

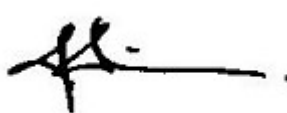
**NHS ISLE OF WIGHT  
CLINICAL COMMISSIONING GROUP**

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**CONCERNS POLICY**

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## PART 1 INTRODUCTION

### 1 INTRODUCTION

- 1.1 This policy outlines actions to be taken by an Isle of Wight CCG ('the CCG') manager or a member of staff when a concern arises.
- 1.2 This policy provides guidance on management or staff action which may lead to formal action being taken under the following:
- Investigation procedure
  - Disciplinary procedure (conduct)
  - Suspension procedure
  - Performance management procedure (capability)
  - Absence management procedure
  - Grievance procedure
  - Harassment and bullying at work procedure
- Please refer to [Figure 1 – Policy Route Guidance Flowchart \(Section 4\)](#).
- 1.3 These procedures have been agreed with staff side colleagues.
- 1.4 This policy does not form part of the employee contract of employment, however outcomes following a formal process may then become relevant to an employee's terms and conditions of employment.
- 1.5 This policy may be amended from time to time. The CCG may also vary any parts of this procedure, including time limits, as appropriate, depending on the circumstances of particular cases.
- 1.6 Template letters/documents for all procedures will be available either on the CCG extranet or through NHS South, Central and West Commissioning Support Unit (CSU) Human Resources (HR).

### 2 SCOPE

- 2.1 This policy is applicable to all employed staff working within the CCG, including clinical leads, Governing Body members and volunteers.

### 3 ROLES AND RESPONSIBILITIES

#### 3.1 Manager responsibilities

- To ensure that they themselves and employees are aware of this policy
- To ensure that the policy and its supporting standards and guidelines are built into local processes and that there is on-going compliance
- To adhere to the timescales within the policy to ensure that matters are dealt with quickly, reasonably and as fairly as possible

- To ensure that the informal stage is used wherever possible prior to any formal action being taken
- To involve the appropriate CSU HR business partner for advice and support when an issue has been raised
- To treat all employees fairly by applying the policy consistently and ensuring that any personal information is kept in complete confidence in line with information governance requirements
- To ensure the NHS Code of Conduct for Managers (October 2002) is adhered to.

### 3.2 **Employee responsibilities**

- To ensure they read, understand and comply with this policy
- To try and deal with matters at the nearest point of origin and where appropriate, in the first instance, approach their line manager in order to discuss the problem informally
- To attend meetings as required
- To maintain confidentiality.

### 3.3 **CSU Human Resources responsibilities**

- To assist managers and employees in the fair and consistent application of the policy
- To ensure that all cases raised are logged, reported and courses of action agreed with the appropriate line manager within the CCG
- To provide advice to employees and managers concerning individual issues, including advice on the range of options or courses of action that may be taken
- To facilitate informal meetings on request
- To provide coaching and training on the application of this policy
- To provide support at formal meetings
- To provide template letters/documents to managers
- To record and monitor cases and report equal opportunities data
- To maintain confidentiality.

#### 4 POLICY ROUTE GUIDANCE FLOWCHART (FIGURE 1)



#### NOTES:

\* Employees should also make themselves familiar with all CCG policies and the support available to them.

\*\* Conduct – the manner in which a person behaves, which is within the employee's control

\*\*\* Capability – the ability to do something, which may not be within the individual's control.



## **PART 2     INVESTIGATION PROCEDURES**

### **1       INTRODUCTION**

- 1.1 This procedure is an aid to ensure effective investigation into a specific conduct, grievance or complaint by the Isle of Wight CCG ('the CCG').
- 1.2 The purpose of an investigation is to be just and equitable and to help promote fairness, order and consistency in the investigation of allegations made by and against staff.
- 1.3 It is recognised that, wherever possible, issues should be addressed informally with the employee. Where this is not possible, an investigation will be invoked when:
  - An allegation has been made against an employee which may constitute misconduct or gross misconduct in accordance with disciplinary action; or
  - An allegation has been made by an employee regarding a grievance or bullying and harassment.

### **2       THE INVESTIGATION PROCESS**

- 2.1 When an incident or complaint gives rise to a concern, the line manager of the staff member involved will escalate the concern to the relevant CCG Officers Group (COG) member to decide whether to investigate the matter further; this will be done with the support of the NHS South, Central and West Commissioning Support Unit (CSU) Human Resources (HR) business partner. The purpose of the investigation will be to establish the facts of the case in hand and to ensure that steps are taken to avoid a recurrence.
- 2.2 When a decision to investigate is made, the line manager will be required to make the member(s) of staff involved aware that an investigation is being undertaken with the support of the CSU HR business partner. COG will then appoint an investigating officer.
- 2.3 Usually the employees' line manager will be appointed as investigating officer, but in some instances it may be deemed appropriate to appoint an independent manager to investigate the allegations, an example would be where allegations have been made by the employee against the line manager.
- 2.4 The investigating officer will be responsible for the investigation stage of this procedure.
- 2.5 If an employee has an objection to the investigating officer assigned, they may raise this with the CSU HR business partner. It may be deemed appropriate to appoint an independent manager to investigate the allegations, as detailed above.
- 2.6 If there are likely to be understanding or language difficulties during meetings, it may be necessary for an interpreter to be made available. The employee will be responsible for making arrangements for this.
- 2.7 In some instances it may be deemed appropriate for a manager of the same sex and/or ethnic origin or other distinction to hear some allegations of harassment made under the Bullying and Harassment Procedure.

- 2.8 The investigating officer will be responsible for contacting the CSU HR business partner for support, advice and training.
- 2.9 The investigating officer will invite the employee to an investigatory meeting by letter which should be hand delivered to the employee, or sent by recorded delivery should it not be possible to give it to them in person. A CSU HR representative will be present at that meeting and the individual will have the right to be accompanied by a trade union representative or workplace colleague. The letter should be given to the employee at least five working days prior to the meeting.
- 2.10 The employee and their representative (if any) should make every effort to attend meetings, including any appeal. If the employee and their representative cannot attend at the time specified, they should let the CCG know immediately and the CCG will seek to agree a reasonable alternative time. The CCG will look to provide a maximum of two alternative dates/times in the event of the employee and/or representative being unable to attend the first date set, as long as it is reasonable and not more than five working days after the date proposed by the CCG, unless mutually agreed between the CCG and employee. If the employee does not attend on the second alternative date, or if the employee fails to attend without good reason, or is persistently unable or unwilling to do so, this may result in the meeting being conducted in the employee's absence and a decision made on the information available. The individual may provide a written statement to the investigating officer holding the meeting.
- 2.11 If the individual is unfit to attend the meeting due to a medical condition, medical advice will be sought from the Occupational Health department to determine when they will be fit to attend. If they are unlikely to be fit to attend in a reasonable time, the individual may provide a written statement to the investigating officer holding the meeting.
- 2.12 While it is acknowledged that employees may find procedural action contributes to feelings of stress, this will not normally be a reason for delaying such action.
- 2.13 If the individual is unable to attend the meeting, summary notes of the meeting will be made, which the employee is entitled to receive a copy of. These notes will not be verbatim notes of the meeting but a summary record of discussions.
- 2.14 If the individual attends the investigation meeting, a transcript will be provided to the employee for agreement and signature.
- 2.15 Following the meeting with the employee, the investigating officer will then carry out an investigation which may involve one or more of the following (this is not an exhaustive list):
- 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 and appraisal records
  - Reviewing CCTV footage
  - Checking telephone records
  - Checking IT and computer records
  - Checking personal records

- 2.16 The investigating officer will take care not to:
- Jump to any conclusions
  - Say or do anything that implies judgement.
- 2.17 The investigating officer will then prepare a report of the investigation.
- 2.18 The purpose of this report is to provide a summary of the allegations and the evidence gathered. The investigating officer is not responsible for deciding the outcome of the investigation but will provide factual summary of evidence only.
- 2.19 The investigating officer is responsible for ensuring that all necessary steps are taken promptly and without any unreasonable delays. The investigating officer would normally be expected to complete the investigation within four weeks.
- 2.20 The investigating officer will submit the completed report to the COG to consider what action should be taken. The following decisions may be taken:
- There is no case to answer
  - The matter can be dealt with informally through discussion with the employee
  - The matter requires formal action
  - For matters identified by the employee, a formal response will be made.
- A copy of the investigation report will be sent to the employee for their records.
- 2.21 Please note that, in conjunction with the Disciplinary Procedure ([Section 3](#)), the CCG reserves the right to hold the hearing on the same day as the investigation meeting. This decision will be made following an adjournment to consider the evidence presented and with the agreement of all parties. Please refer to the Disciplinary Procedures for details on how to proceed.

### **3 STAFF SIDE REPRESENTATIVES OR COMPANIONS**

- 3.1 The employee may, if desired, be accompanied by a trade union official (lay or full time) or a work place colleague. The employee must be informed of this right at the commencement, and all subsequent stages, of this procedure.
- 3.2 If the employee wishes to be accompanied to a meeting, they should confirm the identity of their representative in writing at least two days before any meetings. The CCG reserves the right to apply a 'test of reasonableness' regarding representatives to ensure that they would not prejudice the meeting. Reasonableness may be based on, for example, prior involvement in aspects of the subject or the availability of representative to accompany (e.g. that meetings are not postponed for long periods in order to wait for the representative to be available).

- 3.3 The representative may:
- Address the meeting and confer with the employee during it
  - Present the employee's case
  - Sum up the employee's case
  - Respond on behalf of the employee to any views expressed at the meeting.
- 3.4 The representative may not answer questions on behalf of the employee.
- 3.5 Trade union representatives may be from another CCG or a lay official or full-time officer as long as they are certified as having experience of, or received training in, acting as a workers companion.
- 3.6 Any other companion should always be a member of the CCG and any decision on whether the choice of companion is appropriate should be made in conjunction with a member of the CSU HR team.
- 3.7 Any companion must maintain confidentiality during and after the application of this policy.
- 3.8 Electronic recordings of any meetings conducted under this policy will require the consent of all parties.

## **4 RECORD KEEPING AND CONFIDENTIALITY**

- 4.1 A record of the investigation and the outcome to the investigation will remain on the employee's file in a sealed envelope.
- 4.2 This information will in no way be used against the employee, but is retained for record keeping purposes only in line with the Records Management Policy.
- 4.3 Individuals will be provided with a copy of the notes from their meetings. Where there is a dispute regarding their accuracy, which cannot be resolved, both the original notes and the amended version will be retained on file.
- 4.4 The individual will be provided with a copy of the investigation report. In some circumstances it may be appropriate to withhold some information from the individual, for example in order to protect a witness.
- 4.5 Employees, managers and representatives must ensure confidentiality throughout the procedure, and thereafter when the resolution has been reached. Failure to do this could result in disciplinary action being taken against the person responsible for the information breach.

