life of the warning
* That a note will be kept on their personal file for the life of the warning
* That this warning may be taken into account by a Chairing Manager should there be any further act of misconduct, any unsatisfactory performance or any other substantial reason during the life of the warning
* The employee’s they have the right to appeal.

If there has been no further cause for complaint, at the end of the period during which the warning remained in force, the warning will be regarded as being time spent and removed from the employee’s personnel file.

 **11.2 Final Written Warning**

A final written warning will normally be appropriate for serious breaches of discipline or for a repeated or further breach whilst a first written warning is in force. It may also be used as an alternative to dismissal where mitigating factors exist.

A letter confirming the warning will be sent to the employee by the Chairing Manager within 7 calendar days of the hearing. The letter will state:

* The reason for the warning
* The life of the warning
* That a note will be kept on their personal file for the life of the warning
* That this warning may be taken into account by a Chairing Manager should there be any further act of misconduct or any unsatisfactory performance during the life of the warning
* The employee’s they have the right to appeal.

If there has been no further cause for complaint, at the end of the period during which the warning remained in force, the warning will be regarded as being time spent and removed from the employee’s personnel file.

**11.3 Dismissal**

Dismissal will normally be appropriate for cases of very serious misconduct or for a repeated or further breach of discipline whilst a final written warning is in force. Except in cases of gross misconduct, dismissal will normally be with notice. Examples of gross misconduct are given in Appendix B.

Following a hearing, the employee will, without delay, be notified in writing of the decision to dismiss, the reasons for dismissal, the date of termination and their right to appeal and the appeal process.

**11.4 Other Disciplinary Sanctions**

Other disciplinary sanctions may be applied which fall short of dismissal and are appropriate to the circumstances of the individual case. These can be applied where dismissal would normally be appropriate but where any mitigating circumstances have been considered to be of significance by the Chairing Manager. Such sanctions may include

* Demotion
* Transfer to an alternative post or working pattern
* Working at a different location or Trust, with the agreement of the receiving department/organisation.

Written confirmation of the change will be accompanied by the sanction within 7 calendar days. Further details of the transfer including pay arrangements, effective date will be provided separately.

Protection of earnings will not apply where a disciplinary hearing results in demotion and/or a loss of pay enhancements, even in cases where redeployment or demotion is mutually agreed between the chairing manager and the employee.

**12. DISCIPLINARY WARNINGS - TIME LIMITS**

The disciplinary sanctions set out above should not be regarded as applying incrementally in every case which arises. The point at which formal sanctions commence, or the omission of any level of sanction, will depend entirely on the seriousness of the issue. Thus whilst a series of minor issues, or repetition of an issue, could involve all levels of disciplinary sanction, an isolated serious issue could result in a final warning. An employee found to have committed an act of gross misconduct should expect to be summarily dismissed.

Disciplinary action other than dismissal or, in certain cases transfer, will be of limited duration.

Warnings commence on the date of issue (normally the date of the disciplinary hearing), and will generally be disregarded and considered ‘spent’ after the stated periods. Guidance about the length of warning periods to apply is as follows:

* First Written Warning - normally six months duration and no longer than 12 months
* Final Written Warning - normally 12 months duration and no longer than 24 months

During the warning period, should the conduct of the employee be unsatisfactory further disciplinary action may be necessary.

Employees will have the right to request written confirmation from the Human Resources Department that any spent disciplinary warnings have been removed from their personnel file. (This written confirmation will not be placed on the employee’s personnel file).

Dismissal disciplinary action (e.g. contractual notice or summary dismissal) will take affect the next calendar day after the hearing.

# 13. AUTHORITY TO DISMISS

Authority to dismiss is restricted to those with Associate Director positions or above. Authority to dismiss may not be delegated to other Trust managers.

Dismissal of Executive Directors and other managers directly responsible to the Chief Executive may only be effected by a panel of three non-Executive Directors of the Trust Board. In the case of the Chief Executive, the panel would comprise non Executive Directors of the Trust Board plus the Chairman.

#

# 14. APPEALS PROCESS

#### 14.1 Appeals against Warnings, Redeployment or Demotions

All Employees have the right of appeal against a disciplinary sanction.

