

DISCIPLINARY POLICY AND PROCEDURE PERS 01

Target Audience				
Who should read this policy:	Planned Care CBU	Urgent Care CBU	Specialist Services CBU	Corporate
all employees of Southport and Ormskirk Hospital NHS	x	x	x	x



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Explanation of terms used in this policy

Trade union representative – a representative appointed and accredited by a nationally recognised NHS negotiating body and accredited and recognised by the Trust.

Full-time officer – an official currently employed and accredited by a nationally recognised NHS negotiating body to represent its members. Where such a body does not employ a full-time officer the term also means some other person nominated by that nationally recognised NHS negotiating body.

Exclusion from work – replaces the term exclusion, which can be confused with action taken by a formal regulatory body (such as the General Medical Council or Nursing & Midwifery Council) to exclude a qualified practitioner from the register pending a hearing of their case or as an outcome of a formal hearing.

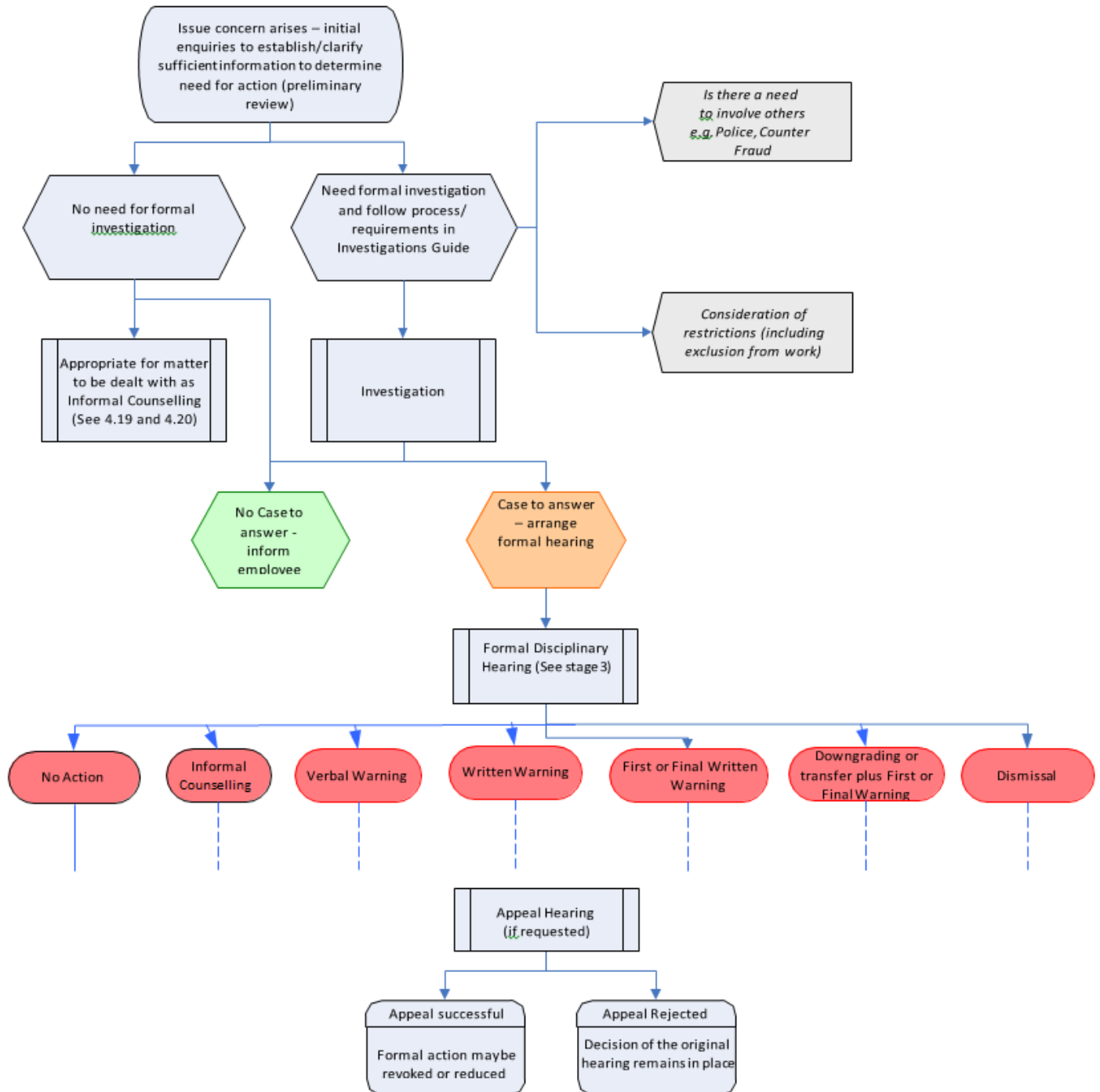
LADO – Local Authority Designated Officer.

General Misconduct – Conduct or behaviour which does not merit immediate dismissal but is of an unacceptable standard for the efficient functioning of the Trust. These offences are deviations from the general standards of conduct and performance expected from a member of staff. Repeated instances of this type of offence could result in dismissal following the application of the Trust's Disciplinary Policy and Rules.

Examples of general misconduct are attached in Appendix 1, though this list is not exhaustive. There may be other actions / situations not specified in the rules which result in disciplinary action. Any member of staff who breaches any of the disciplinary rules which constitute general misconduct on a recurrent basis may be dismissed following the application of the Disciplinary Policy depending on the circumstances of each case.

Gross misconduct – Acts which constitute gross misconduct must be **the most serious** cases of misconduct. Examples of gross misconduct are attached in Appendix 1, though this list is not exhaustive. There may be other actions / situations not specified in the rules which result in disciplinary action. 'Most serious' will be considered using the principals of the Just Culture framework see Appendix 8.

Flowchart for the Creation and Review of Procedural Documents



1. INTRODUCTION

This Policy sets out the approach the Trust will take to manage disciplinary issues within the Trust.

Southport and Ormskirk Hospital NHS Trust expects all staff to behave in a professional and courteous manner at all times.

2. PURPOSE

The purpose of this Policy is to ensure that all staff are treated in a manner which is fair and consistent and which allows for the efficient and effective functioning of the Trust.

The Policy is designed to ensure that management, staff organisations and employees are aware of the standards of conduct expected in the Trust and of their rights and obligations in respect of the disciplinary Policy and rules.

The Policy defines behaviour that constitutes breaches of discipline and provides examples of such behaviours.

The Policy aims to encourage and help employees to achieve and maintain satisfactory standards of conduct.

Matters relating to performance or non-attendance due to ill health should be dealt with under the capability (PERS 25) or management of sickness absence (PERS 12) policies unless such breaches may be deemed as misconduct. In the case of medical and dental staff the Policy for Maintaining High Professional Standards (MED STAFF 1) should be followed.

3. OBJECTIVES

This policy and procedures is to:

- Provide a framework for managing conduct concerns relating to members of staff employed by the Trust.
- Ensure that all employees managed under this policy are treated in a fair and consistent manner.
- Enable a path of recourse for the Trust should an employee's conduct fall outside of the Trust's expectations.

4. PROCESS

This Policy applies to all staff employed by Southport and Ormskirk Hospital NHS Trust.

The Policy to be applied in cases of professional misconduct or professional competence of medical and dental staff is set out in the Policy for Maintaining High Professional Standards (MED STAFF 1), which is available on the Trust's intranet site.

Where personal misconduct of medical and dental staff is suspected or alleged this Disciplinary Policy should be followed, though specific regard should be taken to ensure that the investigation process complies with the requirements set out in the Policy for Maintaining High Professional Standards (MED STAFF 1). References to this have been made at appropriate points throughout this policy to ensure compliance.

Staff employed in a training capacity are entitled to be dealt with under the terms of this Policy in respect of termination of training or of a student, trainee or pupil status; but if there is a national statutory body responsible for the conduct of professional training the requirements of that body will be complied with.

In the case of Doctors in training, the Postgraduate Dean will be notified / involved as required through the Postgraduate Tutor or Foundation Programme Director. In all such cases, reference should be made to the Policy for Maintaining High Professional Standards (MED STAFF 1)

The Trust may report an individual to the appropriate professional body where this is considered necessary, during the application of this policy. In such circumstances the member of staff will be notified in writing.

The Disciplinary Policy

Whenever the Disciplinary Policy is applied it is important it is applied fairly and consistently in accordance with the principles of natural justice and the right to representation.

Where formal disciplinary action is necessary care should be taken to ensure that the spirit as well as the letter of the policy is observed, with the prime objective being to correct and improve behaviour rather than to punish.

Before commencing with a formal disciplinary investigation a review of the facts should take place (a preliminary review) to establish what, if any, action is required and to determine the most appropriate procedure.

Covert recordings of investigation meetings or hearings are forbidden.

Preliminary Review

Once a manager has been made aware of a potential disciplinary matter they should firstly establish the facts promptly and before recollections fade. It is important that records are kept for future reference.

Once a manager has been made aware of a potential disciplinary matter they should firstly establish the facts promptly and before recollections fade. It is important that records are kept for future reference. The manager also needs to consider throughout this process the principals of the Just Culture Guide (appendix 8).