## **5 SUSPENSION (EXCLUSION) OR TRANSFER**

- 5.1 There may be occasions when the allegations being considered are of a serious nature to warrant the suspension of the employee. Please refer to the Suspension Procedure in [Part 4](#).

## 6 THE ROLE OF COUNTER FRAUD AND THE POLICE

- 6.1 For any allegation where it is suspected that there may be an element of fraud, CSU HR will notify the Local Counter Fraud Service (LCFS) and/or Chief Finance Officer in accordance with the NHS Protect guidance document '*Parallel Criminal and Disciplinary Investigations - Policy Statement*' (April 2013), who may in turn refer the matter to the police.
- 6.2 Where it is identified by LCFS that members of staff may be involved in the commission of an offence or offences, the LCFS will liaise with the CSU HR team at the earliest opportunity. The LCFS will work with the CSU HR team in accordance with the NHS Protect guidance document '*Applying Appropriate Sanctions Consistently*'. Where legally appropriate the LCFS will make relevant evidence gathered available to the CSU HR team for use during internal disciplinary proceedings.
- 6.3 Criminal and disciplinary processes have different purposes, different standards of proof, and are governed by different rules. As such, it would not be appropriate for one investigation to cover both criminal and disciplinary matters.
- 6.4 In conducting an investigation, the LCFS investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances. There is no requirement under the Police and Criminal Evidence Act (PACE) for the investigator to notify the suspect that they are being investigated. At the point that evidence to indicate that an offence has been committed is recorded, the suspect will normally be provided with an opportunity to give an explanation regarding any evidence that has been identified. The investigator will not normally make contact with a suspect prior to this (other than to make arrangements for the interview) to ensure that the investigation process is not prejudiced.
- 6.5 All relevant parties may be required to participate in separate interviews as part of the counter fraud investigation.
- 6.6 The investigation carried out by the Counter Fraud team will run in parallel with the internal HR investigation.
- 6.7 Please refer to the CCG's Local Fraud and Corruption Policy.

## 7 INVESTIGATIONS INTO CHILD OR ADULT PROTECTION

### 7.1 Management of allegations against staff – child protection

- 7.1.1 If it is alleged that an employee of the CCG may have caused harm to a child, it must be responded to and thoroughly addressed. There may be a concern that the member of staff may have:
  - Behaved in a way that has harmed or may have harmed a child
  - Possibly committed a criminal offence against or related to a child
  - Behaved towards a child or children in a way that indicates he or she is unsuitable to work with children.

- 7.1.2 Any allegation should be reported immediately to the designated CCG safeguarding nurse/lead (contact details available on the CCG website at: <http://www.isleofwightccg.nhs.uk/about-us/safeguarding/safeguarding.htm>), and Head of Quality and Patient Safety. The designated professionals will work with CCG Director of Quality and Clinical Services and provide guidance regarding the safeguarding context of the allegation, including reporting to the police where a criminal offence may have been committed and informing the local authority designated officer (LADO) within one working day of the allegation being made.

## **7.2 Management of allegations against staff – adult protection**

- 7.2.1 If an allegation is made against a staff member which states that they may have, or have, harmed an adult, this should be immediately reported to the designated safeguarding nurse/lead, and Head of Quality and Patient Safety. Allegations may be historic and/or current, may be in relation to a staff member's conduct during employment, or in their personal lives which involve the abuse, neglect and/or mistreatment of a vulnerable adult, or involve concerns where a person's conduct towards an adult may also potentially impact on their suitability to work with children.
- 7.2.2 The designated safeguarding nurse/lead will work with Director of Quality and Clinical Services and provide guidance regarding the safeguarding context of the allegation, including reporting to the police where a criminal offence may have been committed and informing the LADO.

## **8 PROCEEDINGS AGAINST A STAFF SIDE REPRESENTATIVE**

- 8.1 In all cases where the manager is investigating an issue against a trade union official the case will be discussed with a branch or full time officer.

## **9 RAISING A GRIEVANCE DURING AN INVESTIGATION PROCESS**

- 9.1 In exceptional circumstances, where an employee raises a grievance at any stage of the investigation, a decision will be made as to whether the investigation proceedings should be suspended until such time as the grievance is resolved.
- 9.2 A decision will be made based on the seriousness of the allegations presented which make it clear that it would be inappropriate for the investigation to continue.
- 9.3 In most cases, the two procedures will run parallel.
- 9.4 It is not sufficient to raise a grievance with regards to the investigation action itself.

## **PART 3      DISCIPLINARY PROCEDURE**

### **1      INTRODUCTION**

- 1.1 The Isle of Wight CCG ('the CCG') expects employees to adhere to the organisation's behaviours and to conduct themselves in a professional manner at all times.
- 1.2 The primary aim of this procedure is to establish fair methods for dealing with disciplinary matters that will be understood and respected, so contributing to sound relationships between the organisation and its employees.

### **2      PRINCIPLES**

- 2.1 Cases of minor misconduct are usually best dealt with informally between the employee and their line manager with the aim of providing training, guidance or advice to improve the employee's conduct and so avoid the need for formal steps. Any such discussion will not form part of the Disciplinary Procedure however where appropriate, it may be useful to confirm in writing what has been decided.
- 2.2 If an informal approach has been tried previously and has not brought about improvement, formal action may need to be taken.
- 2.3 Any case which appears to warrant formal action will be dealt with, usually, by the line manager in the first instance.
- 2.4 If disciplinary action is considered for an accredited trade union representative, agreement should be sought with the individual to discuss the matter with a more senior trade union representative or full time trade union official.
- 2.5 Any line manager who has a concern and feels that the appropriate action would be to use the Disciplinary Procedure, should in the first instance begin by raising their concern with their CCG Officers Group (COG) member. Where necessary, especially where there may be other or complicating factors, the manager taking charge of the disciplinary procedure may be supported by, or commission, an independent investigating officer. The manager taking charge of the disciplinary will also be supported throughout the process by a NHS South, Central and West Commissioning Support Unit (CSU) Human Resources (HR) business partner with regard to guidance, training and any other action pertinent to the case.

### **3      DISCIPLINARY PROCESS**

#### **3.1      Investigation**

- 3.1.1 Before any disciplinary hearing is arranged, an investigation is required beforehand, even if an employee has admitted to misconduct. Please refer to [Part 2](#) of this policy.
- 3.1.2 It may be appropriate to suspend an employee whilst the investigation is taking place. Please refer to [Part 4](#) of this policy.

## 3.2 Formal procedure

- 3.2.1 If it is decided that there is a disciplinary case to answer, the employee will be required to attend a disciplinary hearing. The CCG will write to them:
- Setting out sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at a disciplinary hearing
  - If appropriate, enclosing copies of any written evidence, which may include any witness statements (except where a witness's identity is to be kept confidential, in which case the organisation will give as much information as possible while maintaining confidentiality)
  - To ask the employee to provide details of any witnesses they wish to call
  - Inviting them to attend a disciplinary hearing to discuss the matter, giving details of the time, date and venue for the hearing; and
  - Advising of the right to be accompanied by a workplace colleague or appropriate trade union representative at the hearing.
- 3.2.2 The disciplinary hearing should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case.
- 3.2.3 The employee and their representative (if any) should make every effort to attend meetings, including any appeal. If the employee and their representative cannot attend at the time specified, they should let the CCG know immediately and the CCG will seek to agree a reasonable alternative time. The CCG will look to provide a maximum of two alternative dates/times in the event of the employee and/or representative being unable to attend the first date set, as long as it is reasonable and not more than five working days after the date proposed by the CCG, unless mutually agreed between the CCG and employee. If the employee does not attend on the second alternative date, or if the employee fails to attend without good reason, or is persistently unable or unwilling to do so, this may result in the meeting being conducted in the employee's absence and a decision made on the information available. The individual will be able to submit a written statement to be considered by the hearing panel.
- 3.2.4 If the individual is unfit to attend the meeting due to a medical condition, medical advice will be sought from the Occupational Health team to determine when they will be fit to attend. If they are unlikely to be fit to attend in a reasonable time, a decision will be made to proceed with the disciplinary hearing in their absence. In these circumstances the individual will be able to submit a written statement to be considered by the hearing panel.
- 3.2.5 While it is acknowledged that employees may find procedural action contributes to feelings of stress, this will not normally be a reason for delaying such action.
- 3.2.6 At all formal stages of this procedure, employees have the right to be accompanied by a trade union representative or work colleague (refer to [Part 2, section 3](#)).
- 3.2.7 It is the responsibility of the parties concerned to arrange for the attendance of their witnesses. In the case of witnesses who are employees of the CCG, time off work with pay will be granted for them to attend. Witnesses will only be present at the hearing whilst giving evidence.



- 3.2.8 At the disciplinary hearing, the panel will consist of the CCG disciplining manager who will act as chair, a CSU HR representative and professional advisor if applicable.
- 3.2.9 The investigating officer will be required to present their case to the disciplinary hearing panel.
- 3.2.10 Please refer to [Appendix A](#) –‘Proceedings of a Formal Disciplinary Hearing’.
- 3.2.11 The chair (as above) of the hearing will decide whether or not disciplinary or any other action is justified and will inform the employee of the decision at the conclusion of the disciplinary meeting or afterwards in writing if further investigation is required.
- 3.2.12 The outcome of the hearing should be confirmed to the employee in writing, usually within seven days of the hearing, which includes notification of their right to appeal and to whom such appeal should be addressed.

### 3.3 **Disciplinary Action**

- 3.3.1 Where it is considered that disciplinary action is necessary, the usual penalties are set out below. Any warning should contain the details set out below.

#### **First written warning**

- 3.3.2 If there is a failure to meet the CCG’s required standards or a further incident of misconduct occurs, the employee should be given a first written warning.
- 3.3.3 A note of the first written warning will be made on the employee’s personnel file, but will normally be disregarded for disciplinary purposes after a period of 12 months. This note will also explain the change in behaviour required and the consequences should these fail to be achieved.

#### **Final written warning**

- 3.3.4 If the employee’s misconduct continues or is repeated, or if the misconduct is sufficiently serious, but not serious enough to justify dismissal, a final written warning will normally be given.
- 3.3.5 A note of the final written warning will be made on the employee’s personnel file, but will normally be disregarded for disciplinary purposes after a period of 18 months. This note will also explain the change in behaviour required and the consequences should these fail to be achieved.

#### **Content of warnings**

- 3.3.6 Warnings will set out:
- The nature of the misconduct
  - The change in behaviour or improvement in performance required (with timescale)
  - How long the warning will remain current

- The consequences of further misconduct within the set period following a warning (for example, that it may result in a further warning/final written warning or, if the penalty given is a final written warning, that it may result in dismissal or some other penalty, such as demotion or loss of seniority); and
- Right of appeal.