All appeals must be submitted in writing to the manager of the Chairing Manager, as detailed in the out come letter. This written appeal must be received within 7 calendar days of the receipt of the letter notifying the outcome of the disciplinary hearing.

The disciplinary action is not deferred or suspended pending any appeal.

The appeal will be heard by a panel consisting of:

* An appropriate more senior manager to the disciplinary hearing Chairing Manager, who has not been previously involved in the case, who will chair the appeal hearing
* A senior Human Resources professional, not previously involved in the case.

Where determined appropriate by the appeal hearing Chairing Officer, an independent expert.

Appeals against disciplinary action taken by the Chief Executive will be considered by the Chairman, with support from a senior Human Resources professional.

An employee’s appeal should clearly state the grounds for appeal, namely that:

* New evidence has come to light, and/or
* The employee believes that this policy was not correctly applied, and/or
* The employee believes the sanction(s) issued to be unfair.

An appeal hearing should take place as soon as is reasonably practicable and whenever possible within four weeks of the appeal letter being acknowledged to the appellant.

The manager hearing the appeal will confirm the arrangements of the appeal hearing in writing to all concerned.

The role of an Appeal Panel is not to re-hear the original case; instead they are required to consider the following:

* Was the process followed during the disciplinary process fair and consistent with this policy?
* Was the outcome within the range of sanctions that might be considered appropriate and reasonable?
* Has there been any new evidence presented that would cause the panel to consider the original decision to be no longer sustainable?
* Did the Chairing Officer give appropriate consideration to alternatives to the sanction imposed?

The employee and/or their representative/colleague may submit additional written information to the in support of the appeal. This should be received by the Chairing Manager no later than 2 calendar days before the date of the appeal hearing (excluding weekends and public holidays).

The disciplinary hearing Chairing Manager of the disciplinary hearing will attend the appeal hearing to present the reasons for their decision.

An employee may be represented at an appeal hearing by either a representative or a colleague.

The manager hearing the appeal may uphold the original decision, commute the original decision to a lesser sanction, or decide that no disciplinary sanction is warranted. The manager cannot increase the sanction at appeal. The decision will be confirmed in writing and sent to the employee within a reasonable timescale.

The decision from the appeal hearing will be final. There will be no further right of appeal under this procedure and the Trust’s *Grievance Procedure* may not be used in a frivolous or vexatious manner to circumvent these arrangements.

#### 14.2 Appeals against Dismissal

All appeals must be submitted in writing to the Associate Director of Workforce. The written appeal must be received within 7 calendar days of the receipt of the letter notifying the outcome of the disciplinary hearing.

On receipt of an appeal against dismissal the Associate Director of Workforce will arrange for a Non–Executive Director to be appointed to be responsible for ensuring that the appeal process is managed in a fair and timely fashion. The Non-Executive Director will determine the appropriate action to be taken and the appropriate membership of the appeal panel.

The appeal will be heard by a panel consisting of:

* An Executive Director, not previously involved in the case, who will chair the appeal hearing
* The Associate Director of Workforce or an alternative senior Human Resources professional, not previously involved in case
* If determined appropriate by the appointed Non-Executive Director, a Non-Executive Director

The panel may be supported by an administrator who will be responsible for taking notes.

The appeal panel chair may also appoint a professional advisor to sit with the panel in an advisory capacity to provide technical or specialist advice to assist the panel in making an informed decision at the appeal hearing.

The manager hearing the appeal will confirm the arrangements in writing, and the employee’s right to be accompanied by a representative or by a colleague.

An appeal hearing may uphold the decision to dismiss, commute a dismissal to a warning, and/or redeployment or demotion, or decide that no disciplinary sanction is warranted. The decision will be confirmed in writing and sent to the employee within 7 calendar days, together with the typed notes of the appeal hearing.

The decision from the appeal hearing will be final. There will be no further right of appeal under this policy and the Trust’s *Grievance Procedure* may not be used in a frivolous or vexatious manner to circumvent these arrangements.

**15. MONITORING AND REVIEW**

The following sources of information will be used to assess the overall effectiveness of this policy, the incidence of disciplinary cases in the Trust and the management of formal disciplinary cases:

* Monitoring and analysing the number of disciplinary cases recorded by the Human Resources Department, the actions taken and the final results achieved. Disciplinary cases will be monitored and analysed by all of the protected characteristics (as defined by the Equality Act 2010) for which employee information is available on the Trust’s Electronic Staff Record (ESR).
* Informal and formal feedback from managers and trade union representatives.