This is not a formal process in itself and the form it takes should be appropriate to the incident, the outcome of it should be to reach a decision as to how to proceed with the issue. It is also not intended for this to be an onerous time consuming process. Ordinarily the preliminary investigation will be carried out by the appropriate line manager who should seek guidance from the HR Department on the policy and the process to be followed. The line manager should consider the following:

- Identifying individuals involved in the incident;
- Verbal/written statements from individuals identified as being involved/witnessing the incident – individuals need to be informed that they can seek support from their union representative in providing this statement;
 - Normally working time should be given to individuals providing written statements (for example when an individual is absent due to health or on new parents leave);
 - Written statements should be provided by a mutually agreed date but no later than 14 days after the request was made.
 - Guidance on what to include in a written statement is available in Appendix 9.
 - Where statements cannot be produced during normal working time, standard time off in lieu arrangements may be applicable.
- Key documents related to the incident.

Any facts gathered in a preliminary review will need to be re-visited if referred for formal investigation, when a representative will be present if required and applicable.

Having reviewed all of the facts (classed as a preliminary review) the manager should decide considering the Just Culture Guide (appendix 8) whether there is no further action required, arrange informal counselling or arrange for the matter to be dealt with under the appropriate policy (e.g. Disciplinary Policy, Capability Policy, Alcohol or other Drug Misuse etc.). At this stage, if the allegations are viewed as serious and may (if proven) constitute gross misconduct then exclusion from work (with pay) may be applied (Section 8.0). All exclusions must be discussed with a senior member of the HR Business Team before any action against an employee is taken.

Informal Procedure

Recourse to the formal disciplinary Policy (Section 6.6) should not automatically be regarded as the only option in cases of misconduct.

The normal response to instances of minor misconduct, carelessness, poor timekeeping etc. should be appropriate and timely feedback from supervisors and managers as part of good management practice. This conversation will be recorded on the File Note form in appendix 4. The form should be signed by both parties. This does not constitute a verbal warning.

In the event of failure to improve standards of behaviour it would usually be expected that the manager would further counsel the employee at an informal meeting, constituting a verbal warning. The content of the meeting will be confirmed in writing and the File Note form (Appendix 4) completed. The form should be signed by both parties. This will constitute a verbal warning.

The file note form may form part of the information referred to at the formal stages of the policy and therefore may be considered at any disciplinary hearing. The file note/ verbal warning will normally be disregarded after the time period stated.

An employer can take an expired warning into account when deciding on the sanction for a dismissable offence in appropriate circumstances. An employer should not rely on an expired warning to dismiss an employee for an offence, which would not otherwise justify dismissal. In exceptional circumstances, a dismissal which takes into account expired warnings may be fair under s.98(4) of Employment Rights Act.

This informal meeting will be on a one-to-one basis and will not be considered as a formal warning on the employee's record.

This does not form part of the formal Disciplinary Policy, therefore the employee does not have the right to be accompanied and there can be no right of appeal.

The meeting will take the form of a discussion with the aim of encouraging and helping the employee to improve.

The employee should be made aware that failure to improve, or sustain improvement, may result in formal disciplinary action being instigated.

Written confirmation of the outcome of the informal meeting, including details of any timescales for review, should be provided to the employee.

The informal Policy will not apply in cases of alleged gross misconduct, or serious breaches of the disciplinary rules.

Restriction of Practice & Exclusion From Work

Any exclusion from work must be authorized by either a Director of the Trust, Deputy Director, Assistant Director of Operations, Head of Nursing or equivalent.

The authorising officer may delegate responsibility and need not necessarily be present when the employee is excluded from work but must give their authorisation and sign the letter detailing the reasons for exclusion.

In the case of Medical and Dental staff, the exclusion must adhere to the conditions set out in the Policy for maintaining high professional standards (MED STAFF 1).

The Trust will ensure that:

- A risk assessment – appendix 6 is carried out.
- Exclusion from work is a last resort and proportionate to the issues of the case.
- Exclusion from work is a holding action and is only used as an interim measure while action to resolve the problem is being considered.
- Where an employee is excluded, it is for the minimum necessary period of time; this can be up to but no longer than four weeks at a time without review.
- Any extension of exclusion beyond four weeks will be sanctioned by the Trust Manager who originally authorised the exclusion, or another colleague with the authority to exclude.
- Exclusion from the workplace is a temporary measure and is a precautionary act, not a disciplinary one. Exclusion from work will be reserved only for the most exceptional circumstances.
- Exclusion will only be used to protect the integrity of the process, and all individuals potentially affected by the issues including patients and staff.
- Exclusion is not a disciplinary sanction and any employee who is excluded will not suffer any detriment to salary as a result of the exclusion.

Alternative ways to manage the risk of the employee remaining in work and thereby avoiding the need for exclusion include:

- Appropriate senior level supervision of normal clinical commitments sanctioned by the Director of Nursing or the Medical Director.
- Restricting the employee to certain duties or clinical tasks about which there is no doubt of the employee's ability or intentions.
- Transfer to another area of work if appropriate.

Employees will be excluded on full pay (that is what they would have earned had they been at work, including any shift premia and unsocial hours payment to allow a

full investigation to be completed and / or where it is undesirable for the employee(s) to remain on duty.

If serious misconduct is not initially suspected or believed to have occurred and the employee concerned is not excluded, but during the course of an investigation the person conducting it reasonably forms the opinion that a serious breach of discipline may have occurred, the employee who is the subject of the investigation may then be excluded.

Exclusion from work is not a disciplinary sanction but is a holding action pending the completion of an investigation. Where practicable the employee will be given the right to be accompanied by a trade union representative or work colleague at a meeting where the exclusion from duty is to be enacted, though this may not always be possible.

Any decision to exclude will be confirmed in writing to the employee within 3 working days and such written confirmation will state the nature and any special conditions of the exclusion and that it is precautionary, not disciplinary, pending the outcome of the investigation.

In the case of medical and dental staff, the content of the letter should be consistent with the requirements set out in the Policy for Maintaining High Professional Standards (MED STAFF 1).

Examples of actions which may warrant exclusion include serious clinical negligence, intimidation or assault, theft or fraud and criminal acts or investigations by the Police into allegations of criminality.

If the period of exclusion lasts more than four weeks and no disciplinary allegations have been made and communicated in writing, the employee has the right to appeal against the continuation of their exclusion from work under the Trust's Grievance Policy (PERS 2). The right of appeal will not apply in cases involving police enquiries, where legal Policies are pending or a formal committee of enquiry has been or is being established. Reference should be made to the Policy for Maintaining High Professional Standards (MED STAFF 1) in the case of medical and dental staff.

During a period of exclusion the employee must not attend their place of work or any of the Trust's sites unless:

- It is for health related reasons.
- They have been requested to attend a meeting as part of the investigation or at the request of management.
- To attend an appointment arranged with Health and Wellbeing.
- To meet with their nominated trade union representative. Management should be notified in advance of this meeting and the member of staff should be met at reception and accompanied by their representative at all times accessing only the pre-booked meeting room.

When an employee is excluded, they must not discuss any details of the investigation/incident with any other employees or contractors with the exception of their recognised trade union representative, unless prior permission is sought from their manager.

All parties involved in the investigation including the employee, their staff side representative, the investigating officer and the line manager must maintain confidentiality at all times during the investigation and should not discuss any details of the investigation.

The Commissioning Manager will assign an individual to act as a point of contact aside from the Investigating Officer for the excluded employee. The responsibility of this individual is to offer a point of contact for any questions/ concerns outside of the investigation.

During the period of exclusion, the employee must not undertake paid work (including bank, locum and private work) for another employer during their normal working hours with the Trust. A risk assessment should be completed to determine whether the exclusion will apply to all posts the employee holds or not. This may include bank posts. A copy of the risk assessment can be made available to employees upon request.

Levels of Authority

Where formal allegations of misconduct are made against an employee and a formal hearing is arranged, the appropriate level of management required to hear the allegations will chair the hearing.

Gross misconduct allegations will be heard by Directors of the Trust, Deputy Directors, Associate Medical Directors, Assistant Directors of Operations and Heads of Nursing or Midwifery or equivalent.

In the case of Consultant Medical and Dental staff allegations will be heard by Executive Directors and Deputy Directors of the Trust and will be arranged in accordance with the requirements of the Maintaining High Professional Standards in the Modern NHS Procedure (MEDSTAFF 01).

General misconduct allegations may be heard by Clinical Directors, Matrons and departmental managers.

The panel in cases of professional misconduct may also include a senior professional from the relevant discipline.

Right to be Accompanied

Employees who are subject to investigation have the right to be accompanied at investigatory meetings and at all formal stages of the disciplinary and appeals Policy by a trade union representative or work colleague. Witnesses will not normally be afforded the right to be accompanied in investigatory meetings or during any subsequent hearing.

If an employee is unaccompanied at any of these stages, the manager should remind them of their right to be accompanied before proceeding.

If the employee's representative is known arrangements will be made taking their availability into account. Meetings will be re-arranged if the employee's chosen representative is unable to attend. If the employee's chosen representative is not available to attend the re-arranged meeting, the employee may choose alternative representation or may attend the meeting unaccompanied. The Trust reserves the right to hold the meeting on the re-arranged date, unless exceptional circumstances are presented.