### **Dismissal**

- 3.3.7 If either the employee's conduct remains unsatisfactory or there is further serious misconduct before any warning is disregarded or if they are found to have committed gross misconduct or gross incompetence, dismissal will normally result. Gross misconduct or gross incompetence will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). Some examples of gross misconduct are given in section 4.2 below. Employees contract of employment may include further examples of situations in which employees may be summarily dismissed.
- 3.3.8 A decision to dismiss should only be taken by a senior officer who has the authority to do so. This will usually be vested in COG member or equivalent. As soon as practicably possible, the employee will be provided with written notice setting out:
- (a) The reasons for dismissal
  - (b) The date on which their employment contract will end
  - (c) The appropriate period of notice; and
  - (d) Their right of appeal.

### **Alternatives to dismissal**

- 3.3.9 In some cases, the organisation may at its discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning. Examples include, but are not limited to:
- Demotion
  - Transfer
  - Loss of seniority
  - Reduction in pay; or
  - Loss of future pay or bonus.

### **Professional registration**

- 3.3.10 gistration is a requirement of certain NHS employment, and where employees fail to renew their registration, disciplinary action, including dismissal, may be considered. The onus is on the employee to review their registration, which should be recorded by the employer. Mitigating circumstances regarding the reason for non-renewal should always be considered. For further information, please refer to the Recruitment and Exit Procedure.
- 3.3.11 all cases involving dismissal of professional staff, the CCG will inform the relevant professional body. It will be for the professional body to consider if further action is required.
- 3.3.12 Where disciplinary action by a professional body results in a member of staff's name being erased by the appropriate professional register, then this will provide sufficient reason for termination of his/her contract, irrespective of any previous disciplinary action or decision

taken by the CCG. In addition any disciplinary action taken by the CCG may result in the professional body being informed.

### 3.4 Appeal process

3.4.1 If the employee feels that a decision about action under this procedure is wrong or unjust they should appeal in writing, stating their full grounds of appeal, to the disciplining manager (e.g. COG) within one week of the date on which they were informed in writing of the decision.

3.4.2 They must stipulate their full grounds of appeal in writing, which should be one or more of the following:

- New evidence that was not previously obtainable
- Failure to follow the procedure
- The level of sanction received.

It is not sufficient merely to disagree with the decision made.

3.4.3 If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if their appeal is successful they will be reinstated with no loss of continuity or pay.

3.4.4 If they raise any new matters in their appeal, the CCG may need to carry out further investigations. If any new information comes to light the CCG will provide the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing.

3.4.5 The employee will be given written notice of the date, time and place of the appeal hearing. The appeal hearing will be held as soon as reasonably practicable, but the employee will be given a reasonable amount of time to prepare their case.

3.4.6 At all formal stages of this procedure, employees have the right to be accompanied by a trade union representative or work colleague (refer to [Part 2, section 3](#)).

3.4.7 The appeal hearing will normally take the form of a review of the formal stage and not a complete re-hearing.

3.4.8 Where possible, the appeal hearing will be conducted by another manager at a more senior level, this will be a senior officer within the organisation or the chief officer, and who has not been previously involved in the case. A member of the CSU HR team will also be present, and if appropriate with the presence of a lay member of the organisation. The employee may bring a trade union representative or a workplace colleague with them to the appeal hearing.

3.4.9 A hearing may be adjourned if the CCG needs to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

3.4.10 Following the appeal hearing the CCG may:

- Confirm the original decision
- Revoke the original decision or
- Substitute a different penalty.

3.4.11 The CCG will inform the employee in writing of the final decision as soon as possible, usually within seven days of the appeal hearing. Where possible the CCG will also explain this in person. There will be no further right of appeal.

## **4 MISCONDUCT EXAMPLES**

4.1 The following are examples of actions which constitute misconduct (this list is not exhaustive):

- Poor timekeeping
- Inappropriate attitude
- Smoking on NHS premises
- Health and safety issues.

4.2 The following are examples of actions which constitute gross misconduct and are likely to lead to summary dismissal (this list is not exhaustive):

- Refusal to carry out reasonable instructions from a superior or serious insubordination
- Theft, either from the CCG, its employees, clients, customers or agents (including the unauthorised possession or use of any of the CCG's goods, materials, or products)
- Fraud: any deliberate falsification of records or any deliberate attempt to defraud the CCG, fellow employees, clients, customers or agents. Fraud can include falsification of time sheets, travel claims, self-certification forms and obtaining employment by deception. This may also include falsely claiming sick pay or engaging in outside employment during hours contracted to work for the CCG
- Failure to comply with the provisions of the CCG's financial procedures (incurring expenditure on behalf of the CCG in excess of delegated authority) or being in breach of any guidelines on business conduct, guidance on conflict of interest, trading rules or other important CCG rules, policies or procedures
- Regulatory compliance: failure to comply with rules or regulatory requirements established by any regulatory body to which the CCG is subject to, or other conduct which causes the CCG to be in breach of its regulatory responsibilities
- Violence: participating in any fighting or violence involving any fellow employee or any other person which takes place on the CCG's premises, or those of any associated CCG, or while conducting CCG business
- Bullying, harassment or discrimination, racial and sexual harassment or harassment on the grounds of disability, sexual orientation, religion or belief, victimisation and bullying of staff or members of the public
- Reckless behaviour: an act of recklessness or incompetence sufficiently severe to break down trust and confidence in the employee's ability to undertake their job

- Malicious damage, deliberate damage to or unauthorised removal of the CCG's property or to the property of fellow employees, clients, customers or contractors
- Being unfit for duty through intoxication on the CCG's premises or those of clients, customers or agents; or the bringing of intoxicants or illegal drugs onto the CCG's premises at any time; or being asleep on duty
- Gross carelessness, incompetence or negligence, including any action or failure to act which threatens the health and safety of any fellow employee or member of the public including any disregard of safety rules which jeopardises the safety of those on the CCG's premises
- Bringing the CCG into serious disrepute through grossly unprofessional or unbecoming behaviour or other serious action likely to bring the CCG into disrepute. This may include inappropriate use of social media
- Breach of confidence; disclosure or misuse of confidential information or data about the CCG, other CCGs in the sector, patients or staff
- Corporate compliance: failure to comply with the provisions of the CCG's Health and Safety Policy, Whistleblowing Policy or Equality and Diversity Policy
- Misuse of equipment: obtaining unauthorised access to, making unauthorised use of or making unauthorised amendments to information stored on computers, computer software or computer hardware or any failure to comply with the CCG's email, internet and telephone use guidelines, confidentiality / data protection policy; or introduction of unauthorised third party computer software into the working environment
- Failure to disclose allegations relating to their own misconduct.

4.3 A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if the CCG consider that it is relevant to the employee's employment. Consideration will be given to what effect the investigation, charge or conviction has on the employee's suitability for the job and their relationship with the CCG, colleagues and patient/public. If the employee's conduct is the subject of a criminal investigation, charge or conviction, the CCG will investigate the facts before deciding whether to take formal disciplinary action. The CCG will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where an employee is taking part in a criminal investigation (e.g. as a witness, rather than the subject of), no disciplinary action will be taken. Where the employee is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, the CCG may have to take a decision based on the available evidence. Where an employee is exonerated or the criminal investigation/charges are subsequently dropped any action that was taken (e.g. suspension) will be reviewed and revised accordingly.

## **PART 4      SUSPENSION PROCEDURE**

### **1      INTRODUCTION**

- 1.1 This procedure aims to assist managers who consider it necessary to suspend an employee in order that an act of gross misconduct may be investigated. Suspension is considered in cases of misconduct when an employee may have been negligent, careless, or has potentially committed a wilful act that results in the breach of contract/disciplinary rules and potentially puts themselves, patients or other employees at risk.
- 1.2 Managers and employees should remain aware that the suspension does not constitute a disciplinary action. It should not be used by managers as a punitive measure. The overall purpose of suspending an employee on full pay will be to complete an investigation without compromise or risk to either the employee or the Isle of Wight CCG ('the CCG').

### **2      PRINCIPLES**

- 2.1 Suspension of staff should not be carried out without due consideration. A member of staff should be suspended only if alternative courses of action would put any of the following in jeopardy:
- Clients or colleague's well-being or safety
  - The implicated staff member's well-being or safety
  - Other staff member's well-being or safety
  - The integrity of witnesses
  - The security of the CCG's financial or physical resources
  - The CCG's reputation.
- 2.2 In addition, in all but exceptional cases, staff members must have been implicated in or accused of:
- An act of gross misconduct and/or
  - An act of gross incompetence or negligence.

### **3      ALTERNATIVE ACTION**

- 3.1 Suspension should only be used for reasons stated above and to give the CCG an opportunity to determine the most appropriate course of action. As such, alternative action as listed in sections 3.2 - 3.5 below should be taken wherever possible.

#### **3.2      Restricted Duties**

- 3.2.1 If an employee has been implicated in misconduct or incompetence connected with a particular part of their duties but it is still possible to usefully employ them, they may continue to be employed as usual, except with explicitly restricted duties until the findings of an investigation or hearing are known. Pay will not be affected.

### **3.3 Transfer of Workplace**

- 3.3.1 If it is possible to temporarily resolve an issue by transferring the employee to an alternative workplace then this should take place. The employee should be encouraged to transfer with due consideration given to travel arrangements and so on.

### **3.4 Close Supervision**

- 3.4.1 Closer supervision of employee, for example by ensuring they do not have access to resources belonging to the CCG, can avoid suspension until appropriate action can take place.

### **3.5 No Action**

- 3.5.1 Where a risk can reasonably be managed or reduced by taking no action until the matter is resolved or an investigation/disciplinary hearing takes place, then suspension may not be necessary.

## **4 SUSPENSION PROCESS**

### **4.1 Initial Discussion and Confirmation**

- 4.1 Authority to suspend an employee rests with the nominated COG member with authority of the chief officer. Exceptionally, however, in the absence and unavailability of managers at that level, the most senior manager available at the time may suspend an employee. Suspension will always be confirmed in writing as soon as practicable - normally on the next working day - by the authorised manager.
- 4.2 Only where it is practicable, an employee may be accompanied at an interview where suspension is being contemplated. The decision to suspend cannot be delayed in order for the employee to arrange to be accompanied. The employee has the right to be accompanied at any subsequent discussion and review.
- 4.3 At the interview where suspension is considered necessary and in the confirmation letter the following points should be included:
- Why suspension is necessary and its likely duration
  - The communication methods in place between the employee and the manager, including the named point of contact for the employee during the suspension period
  - That suspension is not a punitive measure
  - That the employee should not visit the CCG's premises or contact any of its employees regarding work-related issues
  - To maintain strict confidentiality at all times
  - To be available to the CCG throughout the period of suspension, either for duties or meetings
  - Not to work for any other employer whilst suspended
  - That payment will continue
  - The support mechanisms available to the staff member during the suspension period, such as occupational health, trade union, counselling services
  - If they should fall ill during the suspension period, the appropriate policy for managing the absence will be applied.

