

TRUST POLICY

DISCIPLINARY

This document may be made available to the public and persons outside of the Trust as part of the Trust's compliance with the Freedom of Information Act 2000.

Please be aware that only documents downloaded or viewed directly from the GHNHST Policies webpage are valid documents. Documents obtained through printed copies or internet searches may be out of date and therefore will be invalid.

In this document you may find links to external websites. Although we make every effort to ensure these links are accurate, up to date and relevant, Gloucestershire Hospitals NHS Foundation Trust cannot take responsibility for pages maintained by external providers.

FOR USE BY: This Policy is to be followed by all staff of Gloucestershire Hospitals NHS Foundation Trust and Gloucestershire Managed Services.

All colleagues are able to access support from the Trust's Staff Advice & Support 2020 Hub, which offers advice and support with your Health & Wellbeing - [Staff Advice and Support Hub](#)

The 2020 Hub provides information and signposting to a wide range of support services for physical, emotional or financial wellbeing. This support can include access to our Employee Assistance Programme, counselling, Occupational Health, psychological and trauma support or access to our network of trained peer supporters. All contact with the 2020 Hub is strictly confidential.

Document Overview:

- This document is for use in all situations where there are conduct issues which need to be addressed.
- This document applies to all Trust employees.

Fast Find:

- [B0288](#) - Capability Policy
- [B0295](#) - Grievance and Disputes
- [B0393](#) - Incidents - Managing, Reporting and Reviewing of Incidents Accidents, including Serious Incidents
- [B0291](#) - Disciplinary procedure action cards
- [B0207](#) - Abuse, Aggression and Unacceptable Behaviour Policy
- [B0725](#) - Equality, Diversity & Inclusion Policy
- [B0702](#) - Social Media Policy
- [Occupational Health Service Assessment Forms](#)

This document should be read in conjunction with the following statements:

Safeguarding Is Everybody's Business

All Gloucestershire Hospitals NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and adults and must:

- be alert to the possibility of unborn child, child or adult abuse, neglect and exploitation in any setting
- be conscious that our patients are still children until their eighteenth birthday no matter the reason for attendance
- know how to deal with a disclosure or allegation of unborn child, child or adult abuse
- undertake Safeguarding training appropriate to their role and ensure they undertake regular updated training and awareness at the mandated intervals
- understand and follow local policy and procedure relating to reporting unborn child, child and adult concerns
- ensure early advice and support is obtain if required through the Trust Safeguarding Hub on 0300 422 6279 or by using the Trust vulnerability guidance on the intranet at [Vulnerability \(gloshospitals.nhs.uk\)](https://gloshospitals.nhs.uk)
- if necessary and role appropriate, participate in the multi-agency working arrangements to safeguard a child or adult
- ensure relevant contemporaneous records are kept and maintained in accordance with Trust policy, procedure and professional guidelines.
- ensure that all employees and their managers discuss and record any safeguarding issues that arise at each supervision session

Equality And Human Rights

Gloucestershire Hospitals NHS Foundation Trust recognises that some sections of society may experience prejudice and discrimination. The Equality Act 2010 specifically recognises the protected characteristics of age, disability, sex, race, religion and belief, sexual orientation, gender reassignment, pregnancy and maternity and marital and civil partnership status.

The Trust is committed to promoting and advancing equality; removing and reducing discrimination and harassment and fostering good relations between people that hold a protected characteristic and those that do not both in the provision of services and in our role as a major county employer. The Trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices. The Trust is also aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

The Trust is committed to carrying out its functions, decision making and service delivery in line with that Human Rights commitment and the associated person centric FREDA principles of Fairness, Respect, Equality, Dignity and Autonomy.

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1. INTRODUCTION / RATIONALE

- 1.1 Gloucestershire Hospitals NHS Foundation Trust (GHNHSFT) is committed to providing a safe and healthy working environment where all employees are supported and encouraged to achieve and maintain standards of conduct in accordance with values and behaviours acceptable to the Trust.
- 1.2 This Policy provides a standard framework for managers when engaging with employees in relation to those expected standards of conduct, both at work and where relevant away from work including social media use, so that issues and concerns can be dealt with promptly, fairly and consistently.
- 1.3 This Policy does not form part of any contract of employment or other contract to provide services, and the Trust may amend it at any time (following consultation and agreement with the Trust's staff side organisations).