When a member of staff advises the HR Department of their representative or a Representative accompanies them to a meeting convened under this Policy, copies of all correspondence relating to the case will be provided to them, provided the employee has given their explicit permission to share the information. This permission must be confirmed in writing once the Representative is known.

Investigation

Progression to a disciplinary hearing will not take place until a thorough investigation, which is reasonable in the circumstances has been completed.

The process laid down in the Maintaining High Professional Standards in the Modern NHS Procedure (MEDSTAFF 01) will be followed in the case of medical and dental staff.

Prior to any investigation commencing an informal meeting will be held between the Commissioning Manager and the employee at which the employee will be advised of the suspected breach of the Disciplinary Rules.

A Commissioning Manager will oversee the investigation and will outline the terms of reference for the investigation. The Commissioning Manager will appoint an Investigating Officer.

In some cases the line manager may not be considered the most appropriate person to become the Commissioning Manager, in these circumstances a peer or more senior manager may take the role. HR advice should be sought.

A flow chart of the disciplinary process is provided at the beginning of this policy. The risk assessment form in appendix 6 should be completed for all disciplinary processes.

The employee will be contacted by the Investigating Officer and asked to provide a statement in response to the allegations made against them. Following review of this statement they may be invited to attend a subsequent formal investigatory meeting to determine the facts of the case from their perspective. The invitation will be made in writing, providing details of the complaint / allegation. The employee may be accompanied at the meeting by a trade union representative or work colleague.

During the course of the investigation it may be necessary to interview the employee concerned, and any witnesses if applicable.

The investigatory interviews may be used to establish the facts and to determine whether there is a case for disciplinary action.

The Trust's Investigation Guide should be used to ensure that a fair and thorough investigation has been conducted.

Investigations should normally be completed in 8 weeks, however there may be situations where this timescale will be extended for example where an investigation is complex, where a police investigation is being completed or in cases involving safeguarding.

The Investigating Officer will prepare an investigation report / statement of case on conclusion of the investigation. The Commissioning Manager will review the findings of the Investigating Officer and decide whether there is a formal disciplinary case to answer or whether the issue may be more appropriately addressed through some other means e.g. recorded counselling or application of the capability procedure.

If it is decided to proceed to a formal hearing, the employee will be notified in writing and will be provided with a copy of all documentation including the management statement of case. In order to allow the employee to prepare for the disciplinary hearing, the management case must be provided to them (and their representative if applicable) within 14 calendar days of the decision to refer to a hearing. Arrangements for the hearing itself should run in parallel and it is expected that this would take place within 2 months of decision to refer to a hearing. The employee and their representative will be given at least 14 calendar days' notice of the disciplinary hearing.

Formal Procedure

The decision to progress from an informal Disciplinary process into the formal Procedure will be made by the commissioning manager.

The employee will be advised of the allegations to be considered in writing. They will be provided with supporting evidence from the investigation and will be provided with the opportunity to call witnesses at a disciplinary hearing. They will also be advised of the time, date and place of the hearing.

If the employee wishes to call witnesses, it is their responsibility to make the necessary arrangements by notifying the HR Representative assigned to the case of their intention. For purposes of clarity, the HR Representative, will not be responsible for making arrangements for the employee's witnesses unless they are management witnesses. Should the employee wish to have management witnesses attend/be available to the hearing they will need to notify the HR representative who will arrange for the witness to attend the hearing or be available via telephone.

The line manager of any witnesses will be advised and should facilitate the release of the member of staff to attend the disciplinary hearing. Witnesses would not normally have the right to be accompanied at the hearing.

The management statement of case must include all information gathered as part of the investigation.

Copies of all cases will be provided to the presenting Manager and the Panel at least 7 calendar days before the hearing.

The employee will be provided with an opportunity to submit a written statement of case at least seven calendar days in advance of the hearing in order that the case can be provided to the hearing attendees in advance of the hearing. In exceptional circumstances it may be necessary to reschedule the hearing. Written statements of case, received outside of the seven calendar days before the hearing will only be accepted at the discretion of chair of the hearing. However the individual has the opportunity to present their case verbally.

If the employee does not submit a written statement of case, the management case will still be made available to the manager hearing the case prior to the hearing.

Where the employee, or their representative, is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the hearing will be adjourned to another mutually date which must be within a reasonable timeframe.

If the employee is unable to attend the re-arranged hearing, it will take place in their absence, the employee will be written to advising them of this action. The employee's representative or nominated work colleague may attend in such circumstances to present the employee's case. The employee will also be provided with the opportunity to make a written submission. In cases where the delay is caused through ill health the advice of the Health and Wellbeing department will be sought.

The employee will be informed in writing of the right to be accompanied at all formal stages of the Policy. It is the responsibility of the employee to arrange their own representation for meetings.

Disciplinary action will not be taken against an accredited representative of a trade union until the circumstances of the case have been discussed with the relevant full-time official.

The Investigating Officer will (normally) present the allegations and evidence at a formal disciplinary hearing will not decide on the disciplinary sanction but will present the case to another, normally more senior, manager not previously involved in the investigation.

Where a Commissioning Manager overturns the recommendations of the Investigating Officer then they will present allegations and evidence at a formal disciplinary hearing and the Investigating Officer will be made available as a witness.

A manager who has excluded the employee may also sit on or chair the panel providing they have not been the investigating officer for the case, or they have a conflict of interest that would compromise taking on this role.

Disciplinary Hearing Format

The manager hearing the case or the advising HR representative will introduce the hearing and explain its purpose and the process to be followed. The purpose of the hearing is to establish the facts and determine, on conclusion of the hearing, whether the Trust has proper grounds to take disciplinary action against the employee and if so the level of such disciplinary action.

The manager hearing the case may choose to delegate tasks within the hearing however the responsibility for chairing the meeting and reaching an outcome remains with the manager.

The parties present at the hearing will introduce themselves and confirm their respective roles in the hearing. The employee will be entitled to be accompanied if they so wish, by a work colleague or a trade union representative.

The manager hearing the case or the advising HR Representative will confirm that the hearing is being conducted as part of the Trust's disciplinary Policy and confirm that a formal written record will be taken throughout the hearing.

The manager hearing the case will ask both parties if witnesses are being called and if so the names of the witnesses.

The management representative will present their case.

The employee or their representative, HR representative and Manager hearing the case may question the management representative.

Management witnesses confirmed as attending the hearing or being made available for the hearing may be asked questions by all parties.

The employee or their representative will present their case; highlighting any mitigation they feel should be taken into consideration.

The management representative, HR Representative and Manager hearing the case may ask questions of the employee.

Any witnesses confirmed as attending the hearing by the employee may be asked questions by all parties.

The management representative will summarise their case and must not submit new evidence.

The employee or their representative will summarise their case and must not submit new evidence.

The manager hearing the case will adjourn the hearing to consider all evidence brought by both parties.

The manager hearing the case will take into consideration, the evidence presented as to whether the alleged misconduct has taken place; the seriousness of the offence; any current disciplinary sanctions; how similar cases have been dealt with and any mitigating factors presented by the employee, when making a decision about whether or not to impose a disciplinary sanction, and the level of any such sanction (see section 14.0).

The manager hearing the case will inform the employee of the outcome of the hearing, or when a decision will be made if further information or consideration is required.

The Trust recognises that it is good practice, whenever practical to advise the employee of the outcome of a hearing verbally. However; the manager will need to balance this with making timely decisions and with the possible risk that re-scheduling this meeting may mean a delay in the communication of decisions. Whilst it is expected that in most instances the manager will be able to verbally present their decision they reserve the option to communicate this in writing when they deem this to be a more appropriate means of communication.

The manager hearing the case or the HR representative will inform the employee that they will have the right of appeal against any disciplinary sanction imposed.

The manager hearing the case will close the hearing.

Written confirmation of the decision of the disciplinary hearing will be sent to the employee as soon as is reasonable practicable, and certainly no later than within seven calendar days.

At any point during the hearing, the manager hearing the case may adjourn the proceedings if it appears necessary or desirable to do so, including for the purpose of gathering further information.

Disciplinary Sanctions

When determining what (and if any) disciplinary sanction is appropriate (and what form it should take) the person hearing the case must act reasonably in all the circumstances. Factors relevant in determining which disciplinary sanction to apply include:

- The extent to which standards have been breached.
- The employee's general record.
- Current 'live' warning.
- Other special circumstances which might make it appropriate to mitigate the severity of the penalty.
- Impact of the actions on others and the Organisation (including reputation).
- Consistency of treatment.
- Where the intended disciplinary action is reasonable in all the circumstances.

The following disciplinary sanctions are available to be applied. This process is not sequential

The possible outcomes of a formal disciplinary hearing are as follows and will depend on the severity of the offence(s):

- No case to answer
- Recorded counselling / Verbal Warning
- First written warning
- Final written warning
- Final written warning & downgrading as alternative to dismissal
- Final written warning & transfer as alternative to dismissal
- Final written warning, transfer & downgrading as alternative to dismissal
- Dismissal

It is expected that for hearings considering cases of general misconduct for the first time, a sanction no higher than a first written warning may be issued. Where a further breach of general misconduct occurs, it is expected that a sanction no higher than a final written warning may be issued.

Any member of staff who breaches any of the disciplinary rules which constitute general misconduct on a recurrent basis may be dismissed following the application of the Disciplinary Policy depending on the circumstances of each case.