## **5 SICKNESS ABSENCE**

- 5.1 Employees who report sickness absence whilst suspended from duty will be required to comply with the CCG's Absence Management Procedure (section 6). For recording purposes they will be regarded as being on sick leave. If the sickness absence ends before the investigation/formal hearing is complete or where the risk remains, the suspension will be resumed. However, the terms of the suspension will still remain in place e.g. contact with other staff and the absence managed in line with the CCG's Absence Management Procedure. If an employee is signed off sick whilst on suspension, advice should be sought from the CSU HR business partner.

## **6 COMMUNICATIONS**

- 6.1 A suspended employee is expected to be available to attend further meetings or take part in the investigation during normal working hours unless any other arrangement has been agreed at the time of suspension (for example, honouring a holiday commitment).
- 6.2 During a period of suspension an employee will be asked to stay away from the place of work and may only visit CCG premises by arrangement with their manager. Such permission shall not be unreasonably withheld or delayed, and in particular where the purpose of the visit is to meet with the suspended employee's representative or to investigate the allegations.
- 6.3 During a period of suspension, and in order to maintain confidentiality and prevent harm to the investigation, the employee is required not to communicate with colleagues about work-related matters, and in particular not to discuss the investigation with them. However, in order to avoid feelings of isolation experienced by the suspended employee, the line manager will arrange weekly contact with the employee. If contact by the manager would harm the investigation process, an appropriate manager will be designated to maintain communication.

## **7 DURATION**

- 7.1 The maximum duration of the suspension period is eight weeks, other than as a result of exceptional circumstances. Such circumstances could include sickness of an employee or witness, and/or a need to obtain information/advice from a third party. The CCG has a duty to commence investigation procedures as promptly as possible, following the suspension taking place.

## **8 REVIEWS**

- 8.1 The suspension will continue until a decision has been made on the action to be taken concerning the allegation. If necessary a formal review of the suspension will take place after two weeks and thereafter at periods of no longer than two weeks, and the member of staff informed of the outcome of the review.



## 9 CONCLUSION

- 9.1 Once the investigations are complete the employee should be sent an Employment Declaration to be completed and either return to normal duties, without any adverse record on their personal file, or, if the allegations are confirmed, a formal procedure will apply.

## PART 5 PERFORMANCE MANAGEMENT PROCEDURE

### 1 INTRODUCTION

- 1.1 The primary aim of this procedure is to provide a framework where employees are clear about expectations, the process that is to be followed to ensure managers can work with employees to maintain excellent performance standards and to encourage improvement where necessary.
- 1.2 The Isle of Wight CCG ('the CCG') will ensure that concerns about performance are dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to work through the area(s) they need to improve in a supportive and objective way, in advance of any formal action being taken. Where formal action does need to be taken, meetings will be conducted fairly and employees will have the opportunity to comment throughout the process. Staff carrying out performance management will be adequately trained in this and associated procedures prior to carrying out any performance management.
- 1.3 This procedure does not form part of the employee contract of employment and it may be amended from time to time. The CCG may also vary any parts of this procedure, including any time limits, depending on the circumstances of particular cases.
- 1.4 This procedure is used to deal with poor performance. It does not apply to cases involving genuine sickness absence or misconduct. In those cases reference should be made to the Absence Management Procedure (see [Part 6](#)) or Disciplinary Procedure (see [Part 3](#)).
- 1.5 Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements, including changing the employee's duties or providing additional equipment or training. Adjustments to this procedure may be considered to take account of disability.
- 1.6 The CCG's aim is to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this performance procedure.
- 1.7 The employee will normally be told the names of any witnesses whose evidence is relevant to the employee's performance hearing, unless the CCG believe that a witness's identity should remain confidential.

### 2 PROCESS

#### 2.1 Informal action

- 2.1.1 In the first instance, performance issues should normally be dealt with informally between the line manager and the employee as part of day-to-day management. Where appropriate, a note of any such informal discussions may be placed on the employee's personnel file and will only be considered as part of any future performance meetings. During informal

discussions, if there is direct relevance to the specific issue being raised, the line manager should:

- Clarify the required standards
- Identify areas of concern
- Establish the likely causes of poor performance and identify any training needs or supportive measures needed; and/or
- Set targets and objectives for improvement and a time-scale for review.

2.1.2 The formal procedure should be used for more serious cases, or in any case where an earlier informal discussion has not resulted in a satisfactory improvement.

2.1.3 Employees will not normally be dismissed for performance reasons without previous warnings. However, in serious cases of gross negligence, dismissal without previous warnings may be appropriate.

2.1.4 If the CCG have concerns about the employee's performance, an assessment will be undertaken to decide if there are grounds for taking formal action under this procedure. The extent of the assessment will depend on the circumstances but may involve reviewing the employee's personnel file including any appraisal records, gathering any relevant documents, monitoring the employee's work, reviewing established support mechanisms and, if appropriate, interviewing the employee and/or other individuals confidentially regarding the employee's work.

2.1.5 If an employee has concerns regarding their line manager's performance, the employee should discuss this with their line manager's manager in the first instance.

## 2.2 **Formal action**

### **Standard Procedure for Formal Performance Meetings**

2.2.1 The meeting will normally be held by the employee's line manager, supported by a CSU (HR) representative.

2.2.2 An employee has the right to be accompanied by a trade union representative or workplace colleague (please refer to [Part 2, section 3](#)).

2.2.3 Relevant witnesses may be asked to attend the meeting. It is the responsibility of the parties concerned to arrange for the attendance of their witnesses, including external witnesses. In the case of witnesses who are employees of the CCG, time off work with pay will be granted for them to attend. Witnesses will only be present at the hearing whilst giving evidence.

2.2.4 The employee will be given the opportunity to respond to any information given by a witness. However, they will not normally be permitted to 'cross-examine' witnesses unless, in exceptional circumstances, the CCG decide that a fair process could not be conducted otherwise.

2.2.5 The employee and their representative (if any) should make every effort to attend meetings, including any appeal. If the employee and their representative cannot attend at the time specified, they should let the CCG know immediately and the CCG will seek to agree a reasonable alternative time. The CCG will look to provide a maximum of two alternative dates/times in the event of the employee and/or representative being unable to attend the first date set, as long as it is reasonable and not more than five working days after the date

proposed by the CCG, unless mutually agreed between the CCG and employee. If the employee does not attend on the second alternative date, or if the employee fails to attend without good reason, or is persistently unable or unwilling to do so, this may result in the meeting being conducted in the employee's absence and a decision made on the information available. The individual may provide a written statement to the manager holding the meeting.

- 2.2.6 If the individual is unfit to attend the meeting due to a medical condition, medical advice will be sought from the Occupational Health team to determine when they will be fit to attend. If they are unlikely to be fit to attend in a reasonable time, the individual may provide a written statement to the manager holding the meeting.
- 2.2.7 While it is acknowledged that employees may find procedural action contributes to feelings of stress, this will not normally be a reason for delaying such action.
- 2.2.8 The aims of a performance meeting will usually include:
- Setting out the required standards and behaviours that the CCG believe the employee may have failed to meet, and going through any relevant evidence that has been gathered
  - Allowing the employee to ask questions, present evidence, call witnesses, respond to evidence and make representations
  - Establish the likely causes of poor performance including any reasons why any measures taken or support provided so far have not led to the required improvement
  - Identify whether there are further measures, such as additional training, supervision, coaching, mentoring or other supportive measures which may improve performance
  - Where appropriate, discussing targets for improvement, set SMART objectives, and a time-scale for review
  - If the performance has been sufficiently poor, for example previous objectives have not been met, even with supportive measures in place, dismissal may be a possibility. The CCG would be seeking at this meeting to establish whether there is any likelihood of a significant improvement being made within a reasonable time (e.g. one to three months) and whether there is any practical alternative to dismissal, such as redeployment, based on skills and abilities
  - The consequences of failing to improve within the review period or of further unsatisfactory performance.
- 2.2.9 A meeting may be adjourned if the CCG need to gather any further information or give consideration to matters discussed at the meeting. The employee will be given a reasonable opportunity to consider any new information obtained before the meeting is reconvened.
- 2.2.10 e CCG will inform the employee in writing of our decision and our reasons for it, usually within one week of the performance meeting. Where possible the CCG will also explain this information to them in person.
- 2.2.11 e period for review will normally be set at one month from the date of the previous meeting. This review date may be brought forward if there is a substantial deterioration in performance.

### **Stage 1 Performance Meeting**

2.2.12 the CCG consider that there are grounds for taking formal action over alleged poor performance, the employee will be required to attend a Stage 1 performance meeting. The meeting will be arranged in accordance with [sections 2.2.1 – 2.2.11 above](#). The CCG will notify them in writing of concerns over their performance, the reasons for those concerns, and the likely outcome if the CCG decide after the meeting that the employee's performance has been unsatisfactory. The CCG will also include the following where appropriate:

- A summary of relevant information gathered so far, as part of any assessment
- A copy of any relevant documents which will be used at the performance meeting
- A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case the CCG will give as much information as possible whilst maintaining confidentiality
- To ask the employee to provide details of any witnesses they wish to call
- An outline action plan and objective setting criteria (SMART objectives) to be used during or following the meeting
- The CCG will give the employee written notice of the date, time and place of the performance meeting. The meeting will be held as soon as reasonably practicable, but the employee will be given a reasonable amount of time to prepare their response based on the information the CCG have been given.

#### **Stage 1 Performance Review Meeting: First Written Warning**

2.2.13 the end of the monitoring period a Stage 1 performance review meeting will be arranged in accordance with [sections 2.2.1 - 2.2.11 above](#). Possible outcomes include:

- If the manager is satisfied with the employee's performance, no further formal action will be taken and they will revert to informal monitoring. However if performance returns to unsatisfactory levels within six months the procedure will revert to formal stages at the last level reached
- If the manager feels that there has been some improvement or progress against objectives but not sufficient to meet the required performance standards, the review period may be extended, usually by one more month
- If it is decided that the employee's performance is unsatisfactory, a **first written warning** will be issued, setting out:
  - The areas which have not met the required performance standards
  - Targets for improvement
  - Any support measures, such as additional training, coaching, mentoring or supervision, which will be taken with a view to improving performance
  - A period for review
  - The consequences of failing to improve within the review period, or of further unsatisfactory performance; and
  - Their right to appeal against the sanction (see [Part 3, section 3.4](#)).

2.2.14 e written warning will normally remain active for 12 months from the end of the review period.

2.2.15 fter the active period, the warning will be disregarded in deciding the outcome of future performance proceedings.

2.2.16 e period for review at Stage 2 will normally be set at one month from the date of the Stage 1 performance review meeting. This review date may be brought forward if there is a substantial deterioration in performance.