2. DEFINITIONS

Word/Term	Meaning
Suspension	Temporary removal of an employee from the workplace pending investigation
Misconduct	Conduct not conforming to expected standards; something that is inappropriate and/or not acceptable
Gross Misconduct	Conduct which is so serious that it destroys the relationship between Trust and employee
Summary Dismissal	Dismissal without any payment in lieu of notice
Sanction	An outcome of a formal hearing under the Disciplinary Policy
Fact-Find	A Fact Find is <u>not</u> an investigation but rather the first step and a timely information gathering exercise to explore any background, context or motivation that sits behind a set of circumstances/allegation. It should be undertaken by the receiving manager, or suitable nominee, using the Trust Case Assessment Framework (AC5), Supporting Guidance (AC8) and Reflective Guidance (AC9) in order to determine the next steps
Investigation	A proportionate and reasonable process to gather relevant evidence from all sides to see if there is a case to answer and help the Trust to see what should happen next.
Restorative, Just and Learning Culture	An environment where equal emphasis is placed upon both accountability and learning
Balance of Probabilities	A decision made on the basis of which circumstances is more likely to be true. The burden of proof used in conduct matters and in which the evidence indicates that it was more likely than not that certain events occurred
Employee Companion	Any individual who accompanies any employee who is the subject of a disciplinary process, who may be either a trade union representative or a colleague from the Trust

Word/Term	Meaning
Authorised officers	The role and organisational level required for action relating to this policy i.e. warnings, suspension, dismissal etc. (See B0291 – AC6)

3. POLICY STATEMENT

- 3.1 The purpose of the disciplinary procedure is to ensure a fair, systematic and consistent approach is taken when an employee's behaviour or action is in breach of workplace rules or falls short of the expected standards.
- 3.2 This Policy is intended to provide a framework within which managers can work with colleagues to maintain satisfactory standards of conduct. The Trust wants to ensure that when something happens that was not as expected we follow a defined and consistent process to decide what action should happen next. The Trust will deal with any disciplinary matter fairly by taking steps to establish the facts and giving employees the opportunity to respond before taking any formal action. The Trust wants staff to improve where necessary and ensure any learning is embedded.
- 3.3 This procedure applies to all employees of the Trust.

In cases involving concerns about doctors and dentists, this policy should be read in conjunction with the document Maintaining High Professional Standards in the Modern NHS; a framework for the initial handling of concerns about doctors and dentists in the NHS. That guidance is clear that doctors and dentists will be disciplined for misconduct under the same local procedures as any other staff member.

4. ROLES AND EXPECTED RESPONSIBILITIES

Post/Group	Details
Director for People	<ul style="list-style-type: none"> • The strategic responsibility for effective operation of this Policy • Ensure that disciplinary suspensions and outcomes are subject to strategic governance • The strategic responsibility for fair and consistent compliance • Ensure dissemination and awareness at Executive and Board level • Ensure appropriate consultation on this policy • Abide by and recognise the principles of a Restorative, Just and Learning culture
Trust Board	<ul style="list-style-type: none"> • Review HR management data relating to suspensions, Employment Tribunals and dismissals • Seek assurance that the right process, timescales and support is in place • Create an open culture where reporting is enabled and staff have a right for their concerns to be addressed and responded to in an appropriate, structured and consistent fashion