Following a hearing where a decision to apply a disciplinary sanction is made the employee will receive a letter giving the details of the disciplinary sanction, reasons for the decision, details of the right of appeal and right of representation. Where appropriate the employee will also be informed of the improvements in conduct / performance required, the period of review and consequences of any failure to improve conduct / performance. This may include a requirement for re-training.

First / Final Written Warning

Where a first / final written warning is issued as a result of a disciplinary hearing, the written confirmation will include:

- A statement that the employee has been issued with a first / final written warning, that a copy will be kept on their personal record and that further offences could result in the issuing of a final written warning / dismissal unless there are sufficient mitigating circumstances.
- A statement of the reasons for the first / final written warning and a description of the corrective action expected of the employee in the future.
- A statement of the employee's right of appeal against the first / final written warning and an assurance that the disciplinary sanction will remain live on their record for 12 months* from the date of the hearing provided that there are no further disciplinary sanctions during that 12 months*.
- *In cases of gross misconduct the panel may consider extending a final written warning for 2 years.
- The manager should provide a rationale for the time period set where they have a choice in the hearing/ decision process.
- That should the employee be absent from work for longer than a two week period then the warning period will be paused until the individual's return to work, when it will recommence.

If a further alleged offence is committed within the 12 month / 2 year period, the warning will remain live on the employee's file pending the outcome of an investigation and disciplinary hearing.

Where there are repeated or similar offences of a serious nature e.g. mistreatment of a patient, for which previous warnings have expired the pattern of misconduct, may be taken into consideration at a disciplinary hearing. This will principally inform the manager hearing the case of the likelihood that the employee will re-offend in the future and cannot be used to increase the severity of any disciplinary sanction that is imposed.

In addition to the issue of a final written warning, the transfer of location or department may be required. The practicality of future working arrangements will be considered when transferring an employee under the disciplinary Policy.

Employees who are transferred to a different location under this Policy are not eligible to claim excess travel costs.

In addition to the issue of a final written warning, downgrading may be required as an alternative to dismissal. In such cases, the employee is not eligible for consideration for pay protection and will be paid at the band of the post they have been downgraded to.

Dismissal

Employees dismissed as a result of gross misconduct are summarily dismissed without notice or payment in lieu of notice but will be paid for any outstanding annual leave.

Employees may be dismissed with the relevant statutory notice where they fail to improve their conduct or where further breaches of disciplinary rules are committed following a final written warning.

In the case of Doctors in training the Postgraduate Dean will be notified before any decision to dismiss is taken.

Appeals

Employees have the right of appeal against formal disciplinary sanctions. Normally a more senior level of manager than heard the original case will hear the appeal subject to a manager of more senior authority being available in the reporting structure.

An appeal must be lodged within 14 days of receipt of the letter confirming the sanction, detailing the reasons for the appeal, a sample appeal form can be found in appendix 3. Failure to provide detailed reasons regarding the grounds of appeal will result in the appeal not being lodged. The details of the persons to whom the appeal should be lodged will be contained in the letter confirming the disciplinary sanction.

The appeal form should be returned to either the next in line manager or the Director of HR and OD depending on both the Policy and the level of appeal the relevant HR representative should be copied in. This is set out below:

A) Next in line manager:

- Disciplinary Policy – Appeals against formal action short of dismissal (excludes Informal Counselling for which there is no right of appeal)

B) Director of HR and OD

- Disciplinary Policy – Appeals against downgrading, transfer, dismissal

The appeal will consider the requested grounds of appeal, i.e.

- Sanction was too harsh
- Procedure was not followed
- New evidence is to be considered

The date of the appeal will be set within a reasonable time frame, normally within 2 months of the decision. Anything outside of this timeframe would need to be mutually agreed. The employee will be given at least 14 calendar days' notice of the hearing.

The employee has the right to attend the appeal hearing personally and may be accompanied by a work colleague or representative.

If the employee or their representative fails to attend the appeal hearing, the appeal will be considered in their absence except where an adjournment has been agreed by the panel.

Appeals against dismissal will be heard by a panel of three. At least one panel member will be a non-executive director of the Trust. The other panel members will be taken from Managers with the authority to dismiss (see 6.3). No panel member will have had prior involvement in the case.

Statements of case will be requested from the manager who made the decision at the disciplinary hearing and the employee. Statements of case will be exchanged at least one week prior to the appeal hearing. An employee may wish to choose to present a verbal case but if they choose to do this they cannot present physical documentation to the panel unless this is with agreement from the chair. As the letter confirming the outcome of the disciplinary hearing sets out the reasons for the decision, it is not required for the management case to be provided to the employee prior to the stated date for exchange of documentation.

In all cases, the individual(s) hearing the appeal must not have been directly involved in the case previously.

Appeal Hearing Format

The management representative (normally the manager who heard the original disciplinary case supported by their HR representative) presents the case for the disciplinary action taken and may call witnesses.

All parties have the opportunity to question the management representative and management witnesses.

The employee or their representative presents their case and may call witnesses.

All parties have the opportunity to ask questions of the employee and their witnesses.

The management representative summarises their case, but cannot introduce new evidence.

The employee or their representative summarises their case, but cannot introduce new evidence.

The members of the appeal panel consider the case in private.

The chair of the appeal informs all parties of their decision and confirms the decision in writing within seven calendar days of the hearing.

Grievances raised During Disciplinary Process

In the course of a disciplinary process, if an employee raises a grievance that is related to the case, consideration should be given to temporarily suspending the Disciplinary Policy for a short period while the grievance is dealt with. Where the grievance and the disciplinary cases are related it may be appropriate to deal with both issues concurrently. The employee and their representative will be consulted in this respect.

Depending on the nature of the grievance, another manager may be brought in to deal with the disciplinary process.

Where the allegation is of gross misconduct and may result in dismissal, the grievance Policy (PERS 2) does not apply. In such circumstances, the matters should be dealt with under this disciplinary Policy.

If the grievance is raised before any disciplinary appeal meeting, the appeal hearing may be used to discuss the grievance.

Lessons Learned

It is important to ensure that where appropriate the Trust undertakes a process to learn lessons from the case. In these circumstances the panel chair will request that the HR Department will facilitate a lessons learnt process (appendix 5) following the conclusion of the case.

Criminal Offences

Employees are required to complete the attached form (appendix 2) where they are subject to police arrest, bail, caution or conviction. The completed form must be submitted to their line manager who must seek advice from the Business HR Team.

The line manager will confirm in writing to the employee what action, if any is necessary following receipt of the completed form.

When an employee is interviewed by the police where there is potential for concern in line with the Trust Safeguarding Policies they should notify the Director of Nursing as the Trust Safeguarding Lead who will then follow the Trust process with regards to Safeguarding.

Where an employee has been convicted of a criminal offence during the course of their duties, or outside of working hours, the Trust may need to investigate; this may result in disciplinary action.

The Trust will take into consideration the nature of the offence, its effect on the individual's employment and any other relevant factors.

It may be necessary for the Trust to liaise with the relevant police force. It may not be necessary for the Trust to wait for the outcome of legal proceedings, and where the employee refuses to co-operate the Trust may take action based on the information available to them.

Where an employee is detained or remains in custody prior to conviction, they should be regarded as absent from duty and no payment made.

Employees are contractually obliged to inform the Trust if they receive a criminal conviction during their employment with the Trust. In the event that the Trust is made aware of an employee who has failed to notify the Trust, the Trust may consider notifying the Local Counter Fraud Specialist who may investigate and take further action.

Professional Misconduct

Professional Bodies may choose to take action in addition to the action taken under this procedure by the Trust in cases of professional misconduct. The Trust has a responsibility to report professional misconduct to the registering bodies i.e. Nursing and Midwifery Council, Health Professions Council.

Safeguarding & Child Protection Issues

Allegations of safeguarding in relation to children or vulnerable adults against employees should be dealt with in accordance with the following flow chart. Reference should also be made to the Trust's Safeguarding and Child Protection Policy (CORP 74). In the case of safeguarding issues in relation to vulnerable groups, the Trust's Safeguarding Adults Policy should be referred to (CORP 77). These policies are available on the Trust's intranet site.