## Stage 2 Performance Review Meeting: Final Written Warning

- 2.2.17 the end of the monitoring period a Stage 2 performance review meeting will be arranged, in accordance with [sections 2.2.1 - 2.2.11 above](#). Possible outcomes include:
- If the employee's line manager is satisfied with the employee's performance, no further formal action will be taken and they will revert to informal monitoring. However if performance returns to unsatisfactory levels within six months the procedure will revert to formal stages at the last level reached
  - If the manager feels that there has been some improvement or progress against objectives but not sufficient to meet the required performance standards, the review period may be extended, usually by one more month
  - If it is decided that the employee's performance is unsatisfactory, a **final written warning** will be issued, setting out:
    - The areas which have not met the required performance standards
    - Targets for improvement
    - Any support measures, such as additional training, coaching, mentoring or supervision, which will be taken with a view to improving performance
    - A period for review
    - The consequences of failing to improve within the review period, or of further unsatisfactory performance and
    - Their right to appeal against the sanction (see [Part 3, section 3.4](#)).
- 2.2.18 e final written warning will normally remain active for 12 months from the end of the review period.
- 2.2.19 fter the active period, the warning will be disregarded in deciding the outcome of future performance proceedings.
- 2.2.20 e period for review at Stage 3 will normally be set at one month from the date of the Stage 2 performance review meeting. This review date may be brought forward if there is a substantial deterioration in performance.

## Stage 3 Performance Review Meeting: Dismissal or Redeployment

- 2.2.21 the end of the monitoring period a stage 3 performance review meeting will be arranged, in accordance with [sections 2.2.1 - 2.2.11 above](#). Possible outcomes include:
- If the manager is satisfied with the employee's performance, no further formal action will be taken and they will revert to informal monitoring. However if performance returns to unsatisfactory levels within six months the procedure will revert to formal stages at the last level reached
  - If the manager feels that there has been some improvement or progress against objectives but not sufficient to meet the required performance standards, the review period may be extended, usually by one more month
  - If it is decided that the employee's performance is unsatisfactory, the CCG may consider a range of options including:
  - Dismissal
  - Redeployment into another suitable job at the same or a lower grade (no pay protection will apply)

- Extending an active final written warning and setting a further review period (in exceptional cases where the CCG believe a substantial improvement is likely within the review period)
- Giving a final written warning (where no final written warning is currently active).

2.2.22 e decision to dismiss must be by an authorised by the relevant COG member.

2.2.23 e employee will have the right to appeal (see [Part 3, section 3.4](#)).

2.2.24 Dismissal will normally be with full notice or payment in lieu of notice, unless the employee's performance has been so negligent as to amount to gross misconduct, in which case the CCG may dismiss without notice or any pay in lieu.

2.2.25 e CCG may decide to hold a Stage 3 performance meeting if the CCG have reason to believe the employee's performance has been grossly negligent such as to warrant dismissal without the need for a final written warning.

### **3 APPEAL**

3.1 The employee has the right to appeal against action under this procedure (see [Part 3, section 3.4](#)).

## **PART 6      ABSENCE MANAGEMENT PROCEDURE**

### **1      INTRODUCTION**

- 1.1 The Isle of Wight CCG ('the CCG') is committed to the health and well-being of all our employees. It is our policy to support employees who are genuinely sick and unable to come to work. The CCG recognise that sickness impacts on an employee's capability to perform their duties at work, and the CCG aim to address these issues proactively by providing appropriate levels of support to help the employee minimise sickness absence, and to ensure their welfare. The CCG also recognise the impact of repeated short-term absence on our service and, wherever possible, will work with employees to reduce their absence.
- 1.2 Employees are expected to undertake consistent and regular attendance at work and to make every effort to attend work during their normal working hours.
- 1.3 Confidentiality will be maintained throughout the absence management procedure in accordance with the Data Protection Act 1998 and Access to Medical Records Act 1998.

### **2      REPORTING SICKNESS ABSENCE**

- 2.1 If an employee recognises they are unfit to attend work, they must comply with the following procedure. Failure to follow this procedure may result in a breach of contract and therefore be subject to disciplinary procedures.
- 2.2 An employee must contact their line manager, or nominated deputy, by telephone no later than 30 minutes before their scheduled start time on their first day of absence. They should not leave a message with a colleague unless instructed to do so by their manager. If a message is left on their manager's answer phone, this must be followed by a phone call on the same day, so that they can speak directly to their manager. They must state the reason for their absence and the date on which they expect to return to work. During their absence, they are required to keep their manager regularly updated as to their progress; the frequency of this will be agreed on an individual basis but, in the absence of such an agreement, this update should be daily.
- 2.3 Text messaging and/or email are not an acceptable form of communication when reporting non-attendance.
- 2.4 If an employee is deaf (sign language user) they should report sickness to their manager (as set out in 2.2 above) as per the agreed preferred method. This might be by text, email or text phone (sometimes called Minicom).
- 2.5 The manager is responsible for ensuring all sickness absences are reported on the electronic rostering system and entered as a non-effective.
- 2.6 If the employee is unable to return to work on the date expected they must call their manager again as outlined above. It will not be acceptable to send a text message, email or to leave a message unless agreed with the manager in advance (unless the employee is deaf – see 2.4 above).
- 2.7 If an employee becomes unwell whilst at work and needs to leave early then they need to seek permission from their line manager or nominated deputy to go home. If an employee leaves work before completing 50% of their working day then this is counted as a full sick



day. If an employee leaves work after completing 50% of their working day this is recorded locally.

- 2.8 If the employee's absence lasts for more than seven consecutive calendar days then they must get a Statement of Fitness to Work (Fit Note) from their GP from the eighth day of sickness absence. This form must be sent to their manager immediately.
- 2.9 This medical certificate will indicate whether they are 'unfit for work' or 'may be fit for work', in which case the doctor may give advice as to adjustments that would aid their immediate return to work. If they are judged to be fit for work they must notify their manager immediately. Any advice from their GP will be adhered to by their line manager, where the business can support such action. If this is not possible then they may remain on sick leave until the Fit Note expires.
- 2.10 Should they feel well enough to return to work, with or without adjustments being made, prior to the expiry of the certificate, then with the agreement of their manager and GP, and in some cases occupational health, they may be allowed to do so.
- 2.11 If they cannot return to work when their medical certificate expires, they must obtain another medical certificate from their GP and send it to their line manager immediately and/or no later than seven days. Certificates are required to cover the total period of their absence.
- 2.12 A phased return to work may be agreed to support them back into the workplace. The details are usually recommended by occupational health. A phased return will be over a short period of time, gradually increasing to normal duties/hours. A return to work programme may include work at reduced hours, in this instance annual leave will be used for any unworked hours.
- 2.13 Employees should not work for another employer whilst absent on sick leave unless approved by their line manager.
- 2.14 If an individual undertakes unauthorised work for another employer during a period of NHS sickness absence then the matter may be dealt with in accordance with the Disciplinary Procedure (Part 3) and may be reported to the CCG's local counter fraud specialist which may lead to criminal action being taken.
- 2.15 Failure to comply with this absence management procedure will be dealt with under our Disciplinary Procedure (refer to [Part 3](#)). It may lead to disciplinary action being taken and may affect the payment of sick pay.
- 2.16 The CCG reserves the right to suspend an employee, on full pay, on medical grounds pending further medical guidance in relation to their health. This might arise if the CCG are concerned that they may not be fit to be at work or return to work as planned.

### **3 DENTISTS, DOCTORS, OPTICIANS AND OTHER HEALTH APPOINTMENTS**

- 3.1 Whenever possible appointments to visit the dentist, doctor, optician or other health professionals should be outside of normal working hours. Where this is not possible, disruption must be kept to a minimum by arranging the appointment at a time which will result in least impact on the service, and agreed with the line manager.
- 3.2 Recognising there is less flexibility for hospital appointments, employees will be released with pay if these fall at a time when the individual would have normally been working, evidence of appointments may be requested by the line manager.
- 3.3 For any other appointment in working time, staff will be required to use lieu time, make up time or take annual leave by agreement with the line manager.

### **4 SICK PAY SCHEME**

- 4.1 An employee's sick pay entitlement is as follows:
  - During the first year of service – one month's full pay and two month's half pay
  - During the second year of service – two months' full pay and two months' half pay
  - During the third year of service – four months' full pay and four months' half pay
  - During the fourth and fifth years of service – five months' full pay and five months' half pay; and
  - After completing five years of service – six months' full pay and six months' half pay.
- 4.2 These provisions are the maximum that can be paid within any 12 calendar months. Payments are made on a rolling year basis with the days taken sick within the preceding 12 months subtracted from the total available.
- 4.3 In exceptional circumstances, the CCG may consider an extension to these sick pay entitlements.
- 4.4 In the event that the employee's sick pay entitlement has expired, they must continue to submit a copy of their GP medical certificate to their manager. This will prevent the absence being considered unauthorised, and allow them to be supported during their absence.
- 4.5 In the event that an employee receives childcare vouchers and their sick pay entitlement has reduced to a level where their salary is no longer able to fund their childcare vouchers; the cost will continue to be paid by the CCG but will be reclaimed from the employee.

### **5 SICK PAY AND NON WORK RELATED ACCIDENTS**

- 5.1 Should an employee sustain an injury whilst undertaking a sporting activity in a professional capacity or as a result of any secondary employment that results in their sickness absence from work, then sick pay is not normally payable for this period of absence.
- 5.2 An employee who is absent from work as a result of an accident is not entitled to sick pay if loss of earnings are received from a third party. The CCG will normally advance to the employee a sum equivalent to their sick pay entitlement providing the employee repays this amount when damages are received. Once these monies have been received by the CCG, the absence will not be taken into account for the purposes of sick pay allowances.

## 6 SICKNESS ABSENCE AND ANNUAL LEAVE

- 6.1 Annual leave is accrued throughout the period of sickness absence regardless of whether it is paid or unpaid sickness absence. Four weeks annual leave can be carried over automatically into the next leave year.
- 6.2 Staff will not be entitled to an additional day off if sick on a public holiday.
- 6.3 In the event that a member of staff reports absence due to sickness directly prior to or following a period of annual leave (that is, the member of staff is unable to attend work as planned, and has reported their absence due to sickness), they must notify the manager using the local absence reporting procedure. A medical certificate is required to be submitted to the manager from the first day of sickness irrespective of the length of sickness absence and must remain in place until the employee returns to work unless they have notified the CCG that they would be fit to return.
- 6.4 If a certificate is not provided, then this matter must be discussed with the member of staff by the manager upon their return. The manager may consider the period of sickness to be unauthorised absence, and as such will be unpaid and may be subject to disciplinary action. The member of staff should be advised as such and this should be detailed in writing by the manager accordingly.
- 6.5 If sickness results in cancellation of annual leave, the individual may substitute sick leave for annual leave on production of a medical certificate and provided the normal reporting of sickness absence process has been followed.
- 6.6 Employees may take paid annual leave during sickness absence. Requests to do so should be by agreement with the line manager with support from CSU HR and occupational health.