Analysis reports will be provided annually, or at more frequent intervals as required, to:

* The Trust Executive Committee
* Divisional Boards
* The Joint Consultative and Negotiating Committee
* The Local Negotiating Committee.

This policy and any associated guidance will be reviewed and updated as and when indicated, based on:

* Internal monitoring information
* Feedback from Trade Union representatives, Trust managers and employees
* Legal changes, external guidance and best practice information.

**16. SUPPORTING GUIDANCE AND TRAINING**

As appropriate, information in support of this policy will be made available to employees and managers and published on the Human Resources section of the Trust’s intranet.

The Human Resources Department will provide an on-going programme of general management training, seeking to develop and support good management practice.

The Human Resources Department will develop annual plans for the guidance and training required during the year to support good management practice and employee well-being, such annual plans taking into consideration both the results of any annual learning needs analysis undertaken by the Human Resources Department and information gained from the monitoring of this procedure.

**17. REFERENCES**

ACAS, *Code of Practice: Disciplinary and Grievance procedures*, April 2009, TSO: Norwich [accessed online] [www.acas.org.uk](http://www.acas.org.uk)

**18. CONTRIBUTORS**

This policy has been written by Sarah Powell, HR Business Partner Winchester and Eastleigh Healthcare NHS Trust, Julie Brown, HR Officer, Winchester and Eastleigh Healthcare NHS Trust and Nigel Evison, General Manager HR Policy and Projects, Basingstoke and North Hampshire NHS Foundation Trust.

The following also contributed to the development of this procedure:

* The Human Resources Business Partners of Basingstoke and North Hampshire NHS Foundation Trust and Winchester and Eastleigh Healthcare NHS Trust
* Staff Side members of the Integration Consultative and Negotiating Committee.

**APPENDIX A**

**EQUALITY IMPACT ASSESSMENT FORM**

**PART 1**

To be completed by the policy owner

**Policy Name: Management of Conduct (Disciplinary) Policy**

|  |  | **Yes/No** | **Comments** |
| --- | --- | --- | --- |
| **1.** | **Could the application of this policy have a detrimental equality impact on individuals with any of the following protected characteristics? (See Note 1)**  |  |  |
|  | Age | No |  |
|  | Disability | No |  |
|  | Gender reassignment | No |  |
|  | Race | No |  |
|  | Religion or belief | No |  |
|  | Sex | No |  |
|  | Sexual orientation  | No |  |
|  | Marriage & civil partnership | No |  |
|  | Pregnancy and maternity | NO |  |
| **2.** | If you have identified any potential detrimental impact, do you consider this to be valid, justifiable and lawful? If so, please explain your reasoning. | N/A |  |
| **3.** | If you have answered ‘no’ to question 2, has the policy been amended to remove or reduce any potential detriment? * If you answer ‘yes’, please summarise the changes made
* If you answer ‘no’. please explain why not
 | N/A |  |
| **4.** | Based on the answers to questions 1 – 3 do you consider that a detailed equality analysis is needed? | N/A |  |

**NAME**: …………………………………………………………………………..

**JOB TITLE**: ……………………………………………………………………….

**DATE:**  ……………………………………………………………………………….

**PART 2**

To be completed by the Trust’s Equality and Diversity Lead

|  |
| --- |
| Brief Summary of potential impact of this policy and whether sufficient consideration has been given to the Equality Duty |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | **Yes/No** | **Comments** |
| **1.** | Is this policy recommended for publication without amendment? |  |  |
| **2.** | Is this policy recommended for publication but with recommended amendments? Please specify. |  |  |
| **3.** | Is this policy not recommended for publication without amendments being made? Please specify? |  |  |
| **4.** | Is it recommended that this policy requires a more detailed equality analysis to be undertaken prior to publication?  |  |  |
| **5.** | Specify with which, if any, individuals and groups you have consulted in reaching your decision. |  |  |

**NAME**: …………………………………………………………………………..

**JOB TITLE**: ……………………………………………………………………….

**DATE:**  ……………………………………………………………………………….

**Note 1**

Under the terms of the Equality Act 2010’s public sector Equality Duty, the Trust has a legal responsibility to think about the following three aims of the Equality Duty as part of our decision making and policy development.