Allegations of abuse by a member of staff should be referred to the employee's line manager and the Named Nurse Child Protection must be informed. This includes

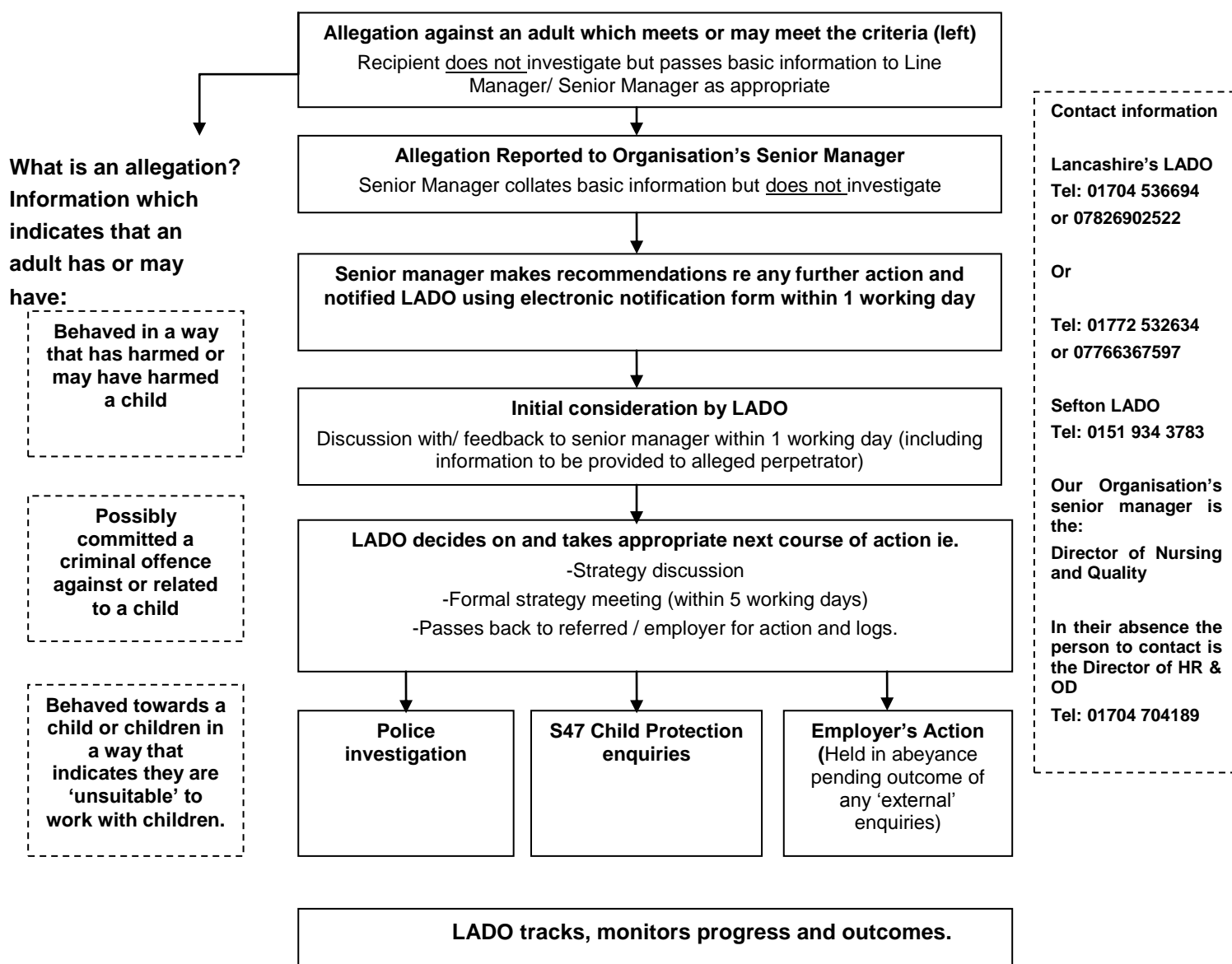
allegations which have happened outside the Trust setting. The Director of Nursing will determine whether a referral to the Local Authority Designated Officer (LADO) is appropriate in accordance with national guidelines. Any referral to the LADO must be completed within 24 hours of the incident being reported.

Named Senior Officers for Child Protection:

The Trust named Senior Officer is the Director of Nursing.

The Named Senior Manager is the Named Nurse Child Protection

Flowchart: Procedure for Managing Safeguarding Children allegations



Remember: The LADO must be contacted when you have received any allegation or concern about any person who works with children who 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; or
- Behaved towards a child or children in a way that indicates she/he is unsuitable to work with children.

Counter Fraud

In the event of any allegation where fraud is identified or suspected, the Human Resources representative must liaise with the Local Counter Fraud Specialist on 0151 285 4500 or the Director of Finance as soon as reasonably practicable and prior to any internal investigation. Further information on the procedure relation to fraudulent activity please refer to appendix 7.

Support

Employees involved in disciplinary matters (including witnesses) may access support and /or advice from the following sources:

Trade unions

Professional registration bodies

Health and Wellbeing Department

Counselling services

Mediation service

Human Resources

Employee Assistance Programme

5. PROCEDURES CONNECTED TO THIS POLICY

Conducting an investigation guide

6. LINKS TO RELEVANT LEGISLATION

- Equality Act 2010
- Employment Rights Act 1996
- Employment Relations Act 1999
- Employment Act 2002 & 2008
- Employment Act 2002 (Dispute Resolution) Regulations 2004
- ACAS Code of Practice – Disciplinary and Grievance Procedures
- Trade Union and Labour Relations (Consolidation) Act 1992

Links to relevant standards

- ACAS Code of Practice On Disciplinary and Grievance March 2015
- Healthcare Professionals Alert Notices Directions 2006.
- Working together to Safeguard Children (2015)
- Maintaining High Professional Standards in the Modern NHS
- Managing allegations against professionals, volunteers and carers (National Guidelines)
- allegations against professionals, volunteers and carers (National Guidelines)

Links to other key policy/ies

- Trust Anti-Fraud and Corruption Policy
- MED STAFF 1 – Policy for maintaining high professional standards
- PERS 2 – Grievance Policy
- PERS 12 – Management of sickness absence Policy
- PERS 25 – Capability Policy
- CORP 74 –Safeguarding & Child Protection Policy
- CORP 77 – Safeguarding Adults Policy
- Anti Fraud and Corruption Policy
- Investigation Guide for Managers

References

As above

7. ROLES AND RESPONSIBILITIES FOR THIS POLICY

Title	Roles and Responsibilities
The Board	<ul style="list-style-type: none"> The Board is responsible for overseeing regular data and in relation to the progress of disciplinary proceedings.
Director of HR & OD	<ul style="list-style-type: none"> The Director of Human Resources and OD is responsible for the implementation of this policy.
Human Resources Department	<ul style="list-style-type: none"> The Human Resources (HR) Department will ensure that disciplinary matters are dealt with fairly, consistently and in compliance with employment law. Staff from the HR department are able to offer advice and assistance to managers on all aspects of this Policy and are required to advise the panel at any formal disciplinary hearing. HR are not a decision maker in the disciplinary process unless they are acting in a line management capacity or as a panel member, when doing so this should be made clear during proceedings. Decisions to initiate formal disciplinary action are the responsibility of the appropriate line manager, ordinarily following discussion with a Human Resources Business Partner. A Human Resources Business Partner must be consulted on any disciplinary issue which might lead to dismissal. In the case of medical and dental staff, the procedures set out in the Policy for Maintaining High Professional Standards (MED STAFF 1) should be followed. Human Resources Staff will provide training for Managers on the implementation of this Policy. Human Resources Department is responsible for ensuring that all documentation related to a disciplinary matter is retained on the employee's personal file in accordance with the Data Protection Act (1998) and that spent disciplinary sanctions are disregarded. To facilitate a lessons learnt process (appendix 5) following the conclusion of the disciplinary process.
Workforce Committee	<ul style="list-style-type: none"> Workforce Executive Led Group is responsible for approval and performance management of the contents of this Policy. It is also responsible for promoting and adhering to the requirements of this Policy
Line Managers	<ul style="list-style-type: none"> Line Managers are responsible for implementing this Policy. Line Managers are expected to have attended training on the implementation of this Policy. To participate in a lessons learnt process (appendix 5) following the conclusion of the disciplinary process

	and implement any associated recommendations.
Employees	<ul style="list-style-type: none"> • All employees are expected to conduct themselves in a courteous and professional manner. • It is the responsibility of each employee to make themselves aware of this disciplinary Policy and rules.
Commissioning Manager	<ul style="list-style-type: none"> • Once a decision has been made taking into consideration the principals of the Just Culture guide and in consultation with HR advice to enter a formal procedure, the line manager will become the Commissioning Manager and seek an investigation into the issues of poor conduct. • The Commissioning Manager is responsible for outlining the terms of reference for the investigation; they will appoint an Investigating Officer, unconnected with the case, to carry out an investigation in line with the Trust's Policy and Procedure. • The commissioning manager is responsible for ensuring that the investigating is conducted in a timely and sensitive manner and will accountable to the board for any delays in the process. • The commissioning manager is responsible for reviewing the progress of the case and determining whether the case should progress to a formal hearing. • The commissioning manager must provide clear rationale as to why a case is progressing to a formal disciplinary hearing. • In the case of medical and dental staff, the procedures set out in the Procedure for Maintaining High Professional Standards in the Modern NHS (MEDSTAFF01) should also be followed.
Investigating Officer	<ul style="list-style-type: none"> • The Investigating Officer is responsible for conducting the investigation in accordance with the terms of reference for the investigation and ensuring the investigation is completed in a timely manner (normally within 8 weeks). • The investigating officer will present the management statement of case on behalf of the Commissioning Manager should a decision be made to proceed to a formal disciplinary hearing. • The Investigating Officer should follow the Investigation Guide to ensure a consistent approach and format is utilised. To participate in a lessons learnt process (appendix 5) following the conclusion of the disciplinary process.
Staff Side Representatives	<ul style="list-style-type: none"> • To accompany members of staff as required and as outlined by this policy. • To participate in a lesson learnt process following the conclusion of the disciplinary process.