## 7 WORK RELATED ACCIDENTS

- 7.1 When an accident takes place in the work place or on official work business, it is the responsibility of the employee to report the incident/accident as soon as possible to their line manager who will then complete appropriate risk forms and submit these to the risk manager.
- 7.2 In accordance with RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995) legislation, those accidents which result in absence from work continuing over seven calendar days must be reported to the Health and Safety Executive (HSE) by the CCG.
- 7.3 Employees may be able to make a claim under the NHS Injury Benefits scheme either on a temporary or permanent basis. Further information can be obtained at [www.nhsbsa.nhs.uk/injury](http://www.nhsbsa.nhs.uk/injury).

## 8 RETURN TO WORK INTERVIEWS

- 8.1 When the employee returns to work from any sickness absence, their line manager will carry out a return to work interview on the first day of their return to work, or as soon as is practicable. Forms need to be submitted to the relevant team administrator for secure filing.
- 8.2 The purpose of a return to work interview is to allow the manager to understand an employee's illness, and to see if any adjustments need to be made to help in their return. This will include:
- Their state of health (for example, whether they are fully able to work or whether they are in need of temporary adaptations to their duties) and
  - Whether there is anything that needs to be done to avoid a recurrence of the condition causing their absence. If so, the CCG will consider suggested actions or issues in line with operational feasibility.
- 8.3 It may be necessary for a risk assessment to be carried out in order to establish whether any adjustments need to be made in the short term.
- 8.4 An employee's line manager needs to be made aware of any medication that they are taking or have been prescribed that may affect their performance at work.
- 8.5 Their manager will give the employee the opportunity to raise issues that may underlie their sickness (for example bullying or harassment, or issues outside of work) so that proactive action and support can be implemented if needed.
- 8.6 Reasons for absence will only be discussed by managers with third parties on a need to know basis, such as HR or a more senior manager.

## 9 OCCUPATIONAL HEALTH & EMPLOYEE ASSISTANCE PROGRAMME

- 9.1 The CCG may refer an employee to its occupational health provider for an independent medical assessment (IMA). The employee may refer themselves. The aim of an IMA, carried out by an independent occupational health physician, is to fully understand their illness and their functional ability in the context of their job role, so their manager and HR are able to support them appropriately.
- 9.2 Prior to any initial referral, the employee will be asked to sign a consent form, and agree to allow the doctor to provide a medical report to CSU HR. This consent form is valid for a six month period.
- 9.3 The CCG are entitled to make a decision in relation to their health based on the facts available.
- 9.4 A referral to occupational health may be requested by the manager following three episodes of sickness in a six month period or five episodes in a rolling 12 month period, or where the employee has been absent due to illness for longer than three weeks. The CCG will also use the Bradford Index System as trigger points for review of absence of employees and therefore scores above 27 may act as a point for referral. The manager may also refer an

employee if they have concerns about their health or if they show unacceptable patterns of absence, e.g. regular Friday, Monday or following holiday/Bank holiday.

- 9.5 A 24-hour free confidential, anonymous counselling service and advice telephone service is available to all staff to help improve general wellbeing and personal effectiveness. Right Management, Employee Assistance Programme (EAP) is accessed via telephone number: 0800 1116 387. Managers may also access this service to obtain management advice and guidance to provide appropriate support to staff.

## **10 MANAGING SICKNESS ABSENCE PROCESS**

### **10.1 Monitoring sickness absence**

- 10.1.1 Employee's attendance records, including the Bradford Factor<sup>1</sup> scores, will be regularly monitored by their line manager and CSU HR to identify areas of concern and may be dealt with under the Performance Management Procedure (refer to [Part 5](#)).

- 10.1.2 e CSU HR team will monitor employee's absence through the HR Dashboard which shall encompass employee related data collected via absence returns made to CSU HR/payroll.

- 10.1.3 a general rule, the key triggers for action are as follows:

- Absence caused by persistent episodes of short term sickness, normally three episodes in six months or five episodes in a rolling 12 month period; this may also include trends/patterns of absence
- Absence caused by long term sickness, lasting more than three weeks
- Inability to fulfil requirements of the post due to either ill health or disability.

### **10.2 Short term absence procedure**

- 10.2.1 e CCG will monitor absences and will use the Performance Management Procedure if the employee has unacceptable levels of short-term absence (refer to [Part 5](#)).

- 10.2.2 ch case will be reviewed on an individual basis by their manager, with consideration of the disability discrimination provisions of the Equality Act, where appropriate.

### **10.3 Long term absence procedure**

- 10.3.2 e CCG define long term absence as a period of more than three weeks (21 working days).

- 10.3.3 e CCG endeavours to be supportive to employees who have been signed off by their GP for a period of three weeks or more. This procedure is designed to assist on-going communication and to provide for a review of the situation.

- 10.3.4 an employee is absent from work due to a long term illness of more than three consecutive weeks, the CCG will support the employee throughout the absence with the aim to assist them to return to work. Managers will maintain contact with the employee in order that they remain fully informed of their progress and also so that they are made aware of any action the CCG may be able to take to aid their recovery.

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<sup>1</sup> Bradford Factor is the total number of days absent x total incidents of days absent

- 10.3.5 their absence continues for longer than three weeks the CCG may make arrangements for regular informal meetings with the employee at a mutually convenient time and place and/or an occupational health referral (refer to [section 9](#) above). Formal meetings are held by the line manager, supported by a HR representative. The employee will have the right to be accompanied by a trade union representative or workplace colleague (refer to [Part 2, section 3](#)).
- 10.3.6 pending on the nature of the absence, the CCG reserve the right to make an occupational health referral prior to the absence reaching three consecutive weeks, if the CCG believes the referral would aid recovery.
- 10.3.7 the employee has a lease car provided by the CCG, it may be necessary for them to return this so that it can be used during their absence. If they have a work laptop, iPad or mobile phone, it may also be necessary for them to return these.
- 10.3.8 the absence continues, further home visits may be requested, and if the CCG have not already done so, the CCG will ask for the employee's agreement for occupational health to contact their GP.
- 10.3.9 the absence persists, or it appears unlikely that the employee will be able to return to work within a reasonable period of time, it may be necessary to review their ability to continue in their present role. This will include considering whether an alternative position might be available.
- 10.3.10 In cases where redeployment applies, refer to the redeployment procedure within the Organisational Change Policy. In the event that no suitable positions are available, the CCG may consider whether their employment should be terminated.

## 11 DISABILITY EQUALITY DUTY

- 11.1 The disability equality duty within the Equality Act 2010 provides rights for employees to not be discriminated against due to a disability. The provisions of the Act state a person has a disability if they have a physical or mental impairment or the impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities. For the purposes of the Act, these words have the following meanings:
- Substantial: more than minor or trivial
  - Long-term: that the effect of the impairment has lasted or is likely to last for at least twelve months (there are special rules covering recurring or fluctuating conditions)
  - Normal day-to-day activities: include everyday things like eating, washing, walking and going shopping.
- 11.2 People who have had a disability in the past that meet this definition are also protected by the Act. People with HIV, cancer or multiple sclerosis are protected by the Act from the point of diagnosis. People with some visual impairment are automatically deemed to be disabled.
- 11.3 The Act imposes a duty on employers to make reasonable adjustments to enable disabled people to access work, or to be able to continue to work.
- 11.4 To ensure the manager and the CCG comply with the equality duty, discussion between the employee and their manager will take place to identify individual needs and what reasonable

adjustments can be put in place. The support of CSU HR and occupational health or access to work adviser should be sought.

## **12 ILL HEALTH RETIREMENT**

- 12.1 In certain circumstances employees may be eligible for ill-health retirement. Any eligibility is subject to the terms of the NHS Pension Scheme and is subject to the support of occupational health.

## **13 CHILDCARE VOUCHERS**

- 13.1 Childcare vouchers can continue through salary sacrifice while on sickness absence. If the CCG bears the cost during periods of unpaid leave, the individual will have to repay the costs paid by the CCG.

## PART 7 GRIEVANCE PROCEDURE

### 1 INTRODUCTION

- 1.1 However successful the relationship is between employees and the Isle of Wight CCG ('the CCG'), it is possible that from time to time, a problem relating to their employment may arise. When this happens, the CCG encourage open and honest communication between the employee and their manager. This ensures that questions and problems arising in the course of employment can be aired and where possible, resolved quickly and to everyone's satisfaction.
- 1.2 Where matters are not able to be resolved informally, this Grievance Procedure should be followed.
- 1.3 The CCG's aim is to deal with grievances sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or grievance matter. Employees are free to raise grievances without fear of redress or action of any kind being taken against them.
- 1.4 None of the parties present (including witnesses) may make electronic recordings of any meetings conducted under this procedure unless permission is given by all parties involved.
- 1.5 The CCG will take false or vexatious grievances very seriously. The Disciplinary Procedure ([Section 3](#)) will be invoked where it is clear that an employee has made a false, vexatious or malicious claim against the CCG or another employee

### 2 WHAT IS A GRIEVANCE?

- 2.1 For the purposes of this procedure a grievance shall be interpreted as a concern, problem or complaint that an employee raises with their employer. This can include (but not limited to):
  - The nature or range of duties
  - Working practices
  - CCG change
  - Contractual terms and conditions of employment
  - Working environment
  - Management decisions
  - Working relationships
  - The operation of jointly agreed policies / procedures
  - Handling of sickness absence management
  - Appeal against outcome of a harassment investigation.
- 2.2 The following items are specifically excluded from this procedure:
  - Disciplinary / performance management matters
  - Nationally mandated changes and regulations such as:
    - Conditions relating to the NHS Pension Scheme
    - Agenda for Change agreements.



- 2.3 Employees cannot attempt within six months of the completion of an action under the grievance procedure to restart the procedure in respect of the same or similar grievance, unless action decided upon by management to redress that grievance has not been implemented.

## **2.4 Mediation**

- 2.4.1 At any stage in this procedure, the parties to the grievance may request that the matter be referred for mediation. Mediation is likely to be most appropriate in cases involving interpersonal relationships. There may, however, be circumstances in which alternative non-adversarial discussions may be undertaken with the aim of promoting a speedy resolution.
- 2.4.2 Mediation is voluntary and will take place only if all parties agree. It is, however, hoped that employees will recognise the benefits of seeking to resolve issues via mediation and will be amenable to and cooperate with this approach.
- 2.4.3 Qualified mediators can be provided by NHS South, Central and West Commissioning Support Unit (CSU). Requests should be discussed with the CSU CSU Human Resources (HR) business partner.