* **Eliminate unlawful discrimination**, harassment and victimisation;
* **Advance equality of opportunity** between people who share a protected characteristic and people who do not share it; and
* **Foster good relations** between people who share a protected characteristic and people who do not share it.

**APPENDIX B**

# STANDARDS OF CONDUCT AND EXAMPLES OF GROSS MISCONDUCT

**INTRODUCTION**

The rules and standards specified below have been adopted by the Trust to give an indication of the standards of conduct and behaviour expected of all employees. Failure to observe these standards, or the commission of an offence or offences or other misconduct may attract disciplinary action.

It is the intention of the Trust’s Management of Conduct (Disciplinary ) Policy that no employee should normally be dismissed unless he/she has been given at least a written warning , except in cases of gross misconduct.

**STANDARDS OF CONDUCT**

Trust employees are expected to combine prompt and efficient service with a concern for the feelings of others, especially patients and members of the public.

If the conduct of an employee falls short of the standard required he/she will first be advised by his/her line manager of his/her shortcomings and be given an opportunity to correct the deficiencies. If the unsatisfactory conduct is repeated he/she may be liable to disciplinary action, including dismissal.

Secondary employment must not in any way hinder, or conflict with, the interests of the employment with the Trust. Any employee who is in doubt as to the advisability of accepting other employment, especially if it is in the same field as his/her NHS employment should read the Trust’s policy on the standards of business conduct (available on the intranet) and speak with the Human Resources Department.

Employees are expected to adhere to the Trust’s policies on confidentiality and professional standards (as applicable). A breach of confidentiality is likely to lead to disciplinary action being taken.

Any employee who unreasonably refuses to carry out the instructions of a manager, supervisor or senior colleague will be liable to disciplinary action.

An employee should inform the Chief Executive or Chief Financial Officer where a conflict of interest exists relating to a contract which the Trust has entered or proposes to enter into. In the case of a married couple, or cohabiting partners, the interest of one is deemed to be the interest of the other.

An employee shall inform Human Resources Department as soon as he/she becomes aware that a candidate for an appointment with the Trust is related to himself/herself. The relationship includes a spouse.

No member of staff may accept gratuities outside the guidelines detailed in the Trust’s Gifts and Gratuities policy. No member of staff is entitled to benefit as a private individual from NHS contracts for the supply of goods and services. The conduct of private business arrangements (particularly for profit) during working time is forbidden, unless written permission is obtained from the Chief Executive that the work is of mutual benefit to the Trust.

Procedure for handling cash or property must be strictly observed at all times (refer to relevant Trust policy).

Staff must appropriately use safety equipment provided for personal protection.

An employee who is charged with a criminal offence must inform his/her manager as soon as possible. The Trust is exempt from the provisions of the Rehabilitation of Offenders Act and all convictions must be disclosed in writing by the employee to their manager (see relevant policy on criminal records checks).

Employees who are employed for all or part of their duty as a driver, or for whom the requirement to drive is essential to the performance of their duties, must inform their manager if charged with a driving offence. Failure to notify the manager will be regarded as a breach of discipline.

Negligence which may threaten health or safety of any person will be investigated under this policy.

**HOURS OF ATTENDANCE**

Constant and regular attendance is a contractual obligation for all employees. Failure to attend punctually or regularly will entail disciplinary action. The distance of an employee’s home from his/her place of work or difficulties of access or domestic circumstances or responsibilities will not normally be accepted as a reason for irregularity of attendance.

Deliberate misuse of time recording systems (e.g. clocking another employee’s card, false start and finish time entries) will lead to disciplinary action.

There are specific provisions for time off for recognised officials of Staff Organisations and Trade Unions.

Abuse of breaks may lead to disciplinary action and sanction.

Staff may not absent themselves from work without notifying their manager or, if unavailable, the senior manager on site.

Inability to attend work because of sickness must be reported in accordance with the Trust’s Management of Attendance Policy.