Post/Group	Details
	<ul style="list-style-type: none"> Abide by and recognise the principles of a Restorative, Just and Learning culture
Line Managers	<ul style="list-style-type: none"> Ensure their staff are appropriately trained and are aware of the expected standards of behaviour and conduct Handle disciplinary matters confidentially and sensitively and taking timely action as appropriate including any fact-finding and initial case assessment Abide by and recognise the principles of a Restorative, Just and Learning culture Assess matters objectively using the Trust Case Assessment Framework (AC5) and establish sufficient information in order to make reasonable, appropriate, defensible and fair decisions Seek necessary People Team support if required Keep written records and ensure appropriate confidentiality Consider any learning within the context of team, departmental or organisational improvement whilst seeking to raise and address issues appropriately Consider the need for any staff referral to Occupational Health
Responsible Officer (For professionally registered staff)	<ul style="list-style-type: none"> Ensure regulatory action is taken when necessary and that the individual is aware Be the first point of contact with professional bodies Monitor compliance with professional body restrictions where appropriate Liaise with professional bodies on fitness to practice issues
The People Team	<ul style="list-style-type: none"> Securely maintain and update HR records in a timely fashion Provide advice and support to line managers, employees and panels during case assessments and disciplinary processes Engage with other agencies where there are parallel or linked processes Ensure relevant referrals take place for DBS, Safeguarding and professional leads are aware for registrants Abide by and recognise the principles of a Restorative, Just and Learning culture Ensure disciplinary matters are dealt with in a timely, consistent and fair way
Commissioning Managers/Case Managers	<ul style="list-style-type: none"> Oversee the disciplinary investigative process to ensure that it is timely, fair, reasonable and proportionate. The term Commissioning or Case Manager is interchangeable Deciding to progress from an informal disciplinary process into the formal procedure will be made by the line manager following an initial fact find and completion of the Trust Case Assessment Framework (AC5). Once a decision has been made to investigate, the line manager will become the Commissioning or Case Manager. Determine the Terms of Reference for any investigation, including any required update as matters progress Appoint an Investigating Officer, unconnected with the case, to carry out an investigation

Post/Group	Details
	<ul style="list-style-type: none"> • In some cases, the line manager may not be considered the most appropriate person to become the Commissioning/Case Manager and in these cases a peer or more senior manager may take the role. People Team advice should be sought. • Appoint a link person(s) following consultation with the People Team and the staff member to support with health, well-being and organisational connectivity • Consider and review the necessity for suspension • Decide on any necessity to proceed to a disciplinary hearing based on the investigation report • Present the Management Case at hearings • Abide by and recognising the principles of a Restorative, Just and Learning culture
Link Person	<ul style="list-style-type: none"> • Provide independent support to an employee through agreed regular contact • Understand and help to remove any blockers to progressing matters in a timely fashion • Not be involved in the investigation in any way • Abide by and recognise the principles of a Restorative, Just and Learning culture
Investigating Officer	<ul style="list-style-type: none"> • Carry out investigations under this policy • Prepare investigation reports • Abide by and recognise the principles of a Restorative, Just and Learning culture • Update the Commissioning Manager on progress and developments including the need for any changes to the ToR
Chair of Panel	<ul style="list-style-type: none"> • Chair hearings using this policy • Issue hearing outcomes • Abide by and recognise the principles of a Restorative, Just and Learning culture • If necessary to present the detail and rationale of a hearing outcome at any appeal
Trade Union or Workplace Colleagues	<ul style="list-style-type: none"> • Support staff involved in investigation, disciplinary and appeal processes • Abide by and recognise the principles of a Restorative, Just and Learning culture • Support employees to understand and recognising how their behaviour and action should be in accordance with the Trust Values and Behaviours
Employees	<ul style="list-style-type: none"> • Take personal responsibility for their own good conduct and behaviour • Abide by and recognise the principles of a Restorative, Just and Learning culture • Cooperate with any fact-finding or investigation when required to do using the Reflective Guidance (AC9) • Maintain confidentiality concerning any investigation in which they have given evidence

Post/Group	Details
	<ul style="list-style-type: none"> • Attend Occupational Health referrals if relevant in support of this policy
Witnesses	<ul style="list-style-type: none"> • Attend investigation meetings and hearings as required • Agree or amend notes of interviews or statements and return them in a timely fashion • Maintain confidentiality concerning any investigation in which they have given evidence • To give consent for their witness statement to be presented at any relevant formal process