## **3 GRIEVANCE PROCESS**

### **3.1 Informal procedure**

- 3.1.1 If possible, employees should try to resolve any potential grievance informally with their manager. The manager should make discreet investigations in order to resolve the matter promptly and fairly. Where the grievance is about another employee, that employee will be given the opportunity to answer the grievance and put their side of the case to the manager. If the grievance is with the immediate manager, the employee may raise the grievance with the next level of management or alternatively with CSU HR.
- 3.1.2 If the matter remains unresolved, or if the employee does not wish to raise the matter informally first, the employee should follow the formal part of this Grievance Procedure (section 3.2). Each step and action under the Grievance Procedure should be taken without unreasonable delay.
- 3.1.3 There may be circumstances where the manager views an informal concern as sufficiently serious or far-reaching to require investigation under the formal Grievance Procedure, even if the person raising the concern does not wish the matter to be treated formally. In these circumstances, the matter will be discussed with the person raising the concern, in conjunction with the CSU HR business partner, and they will decide on the appropriate course of action.
- 3.1.4 In some cases, mediation will be offered as a way of resolving issues (please refer to [section 2.4](#)).

## 3.2 Formal procedure

- 3.2.1 If it is not possible to resolve the grievance informally, the employee should raise the matter formally in writing to their line manager setting out the nature of their grievance and the resolution they seek to achieve.
- 3.2.2 If a grievance is raised in line with this policy the status quo will apply until the procedure has been completed or the grievance resolved. The status quo is defined as the working and management arrangements which applied prior to the grievance.
- 3.2.3 A grievance hearing will need to be set up normally within 14 calendar days of receipt of the grievance, unless a longer timescale is mutually agreed.
- 3.2.4 At all formal stages of this procedure, employees have the right to be accompanied by a work colleague or an appropriate trade union representative (refers to [Part 2, section 3](#)).

## 3.3 Investigation

- 3.3.1 If the grievance is about another employee, evidence must be provided by the individual raising the grievance to the investigating officer within five working days of the individual being informed of the appointed investigating officer. An extension to this time frame may be agreed by the investigating officer.
- 3.3.2 Some circumstances will warrant a pre-meeting to hear the grievance which may be followed by an investigation, and subsequently a grievance hearing. In this case, extended time frames will be mutually agreed by both parties.
- 3.3.3 If an investigation is required refer to [Part 2](#) of this policy.

## 3.4 Grievance Hearing Procedure

- 3.4.1 The grievance hearing panel will include the line manager (or other appropriate manager depending on the grievance being raised) or another appropriate person (refer to [Part 3, section 3.2](#)) who will act as chair, and a CSU HR representative.
- 3.4.2 Employees have the right to be accompanied by a work colleague or an appropriate trade union representative (refer to [Part 2, section 3](#)).
- 3.4.3 It is the responsibility of the parties concerned to arrange for the attendance of their witnesses. In the case of witnesses who are employees of the CCG, time off work with pay will be granted for them to attend. Witnesses will only be present at the hearing whilst giving evidence. Please refer to [Appendix B](#) for proceedings of a grievance hearing.
- 3.4.4 The CCG will look to provide a maximum of two alternative dates/times in the event of the employee and/or representative being unable to attend the first date set, as long as it is reasonable and not more than five working days after the date proposed by the CCG, unless mutually agreed between the CCG and employee. If the employee does not attend on the second alternative date, their grievance would normally be treated as withdrawn. If in these

circumstances a pre-hearing investigation has occurred a decision may be made to conclude the grievance based on the available evidence.

### **3.5 Outcome of Grievance**

- 3.5.1 Following the hearing, the panel will decide on what action, if any, to take. This could be immediately after an adjournment of the hearing or be communicated in writing if the outcome takes longer to decide. A decision in writing will normally be given to the employee within a reasonable period after the meeting. Where appropriate, the decision will set out what action the CCG intends to take to resolve the grievance.
- 3.5.2 The employee may, at the discretion of the chair of the panel, be invited to a meeting to discuss the outcome of their grievance.
- 3.5.3 The employee will be notified of their right to appeal against the decision, if the employee is not satisfied with it.
- 3.5.4 If the grievance is found to be malicious, frivolous or vexatious the individual raising the grievance may be subject to disciplinary action.

### **3.6 Appeal**

- 3.6.1 The employee has the right to appeal against action under this procedure (refer to [Part 3, section 3.4](#)).

## **4 COLLECTIVE DISPUTES**

- 4.1 Where a grievance is raised by a group of employees and is not resolved within the informal stages of this procedure, a representative for the group needs to be nominated to state the complaint.
- 4.2 The formal grievance procedure will be followed with the employee's representative involved in the hearing and feeding back to the other employee's involved as appropriate.

## **5 OVERLAPPING GRIEVANCE AND DISCIPLINARY CASES**

- 5.1 If the employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently. This Grievance Procedure should not be used to complain about dismissal or disciplinary action. If the employee is dissatisfied with any disciplinary action, the employee should submit an appeal under that procedure. If their issue relates to performance management or flexible working policy decisions, the employee should follow the procedure set out in the relevant policy.

## **6 EX-EMPLOYEES**

- 6.1** Where an individual has left the CCG but wishes to raise a grievance, a modified procedure will apply. The ex-employee must set out the basis of the grievance in writing within six weeks of leaving the CCG and send it to their line manager. The manager will respond to the grievance in writing (with support from CSU HR) and offer the ex-employee the opportunity to meet.

## PART 8 HARASSMENT AND BULLYING AT WORK PROCEDURE

### 1 INTRODUCTION

- 1.1 The Isle of Wight CCG ('the CCG') is committed to creating a work environment free of harassment and bullying for all employees, where everyone is treated with dignity, respect and protected from harassment, intimidation and other forms of bullying.
- 1.2 The CCG believes that harassment and bullying in any form is completely unacceptable and will not be tolerated. All allegations of bullying and harassment will be investigated and, if appropriate, disciplinary action will be taken.
- 1.3 The CCG will not tolerate victimisation of a person for making the allegations of bullying and harassment in good faith or supporting someone to make such a complaint.
- 1.4 Managers and employees alike should note that the CCG's liability may extend to both "official" and "unofficial" social activities if these are deemed to be an extension of the workplace. The CCG may have a duty of care in respect of such matters and will investigate all complaints of inappropriate or improper conduct whether they are alleged to have occurred in or outside the workplace.
- 1.5 In addition, the CCG will investigate vigorously any allegations of harassment, regardless of whether the matter has been raised formally or informally.

### 2 PRINCIPLES

- 2.1 This procedure is designed to ensure that all complaints of harassment are dealt with objectively, quickly, sensitively, and confidentially.
- 2.2 Each employee of the CCG carries a responsibility for their own behaviour. They should act at all times in accordance with the CCG's statement of values and behaviours (<http://www.isleofwightccg.nhs.uk/about-us/How-we-work/vision-and-values/vision-and-values.htm>). This procedure is not intended to deal with occasional lapses of good manners unless a pattern of behaviour emerges that is perceived to be offensive or intimidating.
- 2.3 All matters relating to any part of this procedure will be treated in strict confidence. Any breach of this confidentiality may render those responsible liable to disciplinary action. However, it must be remembered that legislation requires the accused to be made aware of the allegations against them and the name(s) of those making the allegations, along with witnesses.
- 2.4 Under the Equality Act 2010 employees who raise a complaint of harassment are protected from being victimised. The Act defines victimisation as less favourable treatment by the employer because the employee has done one of the following protected acts:
  - Brought proceedings against the employer because of discrimination or harassment
  - Is giving evidence on behalf of another employee who is claiming discrimination or harassment.

- 2.5 No employee will be victimised for making a complaint of harassment and no manager shall threaten either explicitly or implicitly that an employee's complaint of harassment will be used as a basis for decisions affecting that employee. Such conduct will be treated as a serious disciplinary offence.

### 3 WHAT IS BULLYING AND HARRASSMENT?

- 3.1 Harassment is a form of discrimination defined in the Equality Act 2010 as: *'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual'*. Under the Act the relevant protected characteristics are age, disability, gender reassignment, race, religion or belief, sex (gender) and sexual orientation.
- 3.2 In addition the Equality Act 2010 prohibits harassment based on association with someone with a protected characteristic or perception that someone has a protected characteristic.
- 3.3 The key to distinguishing between what does and does not constitute harassment is that harassment is behaviour that is unwanted by the person to whom it is directed. It is the impact of the conduct and not the intent of the perpetrator that is the determinant. Harassment can be raised by a third party who may have witnessed an incident.
- 3.4 Harassment may be an isolated occurrence or repetitive; it may occur against one or more individuals. Harassment may be, but is not limited to:
- Physical contact: ranging from touching (including of a sexual nature, related to gender re-assignment or sex) to serious assault, gestures, intimidation, and aggressive behaviour
  - Verbal: unwelcome remarks, suggestions and propositions, malicious gossip, jokes and banter, or offensive language
  - Non-verbal: offensive literature or pictures, graffiti and computer imagery, isolation or non-co-operation, and exclusion or isolation from social activities.
- 3.5 Indirect harassment is also defined in law. That is, the harassment is not directed to the person concerned but in their hearing. The legislation also refers to less favourable treatment because an individual has rejected or submitted to the defined conduct.
- 3.6 Bullying can be defined as:  
*'Unacceptable behaviour as perceived by the employee, which subjects the individual or group to unwelcome attention, intimidation, humiliation or ridicule or violation of an individual's dignity. Furthermore, offensive, abusive, or insulting behaviour, abuse of power or unfair sanctions which makes the recipient feel upset, threatened or vulnerable. Deliberately undermining a competent employee by imposing unreasonable workloads or frequent unjustified criticism'*.

## 4 BULLYING AND HARASSMENT PROCESS

- 4.1 Managers are required to act upon any complaint of harassment, whether formal or informal. Failure by a manager to do so will be regarded as misconduct, which if proven, will result in disciplinary action. Details of all such complaints must be notified to CSU HR for recording in compliance with legislation, for example, the Race Relations (Amendment) Act 2000. The Grievance Procedure (refer to [Part 7](#)) should then be applied.
- 4.2 Any employee who wishes to make a complaint of harassment should first discuss this informally with his/her line manager/other appropriate manager/CSU HR, providing they feel able to do so in accordance with the Grievance Procedure (Part 7, section 3.1). Should the issues not be resolved at this stage, or if an employee feels unable to raise the issue informally, then a formal resolution should be sought as outlined in the Grievance Procedure (refer to [Part 7, section 3.2](#)).
- 4.3 Where a complaint of harassment is brought to the attention of management, whether formally or informally, prompt action will be taken to investigate the case (refer to [Part 2](#)). If harassment is established, corrective action will be taken. This will normally include action under the Disciplinary Procedure (refer to [Part 3](#)).
- 4.4 If it is considered that one of the parties concerned in a personal harassment case should be moved from the workplace, then as a matter of principle, the CCG will normally remove the alleged harasser rather than the complainant. However, this will depend on the nature of the complaint and the circumstances at the time as, in some cases, it may be more appropriate to remove the complainant. It should be noted that by moving either party there is no implied guilt, nor will this have any detriment on the investigation.
- 4.5 The CCG recognises the distress and anxiety that such allegations can cause to both the complainant and the alleged harasser. Support is available for both parties from CSU HR and the counselling service (details of which are available from line managers or CSU HR). Enquiries into complaints of harassment will be progressed promptly and objectively, with sensitivity and due respect for the rights of both the complainant and the alleged perpetrator.
- 4.6 If a claim is found to be malicious, frivolous or vexatious the individual raising the claim may be subject to disciplinary action.