**EXAMPLES OF GROSS MISCONDUCT**

Any of the following acts or omissions by an employee will be considered serious enough to result in dismissal or summary dismissal regardless of whether or not the employee has a current warning for conduct or performance. It is particularly important that both managers and employees are aware of the types of behaviour included under this heading given the serious consequences should they be breached. This list is not exhaustive or exclusive and does not indicate any limitation upon the Trust’s right to exercise discretion in individual cases.

**1. Theft**

Any instance of theft or unauthorised removal of Trust property or property belonging to an employee, a patient or a member of the public on Trust premises.

**2. Fraud**

Any deliberate attempt to defraud the Trust, its employees, its patients or members of the public while acting on behalf of the Trust, or abusing their role as an employee of the Trust.

Any falsification of qualifications, work permits or visas that are required for employment or which result in financial gain.

Falsification of work performance in order to earn or enhance pay.

**3. Assault / aggressive behaviour**

The use of physical violence and/or menacing physical or extreme aggressive verbal behaviour towards any:

* Patient in the care of the Trust
* Employee, worker or volunteer of the Trust
* Employee or worker of any other organisation with which the Trust has contractual or working relations
* Member of the public on Trust property or being visited by the employee in the course of their work.

**4. Negligence**

Any wilful or deliberate action or failure to act which would cause damage or loss to Trust property or equipment or threaten the health and safety of Trust employees; of workers, volunteers, patients or member of the public.

**5. Clinical negligence.**

Any wilful or deliberate action or failure to act, or failure to report a clinical incident that could threaten the health and safety of patient, employees, workers or members of the public.

**6. Misrepresentation**

The deliberate falsification of records, personal files, application forms, references or other written or printed material in order to produce deceptive or misleading information.

The misrepresenting of an employee’s role or position within the Trust in order to gain financial or other advantage.

**7. Malicious damage**

The deliberate action or negligence resulting in damage to Trust property or equipment, or to anyone else’s property whilst it is on Trust premises or elsewhere where it is being used during their work with or for the Trust.

**8. Misuse of alcohol, prohibited drugs or other substances**

Being unable to carry out the duties of the post in a satisfactory manner or endangering other employees, patients or members of the public due to the influence of alcohol, prohibited drugs or other substances. (The Trust through its Occupational Health policies seeks to advise and assist employees on the risk of alcohol and substance abuse and positive measures to deal with such problems).

**9. Disclosure / breach of confidentiality**

Providing confidential information - deliberately or as the result of negligence - to unauthorised persons, e.g. other employees, patients or members of the public; disclosure of personal passwords to other employees, patients or members of the public; unauthorised access to confidential Trust information; interference with or misuse of Trust computers.

**10. Unacceptable Internet use**

Deliberately accessing internet sites containing pornographic, offensive or obscene material or other actions deemed to be in breach of the Trust’s *E-mail and Internet Policy*.

**11. Health & Safety**

Serious breaches of health and safety regulations endangering other employees, workers, volunteers, patients or members of the public, including the misuse of safety equipment.

**12 Discrimination, harassment or victimisation**

The discrimination, harassment or victimisation of another employee, a worker, volunteer, patient or a member of the public on any grounds, including race, ethnic or national origin, colour or nationality; gender (including marital status); age; disability; sexual orientation; religion or belief.

**13 Breaching / Failure to maintain professional code of conduct**

The failure to comply with and/or maintain their professional code of conduct where an employee’s role and the continuation of their employment requires them to adhere to and maintain statutory registration.

**14 Bribery**

The offering or receiving a bribe to bring about or reward improper performance of a function or activity. Bribes do not need to be monetary and can amount to some other advantage as described in the Bribery Act 2010.

**15. Bringing the Trust into serious disrepute**

Any action or behaviour either within the work environment, or where the employee is representing the Trust or identifiable as being a member of Trust staff, that brings the Trust into serious disrepute.

**16. Serious insubordination**

 Failure to comply with a reasonable management instruction where the consequences could be serious for the Trust, other employees, workers, patients, volunteers or members of the public.

* + - 1. **Any criminal breach** **of Section 128 of the 1959 Mental Health Act (Sexual Offences against Patients).**
			2. **Failure to disclose a criminal conviction**

Before or during employment with the Trust.