8. TRAINING

What aspect(s) of this policy will require staff training?	Which staff groups require this training?	Is this training covered in the Trust's Mandatory and Risk Management Training Needs Analysis document?	If no, how will the training be delivered?	Who will deliver the training?	How often will staff require training	Who will ensure and monitor that staff have this training
Implementation of the policy and procedure	Managers and trade union representatives	If yes, please refer to it for details on training requirements, and update frequencies	Training will be delivered in the classroom.	The HR team or a chosen external provider.	Once	HR Department in collaboration with the Education and Training Department

9. EQUALITY ANALYSIS ASSESSMENT

Southport & Ormskirk Hospital NHS Trust is committed to ensuring that the way we provide services and the way we recruit and treat staff reflects individual needs, promotes equality and does not discriminate unfairly against any particular individual or group. The Equality Impact Assessment for this policy has been completed and is readily available on the Intranet. If you require this policy in a different format e.g. larger print, Braille, different languages or audio tape, please contact the Corporate Governance Team.

EQUALITY ANALYSIS ASSESSMENT	
Analysis Completed By	Laura Hilton
Date Completed	January 2020
Barriers Identified	Race
Action Plan Completed	WRES Action Plan Freedom to Speak up Action plan
Nominated lead for Managing Action Plan	Equalities Lead & Head of HR & Freedom to Speak up Guardian
Completed Assessments held by	Policy Coordinator

10. DATA PROTECTION AND FREEDOM OF INFORMATION

All staff have a responsibility to ensure that they do not disclose information about the Trust's activities in respect of service users in its care to unauthorised individuals. This responsibility applies whether you are currently employed or after your employment ends and in certain aspects of your personal life e.g. use of social networking sites etc. The Trust seeks to ensure a high level of transparency in all its business activities but reserves the right not to disclose information where relevant legislation applies.

11. MONITORING THIS POLICY IS WORKING IN PRACTICE

Using the table below identify how the Trust will ensure that the policy is working effectively in practice

Monitoring this policy is working in practice What key elements will be monitored? (measurable policy objectives)	Where described in the policy?	How will they be monitored? (method + sample size)	Who will undertake this monitoring?	How Frequently?	Group/Committee that will receive and review results	Group/Committee to ensure actions are completed	Evidence this has happened
Application of the policy	Monitoring section	Review of incidents	HR Business Partners	Annually	Workforce Committee Joint Negotiating Committee	Workforce Committee	Agenda & minutes of workforce committee
Disciplinary data recorded as per policy	Monitoring section	Monthly reporting	Head of HR	Monthly	Workforce Committee Joint Negotiating Committee	Workforce Committee	Agenda & minutes of workforce committee
Performance against Key Performance Indicators	Monitoring section	Monthly reporting	Head of HR	Monthly	HR Business Services Meeting	Workforce Committee	Agenda of HR Business Services Meeting
Equality & Diversity analysis of data	Monitoring section	Workforce Race Equality Scheme Employee relations spread sheet	Head of HR	Annually	Board Workforce Committee Joint Negotiating Committee	Board Workforce Committee Joint Negotiating Committee	Agenda & minutes of Board Workforce Committee Joint Negotiating Committee Workforce Race Equality Scheme

12. APPENDIX

Appendix 1 - Misconduct Breaches/Rules

Appendix 2 - Notification of Police arrest/bail/caution or conviction

Appendix 3 - Disciplinary Appeal Form

Appendix 4 - File Note Form

Appendix 5 - Lessons Learnt – Disciplinary Investigations and/or Hearings

Appendix 6 - Risk Assessment Form (Disciplinary Procedure)

Appendix 7 - Allegations of Fraudulent Activity

Appendix 8 - A Just Culture Guide

Appendix 9 - Guidance

Appendix 1 - Misconduct Breaches / Rules

The Trust considers the following to be examples of the type of offences which constitute general and gross misconduct. The list is not exhaustive.

No	General Misconduct	Gross Misconduct
1		Ill treatment, willful neglect and / or sexual offences against patients.
2		Physical or indecent assault during the course of employment and / or on Trust premises.
3	Verbal abuse of a patient, member of the public or member of staff during the course of employment or on the Trust premises.	Serious verbal abuse of a patient, member of the public or member of staff during the course of employment or on the Trust premises.
4	Disclosure of privileged and confidential information to any unauthorised persons outside the provisions of 'Guidance for staff on relations with the public and the media' and the Trust's Whistleblowing Policy (CORP 69).	Deliberate disclosure of privileged and confidential information to any unauthorised persons outside the provisions of 'Guidance for staff on relations with the public and the media' and the Trust's Whistleblowing Policy (CORP 69).
5	Failure to comply with the legal requirement and / or Trust regulations concerning medicines. (Drug error scoring matrix to be used)	Negligent or deliberate failure to comply with the legal requirement and / or Trust regulations concerning medicines. (Drug error scoring matrix to be used)
6	Practising without a professional registration in a profession where there is a requirement to obtain and maintain professional registration.	Deliberately practising without a professional registration in a profession where there is a requirement to obtain and maintain professional registration.
7	Minor breach or failure to adhere to standard operating procedures and codes of conduct applicable to specific departments, professions or grades of staff.	Serious breach or failure to adhere to standard operating procedures and codes of conduct applicable to specific departments, professions or grades of staff, or any explicit term of his/her contract.
8	Failure to observe Health & Safety and Fire Regulations or instructions.	Any act or omission constituting serious danger to the Health & Safety of any person during the course of employment or on the Trust premises.
9	Theft or attempted theft on the Trust premises or during employment by the Trust.	Serious theft or attempted theft on the Trust premises or during employment by the Trust.
10	Misrepresentation at the time of appointment or at any time during employment (eg. previous employment; qualifications held).	Falsification of any official documentation, qualifications or information used in support of an application for any post.

No	General Misconduct	Gross Misconduct
11	Behaviour linked to the consumption of alcohol or substance misuse in accordance with Trust Policy PERS 42 Alcohol, Drugs and Substance Misuse Policy.	Consumption of alcohol and / or misuse of drugs and / or other substances to an extent which seriously affects the satisfactory performance of the employee's duties and / or jeopardises the safety and welfare of a patient(s), member(s) of the public or member(s) of staff in accordance with Trust Policy PERS 42 Alcohol, Drugs and Substance Misuse Policy
12	Negligence in job performance.	Any act or omission constituting serious negligence or incompetence in an employee's performance of their duties.
13	Criminal offences outside of the working relationship which affect the performance of duties, or the relationship between the employee and the Trust.	Criminal offences outside of the working relationship which substantially affect the performance of duties, or the relationship between the employee and the Trust.
14		Maliciously making or assisting someone else to make an unfounded complaint.
15	Unjustified refusal of a lawful and reasonable instruction without reasonable grounds, or to wear any uniform or protective clothing provided by the Trust.	Serious act(s) of insubordination or unjustified refusal of a lawful and reasonable instruction which could result in immediate serious consequences.
16	Breach of the Trust's IT Policies/ unauthorised access of IT systems and /or inappropriate use of the internet or email system.	Serious breach of the Trust's IT Policies/ unauthorised access of IT systems and /or inappropriate use of the internet or email system.
17	Words or acts (including social networking) which brings the Trust's / employee's reputations into disrepute.	Serious words or acts (including social networking) which brings the Trust's / employee's reputations into disrepute.
18	Misappropriation or attempted misappropriation of Trust funds or resources; fraudulent manipulations of timesheets, expense claims or other official records.	Serious or deliberate misappropriation or attempted misappropriation of Trust funds or resources; fraudulent manipulations of accounts financial statements, timesheets, expense claims or other official records; or breach of the Trust Standing Financial Instructions.
19	Unauthorised absence from work.	Undertaking any other employment while unable to attend for duty for reason of ill-health while in receipt of sick pay, amounting to fraud (PERS 12).
20		Culpable damage caused by an employee during the course of their employment or on the Trust premises.
21		Acceptance of gifts or hospitality in contravention of 'Standards of business conduct for NHS staff'.

No	General Misconduct	Gross Misconduct
22		Failure to inform the Trust of any pecuniary interest of which the employee is aware in a contract which has been or is proposed to be entered into by the Trust in accordance with 'Standards of business conduct for NHS staff'.
23	Failure to comply with the Trust's no-smoking policy.	
24	Personal misconduct which affects his / her performance of duties and / or relationship between the member of staff and the Trust.	Personal misconduct which seriously affects his / her performance of duties and / or relationship between the member of staff and the Trust.
25	Unauthorised use of the Trust's resources or of information obtained during the course of his / her employment, or for personal reasons not connected with his / her duties.	
26	Undertaking any other employment which adversely affects the performance of his / her duties.	
27	Failure, without reasonable grounds, to comply with the requirements of Trust Policies and Procedures.	
28	Misrepresentation at the time of appointment	Serious misrepresentation at the time of appointment including: Previous employment Qualifications Failure to disclose any criminal offences or cautions in accordance with the provision of the Rehabilitation of Offenders Act 1974
29		Any breach of an explicit term of his / her contract of employment.
30	Behaviour in breach of the Trust values	Behaviour that seriously breaches the Trust Values
31	Words or acts that breach the Trust's Dignity at Work Policy (Prevention of harassment and bullying), including any form of discrimination, victimisation or harassment on the grounds of sex, race, sexual orientation, disability, age belief or religion, gender reassignment, pregnancy and maternity, marriage and civil partnership.	Words or acts that seriously breach the Trust's dignity at work policy (Prevention of harassment and bullying), including any form of discrimination, victimisation or harassment on the grounds of sex, race, sexual orientation, disability, age belief or religion gender reassignment, pregnancy and maternity, marriage and civil partnership.
32	Failure to adhere to the Trust's Mandatory Professional Standards	