## 5 RECORDS

- 5.1 Where the complaint is informal and resolved at this stage, no record will be kept on personal files.
- 5.2 Following formal investigation, where the complaint is not substantiated, no records will be retained.
- 5.3 Where a complaint is substantiated or partially substantiated but does not proceed to disciplinary, a letter confirming the outcome will be retained on the personal file and supporting documentation retained in a separate file for a period of 12 months.

- 4.5 Where the matter proceeds to a disciplinary hearing then the storage of records should be in accordance with section 5 of this part.

## **PART 9            IMPACT, MONITORING AND REVIEW**

### **1            TRAINING IMPLICATIONS**

- 1.1 All Isle of Wight CCG ('the CCG') employees need to be aware of this policy and their responsibilities. This will be achieved by:
- New employees being directed to the policy
  - Line managers will be provided with coaching and training on the application of this policy.

### **2            EQUALITY AND DIVERSITY**

- 2.1 In applying this policy, the CCG will have due regard for the need to eliminate unlawful discrimination, advance equality of opportunity, and foster good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act 2010: age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.
- 2.2 Where English is not the first language of an employee, or there are difficulties in reading this policy, employees should contact their line manager or a senior officer within the CCG, a CSU HR representative or staff representative for advice and guidance.
- 2.3 If there are likely to be understanding or language difficulties during meetings, it may be necessary for an interpreter, colleague or friend to be made available. The employee will be responsible for making arrangements for this, or where appropriate, Access to Communications will be contacted with the support of the relevant NHS South, Central and West Commissioning Support Unit (CSU) HR business partner.
- 2.4 In line with CCG policy, an equality analysis has been completed. It is understood that no employee will receive less favourable treatment on the grounds of disability, age, sex, race, religion or belief, gender reassignment, pregnancy or maternity, marriage or civil partnership, working patterns or trade union membership or non-membership in relation to the application of this policy.

### **3            MONITORING THE EFFECTIVENESS OF THE POLICY**

- 3.1 The effectiveness of this policy will be monitored by the CSU HR team to ensure the correct procedures have been followed and timescales met. Any learning points and trends will be identified by the CSU HR business partners who will make recommendations to the CCG



about changes which need to be made. The application and impact assessment of this policy will be monitored by the CCG's Audit Committee.

- 3.2 Policy monitoring and review will include analysis of the available equality characteristics.

## **4 REVIEW**

- 4.1 This policy may be reviewed at any time at the request of either staff side or the CCG but will be reviewed automatically in the event of new legislation or guidance emerging or annually.

## **APPENDIX A**

### **PROCEEDINGS OF A FORMAL DISCIPLINARY HEARING**

The checklist below is for guidance purposes only, as it is recognised that the chair will need to determine how best to manage any hearing given the individual circumstances of the case. It may be appropriate to undertake meetings off site.

#### **INTRODUCTIONS**

- Welcome attendees.
- Request that all attendees turn off any electronic devices to avoid unnecessary interruptions during the meeting.
- Introduce those present and their roles, (see guidance re: roles/responsibilities); this may include: panel members, any HR member supporting panel, note-taker, management representative, support for management side etc.
- Representation of employee – If accompanied confirm the role of the companion, e.g. that they will be able to address the hearing in order to: put the employee's case forward; sum up the case; respond on the employee's behalf to any view expressed at the hearing; and confer with the employee. However, the representative will not usually answer questions on behalf of the employee, but may do so with the agreement of the panel.
- If not accompanied note that the employee has been advised of their right to be accompanied but has chosen to attend unaccompanied.
- Ask the employee to introduce themselves and any companion they may have with them. Check whether the participants are happy with use of first names.
- Confirm with the employee that they have received the letter notifying them of the hearing and the associated documentation providing advanced disclosure of the case.
- Confirm with the employee that they understand that it is a formal disciplinary hearing which will be conducted in line with the CCG's Disciplinary Procedure. [If appropriate, having first sought advice from HR, subject to previous action/warnings, advise that one potential outcome of the hearing could be dismissal – however in such a case it is essential that delegated authority is provided beforehand].
- Ask that all communications go through the chair during the hearing.

#### **OUTLINE PROCEDURE**

- Advise of the procedure or if appropriate invite a HR representative (if applicable) to outline the procedure.
- Confirm documentation provided – Identifying, if appropriate, any other documentation the panel has at their disposal for reference purposes. Also confirm if the panel received any additional information/evidence from the employee.
- Adjournments - Advise that should any party consider an adjournment necessary requests should be made via the chair. Identify the location of the rooms available to both management and employee.
- Taking of notes – Advise that the note-taker will take summary notes to support the panel's consideration. Should the employee want a summary of these notes these can be provided

on request. Advise that both the employee and their representative would be welcome to make their own notes.

- Respond to any procedural concerns/queries that may arise.

## **RUNNING ORDER**

- The management representatives will be invited to present the allegation(s) against the employee and the evidence upon which this is based, which may include calling witnesses.
- The staff member, their representative if applicable and the panel will be given the opportunity to ask questions of the management representatives and any witnesses, and to query the evidence provided.
- The staff member and their representative are then invited to present their case, which again may rely on witnesses.
- The panel and the management representatives will correspondingly be allowed to ask questions of the employee and any witnesses.
- Both the management representatives and the employee will be asked to provide a brief concluding statement.
- The panel will adjourn to consider the decision.

## **ADJOURNMENT AND DECISION**

- Panel either adjourns or closes the hearing to consider the case.
- If the panel is unable to make a decision as further information/time is required, inform the employee as to when they can expect written notification of the decision (or if further action was deemed necessary, what this would entail).
- When closing the hearing, ensuring that everyone understands what is going to happen.
- Panel makes a decision (see relevant procedure for list of potential outcomes).
- Advise that the outcome of the hearing should be confirmed to the employee in writing, usually within seven days of the hearing (which includes notification of their right to appeal and to whom any such appeal should be addressed).

## **RECORD**

- Record summary of the discussions (including any agreed actions and timescales for improvement etc).
- Ensure that the records are factual, unambiguous and constructive (assume that the staff member may see these).
- Write to employee summarising the outcome of hearing and any next steps.
- Store records securely, as these may be subsequently required within later procedural stages and shared with all relevant parties, including the employee.

## **APPENDIX B**

### **PROCEEDINGS OF A FORMAL GRIEVANCE HEARING**

The checklist below is for guidance purposes only, as it is recognised that the chair will need to determine how best to manage any hearing given the individual circumstances of the case. It may be appropriate to undertake meetings off site.

#### **INTRODUCTIONS**

- Welcome attendees.
- Request that all attendees turn off any electronic devices to avoid unnecessary interruptions during the meeting.
- Introduce those present and their roles, this may include: panel members, HR member supporting the panel, note taker if applicable, etc. If the employee is not accompanied explain that they were offered the right to be accompanied
- Representation of employee – If accompanied confirm the role of the companion, e.g. that they will be able to address the hearing in order to: put the employee's case forward; sum up the case; respond on the employee's behalf to any view expressed at the hearing; and confer with the employee. However, the representative will not usually answer questions on behalf of the employee, but may do so with the agreement of the panel. If not accompanied note that the employee has been advised of their right to be accompanied but has chosen to attend unaccompanied.
- Confirm with the employee that they have received the letter notifying them of the meeting and any associated documentation.
- Confirm with the employee that they understand that it is a formal grievance meeting which will be conducted in line with the relevant CCG Grievance procedure.

#### **OUTLINE PROCEDURE**

- Advise of the procedure or if appropriate invite a HR representative to outline the procedure.
- Confirm documentation provided – Identifying, if appropriate, any other documentation the panel has at their disposal for reference purposes.
- Adjournments - Advise that any party can request an adjournment, via the chair. Identify the location of any separate rooms available to provide the parties with private space during these adjournments.
- Taking of notes – Advise that the note-taker will take summary notes to support the panel's consideration. Should the employee want a summary of these notes these can be provided on request. Advise that both the employee and their representative would be welcome to make their own notes.
- Respond to any procedural concerns/queries that may arise.

## EXPLORE THE ISSUE

- Invite the employee to explain his/her complaint/concern and what remedy/resolution they are seeking (this may be done by their representative if they so wish).
- The panel to seek to gain a full understanding of the case, raising any questions with the employee (and management representative/respondent) as necessary, to clarify any points in relation to the information or evidence submitted or gained via investigation if applicable. NOTE: If applicable and where previously agreed with the chair, witnesses may be called. Also depending upon the circumstances of the case, if applicable, a management representative/respondent will be given an opportunity to respond to each of the points raised by the employee and make representation to the panel.
- Employee (and any respondent) to be provided with the opportunity to sum up their case.

## CLOSE AND CONCLUDE

- After the case(s) have been explained and the main questioning completed, the chair may consider whether to briefly adjourn the meeting to give all the opportunity to review what has been said and consider whether there is anything they wish to clarify or to add in closing remarks to enable the panel to review what they have heard and seek clarification on any issues before bringing the meeting to a close.
- If the panel is unable to make a decision as further information/time is required, inform the employee as to when they can expect written notification of the decision (or if further action was deemed necessary what this would entail)
- When closing the meeting, ensure that everyone understands what is going to happen.
- Depending upon whether the panel has been able to make a decision during any adjournment, explain that the staff member will receive confirmation/ notification of its decision in writing usually within 7 days of the meeting.
- The chair will prepare a report summarising the nature of the grievance, the investigation (where applicable), and the panel's decision, including reasons for this, and any recommendations, and notify the employee in writing as to the outcome of the meeting, usually within 7 days after the meeting.

**NOTE:** Where it is identified that further essential information or clarification is required, the panel may decide to adjourn the meeting to enable further investigation. In such a case, an indication of the timeframe for this should be provided. Once completed the panel should be reconvened.

## RECORD

- Record summary of the discussions, (including any pertinent points, agreed actions, outcomes and recommendations).
- Ensure that the records are factual, unambiguous and constructive (assume that the staff member may see these).
- Write to employee summarising the outcome of meeting and any next steps.
- Store records securely, as these may be subsequently required within later procedural stages and shared with all relevant parties.
- If requested by the employee, a summary of the meeting notes should be provided for their information.