* + - 1. **Failure to maintain mandatory professional registration.**
			2. **Breach of Copyright and Patent Rules**

Including the use of unlicensed software, breach copyright or abuse of intellectual property rights, inappropriate use of the internet including downloading of offensive material

**21. Unauthorised Absence**

Any absence from work that has not been agreed by the Line Manager.

## APPENDIX C

**GUIDANCE ON THE RUNNING ORDER FOR INVESTIGATIONS**

**(Subject to change where appropriate)**

1. The Investigating Officer introduces the people in attendance and their roles at the meeting.
2. The Investigating Officer reminds the employee of their right to be accompanied – if no representative is present. This must be recorded in the notes of the meeting.
3. The Investigating Officer outlines the intended procedure for the meeting.
4. The Investigating Officer then asks if there are any initial questions.
5. The Investigating Officer details the allegations made which are then discussed further.
6. Each party has the opportunity to provide relevant information or names of witnesses to support their statement.
7. The meeting ends once all the evidence is gathered
8. Following the meeting with the employee, the Investigating Officer will then continue with the investigation, which may involve one or more of the following:
9. Gathering statements from staff, patients or the public who were witness to the allegations
* Collating documentary evidence such as staff meeting notes, supervision notes, time sheets, accident/incident reports
* Reviewing CCTV footage
* Checking telephone records
* Checking electronic records
* Checking personal records
1. The Investigation Officer will attend any subsequent disciplinary hearing to present their findings.

## APPENDIX D

## GUIDANCE ON THE RUNNING ORDER FOR FORMAL DISCIPLINARY HEARING

(Subject to change where appropriate)

1. The hearing must be convened in accordance with the Trust *Management of Conduct (Disciplinary) Policy.*
2. The hearing must only be held following completion of an appropriate investigation.
3. The employee may elect to be accompanied at the hearing by a representative or by a colleague
4. The allegations should be stated by the Chairing Manager.
5. The Chairing Manager will ask the Investigating Officer to present their case and to call any witnesses, as applicable.
6. The employee or representative/colleague will have the opportunity to ask questions of the Investigating Officer and witnesses.
7. The hearing panel may also question the manager and witnesses.
8. The employee or representative/colleague will be asked to state the response to the case and may call any witnesses already notified to the Chairing Manager.
9. The Investigating Officer will have the opportunity to ask questions of the employee or representative/colleague and all witnesses.
10. The panel will have the opportunity to ask questions of the employee or representative/colleague and all witnesses.
11. The panel will have the final opportunity to ask questions of all parties for clarification.
12. The Chairing Manager will invite the Investigating Officer followed by the employee or representative to summarise their case.
13. Both parties will withdraw while the Panel considers its decision.
14. When the panel has reached a decision in respect of the case before it, they will have the opportunity to request information on any existing warnings on file and to inform their decisions on the most appropriate sanction, if any, to apply.
15. The Chairing Manager will call both parties back and advise them of the decision with an explanation of reasons.
16. Where a sanction has been issued, the employee will be advised of their right of to appeal.
17. The decision will be confirmed in writing by the Chairing Manager.

**APPENDIX E**

## GUIDANCE ON THE RUNNING ORDER FOR APPEAL HEARINGS

(Subject to change where appropriate)

1. The appeal hearing panel shall receive a record of the original hearing and invite statements of case from both parties, including any other information, at least 7 calendar days before the appeal hearing..
2. The appeal hearing chair shall confirm the purpose of the meeting.
3. The appellant or representative will be invited to explain the reason(s) for their appeal.
4. The disciplinary hearing chair may question the appellant.
5. The appeal panel may ask questions of the appellant.
6. The disciplinary hearing chair will then be invited to explain the rationale of the sanction imposed or process followed.
7. The appellant may ask questions of the disciplinary hearing chair.
8. The panel may ask questions of the disciplinary hearing chair.
9. At any time in the process it shall be open to the appeal panel to require evidence to be re-heard first hand even if this requires an adjournment to allow witnesses to be called.
10. Both parties will be given the opportunity to summarise their case with the disciplinary hearing chair having the right to speak last.
11. Both parties shall withdraw while the appeal panel considers its decision.
12. After considering the merits of both submissions the appeal panel shall have the options of quashing, upholding or varying the sanction imposed.