Appendix 2 – Notification of Police Bail / Criminal Conviction / Police Caution Declaration

Notification of Police Bail/Criminal Conviction / Police Caution	
Employee Name	
Ward / Department	
Date of Incident	
Date of Police Interview	
Date of Arrest	
Date of Police Bail	
Conditions of Bail	
Date of caution/ charge	
Date of conviction	
Details of incident and outcome	
Employee signature	
Date	
Date disclosed to line manager	
Line Manager Signature	
HR Representative	
HR use only - Follow up action required	

Completed forms should be returned to the Relevant HR Advisor via email or post,
HR Department, Corporate Management Office, Southport & Formby District
Hospital, Southport

Appendix 3 – Disciplinary Appeal Form

Name	
Department	
Job Title	
Pay Band	
Date of disciplinary hearing	
Disciplinary sanction	
Allegation(s) considered	
Grounds of appeal	
<input type="checkbox"/>	Sanction was too harsh
<input type="checkbox"/>	Process was not followed
<input type="checkbox"/>	New evidence is to be considered
Reasons for appeal	
Signature	
Date	

Appendix 4 – File note form

File Note Form

Employee: Department:

Date:

Action/ purpose of the meeting:

File note of conversation

☐ Verbal Warning

Details: (including date of incident/ misconduct, what the misconduct was and details of specific discussion held)

.....
.....
.....
.....

Discussion held that conduct has been found unsatisfactory and/ or there are identified areas for improvement, the reasons(s) have been discussed and identified above. The staff member has been informed that failure to improve or avoid a recurrence in the outlined conduct may result in further action/ potentially disciplinary action in accordance with the Disciplinary Policy.

Agreed action plan:

.....
.....

Expiry Date: (no more than 12 months)

Date of next meeting for follow up:

Manager completing (signature)

Print name:

Date:

I have received and agree with the action plan. I have been informed that a copy of this notice will be placed in personal files relating to my employment with the Trust.

Signed (employee)

Date:

Appendix 5 – Lessons Learnt – Disciplinary Investigations and/or Hearings

Attendees at Lessons Learnt Process:	Date of Lessons Learnt Meeting:
Date of Incident:	Name of Investigating Officer: Name of HR Support to the Investigating Officer:
Date Investigation Commenced:	Name of Commissioning Manager:
Date Investigation Completed:	Outcome of the investigation i.e. no case to answer, informal counselling, proceed to hearing:
Length of investigation (weeks):	Date Hearing Convened (if applicable):
Name of the manager who chaired the hearing:	HR Support to the Panel:
Please describe the nature of the allegations investigated:	
If the investigation took more than the 8 weeks outlined by the disciplinary policy what were the reasons for the delay?	
Were there any matters/ issues that were brought up in the hearing that were not highlighted during the investigation?: <u>Issue:</u> <u>Reason why it was not highlighted during the investigation:</u>	
What were the positives of both the investigation and the disciplinary hearing (if applicable):	

Would the investigating officer make any changes if undertaking the investigation again?						
Would the staff side representative change anything if involved in such a process again:						
Were there any learning points from the Disciplinary Hearing (if applicable):						
Were there any organisational learning points that were highlighted either during the investigation or during the disciplinary hearing:						
<p>Please detail the actions that will be put in place as a result of the organisational learning points:</p> <table border="0"> <tr> <td><u>Action:</u></td> <td><u>Who will implement:</u></td> <td><u>By when:</u></td> </tr> <tr> <td> </td> <td></td> <td></td> </tr> </table>	<u>Action:</u>	<u>Who will implement:</u>	<u>By when:</u>	 		
<u>Action:</u>	<u>Who will implement:</u>	<u>By when:</u>				
Any other relevant information for the lessons learnt process:						

Appendix 6 - Risk Assessment Form (Disciplinary Procedure)

Employee name:

Job Role of employee:

Assessor:

Date Risk Assessment Completed	
What are the allegations that require consideration of exclusion or restricted duties?	
Do the allegations potentially constitute gross misconduct?	Yes/ No
Are there any risks to the investigation if the employee remains in work whilst the investigation is ongoing? If Yes, please describe the identified risks to the investigation should the employee remain in their job role	Yes/ No
Are there any risks to patients, staff or the Trust if the employee remains in their job role? If Yes, please describe the identified risks should the employee remain in their job role	Yes/ No
How could the identified risks be addressed whilst the investigation is completed? Have you considered alternatives to exclusion to mitigate any risks identified? If so what alternatives have been considered? Have you considered: <ul style="list-style-type: none"> • Restricting the employee from carrying out certain duties • Improving the supervision of the employee in carrying out their activities • Redeployment of the employee to another job role whilst the investigation takes place 	Yes/No

Can these alternatives be put in place? If not why is this not possible?	Yes/ No
Have you sought HR advice in completing this risk assessment? If so who from?	Yes/ No
Decision to exclude from duty Date exclusion effective from:	Yes/ No
Decision to restrict: If yes please provide details of the restrictions to be in place: Date restriction effective from:	Yes/ No
Review Date: (should be reviewed every four weeks from the date of exclusion or restriction)	

Excluding Officer
(Name).....Signed.....Date.....

Appendix 7 - Allegations of Fraudulent Activity

1. As soon as is reasonably practicable Human Resources department must notify the Local Counter Fraud Specialist [LCFS] on 0151 285 4500 or Director of Finance of any allegations relating to fraudulent activity of a Trust employee.
2. The LCFS will be granted an initial period to assess the information and gather additional information or evidence in order to determine the most appropriate course of action.
3. If **no evidence of fraud** is found the LCFS will notify the Director of Finance and inform Human Resources department as to the reasons for the decision. The Trust may still continue with its own internal investigation which may or may not lead to disciplinary action.
4. If there is **evidence of fraud** the LCFS will continue with their investigation and the appropriate course of action will be agreed with the Director of Finance.
5. In some instances it may be necessary to **exclude** staff in such cases the LCFS will supply the Human Resources department with all the facts to ensure that this is the most appropriate course of action. Any exclusion would be undertaken in line the Trust policy.
6. If further investigation is deemed necessary by the LCFS this will be conducted in accordance with the Police & Criminal Evidence Act 1984 and the NHS Counter Fraud and Corruption Manual.
7. The Trust will co-operate fully in any such investigation.
8. In some instances it may be necessary to conduct „Interviews under Caution“. In such circumstances legal representation may be required. Attendance of legal representatives is in line with the Police & Criminal Evidence Act 1984 and is not be confused with the stipulations of an internal Trust investigation as detailed in this policy.
9. The Trust will not notify the employee that they are the subject of an LCFS fraud investigation unless this has been fully discussed and agreed with the LCFS or Mersey Internal Audit Agency [MIAA].
10. The following are likely outcomes of an MIAA investigation:
 - **No Case to Answer** – in these cases the LCFS will provide a report to the Director of Finance in which the details of the case and the reason that no further action can be taken will be explained. A Trust internal investigation may or may not take place which could result in disciplinary action.
 - **Criminal Prosecution** – where a prima facie case is established against an individual it may be decided that criminal prosecution is the most appropriate sanction.
 - **Civil Action** – in some instance it may be decided that civil action is the most appropriate sanction in order to recoup some of the costs of the fraudulent activity.
 - **Internal Disciplinary Process** – in some cases it may be decided to follow the organisations disciplinary process. In these cases the LCFS will provide information and act as a witness to present their findings. In some instances a member of Human Resources department may be jointly involved in the interview process however the LCFS officer will not be appointed as the internal investigating officer.

11. The decision as the most appropriate course of action will be taken following consultation between the LCFS, the Director of Finance and Director of HR & OD.
12. A decision may be made to pursue parallel actions for example the LCFS may continue to pursue criminal sanctions whilst the Trust will conduct an internal disciplinary action. This may result in the internal process being completed prior to criminal sanctions being taken.

In such circumstances the LCFS will provide sufficient copies of evidence in order to allow an internal investigation to commence.

The decision will be made on a case by case basis and the emphasis will be on criminal sanctions.

13. Irrespective of the sanctions pursued the Trust will use all measures available to recover any monies lost to fraudulent activity.

A just culture guide

Supporting consistent, constructive and fair evaluation of the actions of staff involved in patient safety incidents

This guide supports a conversation between managers about whether a staff member involved in a patient safety incident requires specific individual support or intervention to work safely. Action singling out an individual is rarely appropriate - most patient safety issues have deeper causes and require wider action.

The actions of staff involved in an incident should **not** automatically be examined using this *just culture guide*, but it can be useful if the investigation of an incident begins to suggest a concern about an individual action. The guide highlights important principles that need to be considered before formal management action is directed at an individual staff member.

An important part of a just culture is being able to explain the approach that will be taken if an incident occurs. A just culture guide can be used by all parties to explain how they will respond to incidents, as a reference point for organisational HR and incident reporting policies, and as a communication tool to help staff, patients and families understand how the appropriate response to a member of staff involved in an incident can and should differ according to the circumstances in which an error was made. As well as protecting staff from unfair targeting, using the guide helps protect patients by removing the tendency to treat wider patient safety issues as individual issues.

Please note:

- A **just culture guide** is not a replacement for an investigation of a patient safety incident. Only a full investigation can identify the underlying causes that need to be acted on to reduce the risk of future incidents.
- A **just culture guide** can be used at any point of an investigation, but the guide may need to be revisited as more information becomes available.
- A **just culture guide** does not replace HR advice and should be used in conjunction with organisational policy.
- The **guide** can only be used to take one action (or failure to act) through the guide at a time. If multiple actions are involved in an incident they must be considered separately.

Start here - Q1. deliberate harm test

1a. Was there any intention to cause harm?



Yes

Recommendation: Follow organisational guidance for appropriate management action. This could involve: contact relevant regulatory bodies, suspension of staff, and referral to police and disciplinary processes. Wider investigation is still needed to understand how and why patients were not protected from the actions of the individual.

END HERE

No go to next question - Q2. health test

2a. Are there indications of substance abuse?



Yes

Recommendation: Follow organisational substance abuse at work guidance. Wider investigation is still needed to understand if substance abuse could have been recognised and addressed earlier.

END HERE

2b. Are there indications of physical ill health?



Yes

Recommendation: Follow organisational guidance for health issues affecting work, which is likely to include occupational health referral. Wider investigation is still needed to understand if health issues could have been recognised and addressed earlier.

END HERE

2c. Are there indications of mental ill health?



Yes

Recommendation: Follow organisational guidance for health issues affecting work, which is likely to include occupational health referral. Wider investigation is still needed to understand if health issues could have been recognised and addressed earlier.

END HERE

if No to all go to next question - Q3. foresight test

3a. Are there agreed protocols/accepted practice in place that apply to the action/omission in question?



If No to any

Recommendation: Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.

END HERE

3b. Were the protocols/accepted practice workable and in routine use?



If No to any

Recommendation: Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.

END HERE

3c. Did the individual knowingly depart from these protocols?



If Yes to any

Recommendation: Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.

END HERE

if Yes to all go to next question - Q4. substitution test

4a. Are there indications that other individuals from the same peer group, with comparable experience and qualifications, would behave in the same way in similar circumstances?



If Yes to any

Recommendation: Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.

END HERE

4b. Was the individual missed out when relevant training was provided to their peer group?



If Yes to any

Recommendation: Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.

END HERE

4c. Did more senior members of the team fail to provide supervision that normally should be provided?



If Yes to any

Recommendation: Action singling out the individual is unlikely to be appropriate; the patient safety incident investigation should indicate the wider actions needed to improve safety for future patients. These actions may include, but not be limited to, the individual.

END HERE

if No to all go to next question - Q5. mitigating circumstances

5a. Were there any significant mitigating circumstances?



Yes

Recommendation: Action directed at the individual may not be appropriate; follow organisational guidance, which is likely to include senior HR advice on what degree of mitigation applies. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients.

END HERE

if No

Recommendation: Follow organisational guidance for appropriate management action. This could involve individual training, performance management, competency assessments, changes to role or increased supervision, and may require relevant regulatory bodies to be contacted, staff suspension and disciplinary processes. The patient safety incident investigation should indicate the wider actions needed to improve safety for future patients.

END HERE

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Based on the work of Professor James Reason and the National Patient Safety Agency's Incident Decision Tree

Supported by:



collaboration trust respect innovation courage compassion

Appendix 9 - Guidance

Guidance on what to consider when providing a written statement is available on most Trade Union websites examples from the RCN and Unison are as follows:

<https://www.rcn.org.uk/get-help/rcn-advice/statements>

<https://www.unison.org.uk/content/uploads/2013/07/PoliciesNursing-How-to-write-a-witness-statement3.pdf>

Statement

Name:

Job title:

Professional address:

Subject of statement: *[for example, patient/client X at what incident/location]*

I am employed by *[insert your employer]*. I qualified as *[profession]* in *[month/year of qualification]*. My previous experience includes... I have worked in my current job for *[months/years]*.

This statement is based on *[personal recollection/review of records – or a combination]*.

I have been involved in the care of Patient X since *[date]*. My last involvement in their care was on *[date]*.

I am responding to allegations *[you could list them for ease of reference]* / a request for a written statement.

[Insert the content of your statement here, following [our guidance](#)]

[Add the following statement of truth at the end and sign and date your statement]

This statement is true to the best of my knowledge and belief, based on the information available to me at this time.

Name:

Job title:

Signature:

Date

Policy Implementation Plan

An Implementation template document for policy leads to use is available in a Word document on the intranet

Policy Title	PERS 01 Disciplinary Policy and Procedure
Is this New or revision of an existing policy	Revision to existing policy
Name and role of Policy Lead	Laura Hilton, Acting Head of HR
Give a Brief Overview of the Policy	
<p>The purpose of this Policy is to ensure that all staff are treated in a manner which is fair and consistent and which allows for the efficient and effective functioning of the Trust.</p> <p>The Policy is designed to ensure that management, staff organisations and employees are aware of the standards of conduct expected in the Trust and of their rights and obligations in respect of the disciplinary Policy and rules.</p> <p>The Policy defines behaviour that constitutes breaches of discipline and provides examples of such behaviours.</p> <p>Matters relating to performance or non-attendance due to ill health should be dealt with under the capability (PERS 25) or management of sickness absence (PERS 12) policies unless such breaches may be deemed as misconduct. In the case of medical and dental staff the Policy for Maintaining High Professional Standards (MED STAFF 1) should be followed.</p>	
What are the main changes in practice that should be seen from the policy?	
<p>The Policy aims to encourage and help employees to achieve and maintain satisfactory standards of conduct.</p>	
Who is affected directly or indirectly by this policy?	
<p>The Disciplinary Policy has been reviewed in line with learning from previous cases and most notably to ensure that the Trust is complying with the NHSi/e recommendations following the Baroness Dido Harding recommendations (Appendix 1). Key changes are summarised below:</p> <ul style="list-style-type: none">• Introduction of Just Culture approach• Introduction of a preliminary review / fact finding• Updated exclusion checklist• Revised timescales to reflect real world• Replacement of case manager with commissioning manager• Removal of welfare contact• Introduction of statements being provided to the IO, which may remove the need for or reduce the content of an investigatory meeting• Framework around appeals	

Implications

Implications	
Will staff require specific training to implement this policy and if yes, which staff groups will need training? Managers and trade union representatives	
Explain the issues? Policy may be applied incorrectly or misunderstood	Explain how this has been resolved Training will be provided by the HR team on this policy to ensure that the policy is understood and adhered to.
Are other resources required to enable the implementation of the policy e.g. increased staffing, new documentation? New training material will need to be created	
Explain the issues? The investigation guide will also need updating along with policy templates.	Explain how this has been resolved The HR team will update the investigation guide and policy templates in accordance with the revised policy.
Implications cont'd/...	
Have the financial impacts of any changes been established? N/A	
Explain the issues?	Explain how this has been resolved
Any other considerations No	
Explain the issues?	Explain how this has been resolved

Approval of Implementation Plan
Enter Name and Title of Policy Lead whose portfolio this policy will come under Laura Hilton, Head of HR
Signature <i>L.E. Hilton</i>
Date Approved20.01.2020

Policy Details

Title of Policy	Disciplinary Policy and Procedure
Unique Identifier for this policy is	PERS 01
State if policy is New or Revised	Revised policy
Previous Policy Title where applicable	As above
Policy Category Clinical, HR, H&S, Infection Control, Finance etc.	HR
Executive Director <i>whose portfolio this policy comes under</i>	Director of HR and OD
Policy Lead/Author <i>Job titles only</i>	Head of HR
Committee/Group responsible for the approval of this policy	Workforce Committee
Consultation with	Joint Negotiating Committee
Privacy Impact Assessment	Yes
Month/year consultation process completed	January 2020
Month/year policy approved	January 2020
Month/year policy ratified and issued	March 2020
Next review date	March 2022
Implementation Plan completed	Yes
Equality Impact Assessment completed	Yes
Previous version(s) archived	
Disclosure status	
Key words for this policy	

For more information on the consultation process, implementation plan, equality impact assessment, or archiving arrangements, please contact Corporate Integrated Governance.

Review and Amendment History

Version	Date	Details of Change
2.0.0	Oct 2014	Additions of references to Maintaining High Professional Standards in the Modern NHS (MEDSTAFF 1) Addition of Mandatory Professional Standards section and appendix amendment/ addition to disciplinary rules (appendix 1) Minor amendment to submission timescales for appeals. Criminal offences section and associated form. Amendment to safeguarding section
3.0.0	February 2020	The Disciplinary Policy has been reviewed in line with learning from previous cases and most notably to ensure that the Trust is

		<p>complying with the NHSi/e recommendations following the Baroness Dido Harding recommendations. Key changes are summarised below:</p> <ul style="list-style-type: none"> • Introduction of Just Culture approach • Introduction of a preliminary review / fact finding • Updated exclusion checklist • Revised timescales to reflect real world • Replacement of case manager with commissioning manager • Removal of welfare contact • Introduction of statements being provided to the IO, which may remove the need for or reduce the content of an investigatory meeting • Framework around appeals
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