5. THE NEED FOR FORMAL ACTION OR NOT

- 5.1 Effort should always be made where possible to deal with problems through discussion between an employee and their line manager promptly, privately and informally as they arise. There should be an emphasis on support, advice and guidance.
- 5.2 Where informal discussion has failed or is not considered appropriate due to the seriousness of the allegations then consideration will be given to moving directly to the formal stages of this Policy. Before any formal action is taken the circumstances will be reviewed using the Trust Case Assessment Framework, Restorative Guidance and Reflective Guidance if applicable.
- 5.3 Treating colleagues fairly is at the heart of a Restorative, Just and Learning Culture and allows staff to feel confident to speak up when things go wrong rather than fearing blame. A timely and objective assessment of the circumstances should be carried out to establish whether there are reasonable and necessary grounds for a formal investigation and/or action or would training, support, guidance, or informal management action be more appropriate?
- 5.4 By using a Restorative, Just and Learning Culture an individual need may be identified such as reflective practice, supervision, training, performance or behavioural awareness. However, such an approach is all about both fairness and accountability and often there are others who are impacted or to be considered too. It is on that basis that formal action may still be required but only after careful consideration, as it is never the preferred choice.
- 5.5 Should the decision be to address matters through formal disciplinary action line managers will ensure that employees are kept fully informed of the allegations against them, the progress of the investigation and the processes being followed. How often and how that will practically happen should be agreed between the line manager and employee. The employee will always be given written confirmation of any allegations against them to ensure they are given the opportunity to state their case.
- 5.6 The Trust's aim is to deal with disciplinary 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 an investigation or disciplinary matter.

- 5.7 The employee, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure, whether these meetings or hearings are conducted in person, by telephone, or using remote working platforms or technologies unless agreed by all parties beforehand.
- 5.8 Any employee subject to a formal disciplinary process will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against the employee, unless the Trust believes that a witness's identity should remain confidential.
- 5.9 In the case of conduct issues relating to staff groups requiring professional registration, the Trust has in place a mechanism to ensure that relevant statutory regulatory bodies are informed where necessary. Any potential need for referral should be brought to the attention of the relevant Trust Responsible Officer (RO) as soon as possible who will make a judgement on any further action through early dialogue with the body of registration. Such dialogue does not constitute a referral but should be seen as reasonable first steps to protect both the individual and service. The need for referral should be reviewed if circumstances change.
- 5.10 Employees must be advised in advance of any subsequent formal written referral being made. Decisions in relation to professional registration as a result of formal referral will be for the relevant body to determine.

6. THE PROCEDURE

There are four main stages to the disciplinary procedure:

Stage 1 - Review of the Incident/Event and Fact Finding – (Case Assessment Framework [AC5](#), Restorative Guidance [AC8](#) and Reflective Guidance [AC9](#))

Stage 2 - Informal Stage

Stage 3 - Formal Stage (Including Investigation)

- Fast Track – Written warnings only ([AC1](#))
- Formal Hearing – ([AC2](#))
- Management Words of Advice
- Written Warning
- Final Written Warning
- Dismissal

Stage 4 - Appeals – Against Formal Warnings and dismissal – ([AC3](#))

A Flowchart detailing the process is detailed in [AC7](#).

STAGE 1 – REVIEW OF THE INCIDENT/EVENT AND FACT-FINDING

- 6.1 In accordance with a Restorative, Just and Learning Culture, when managers are made aware of an incident/event then there should be a timely establishment of the facts. This part of the procedure is to ensure the circumstances are established and understood to

enable line managers to decide upon the next steps, i.e. was it a system or policy issue that led to the event rather than an individual's conduct and crucially whether the matter requires progression to formal investigation or not.

- 6.2 Initial facts are to be established such as dates and times of the incident, the people involved or those people who have potentially witnessed the incident, where the incident took place, what relevant material exists such as emails, CCTV, photographs, case records, written documents or electronic records. In the case of CCTV and any other relevant records, action must be taken promptly to ensure that these records are secured before they are deleted.
- 6.3 To gather this initial information, it may be that line managers need to ask those involved for their account of the incident/event; that may take the form of verbal discussion or a request for a written account using the Reflective Guidance ([AC9](#)). A record of any verbal discussion should be made and agreed with the individual. A request for information in this way is not a formal investigation meeting and any record or notes provided by the individual themselves, as part of that initial review, will be made available to the employee should the matter progress to a formal process.
- 6.4 A review of an incident/event using the Case Assessment Framework ([AC5](#)), Restorative Guidance ([AC8](#)) and Reflective Guidance ([AC9](#)) should occur as quickly as possible and be a high priority for line managers. Whilst every case will be on merit it is expected that any assessment should be completed within five working days. Not every event/incident will require such an assessment and the necessity to do so will be a matter of professional judgment. However, in order to respond in accordance with this Policy the Case Assessment Framework ([AC5](#)) is the method for gathering information and documenting decisions.

STAGE 2 - INFORMAL STAGE

- 6.5 Line managers are encouraged to deal with cases of minor misconduct informally. Such a response is not disciplinary action under the terms of the Policy but rather it is a positive step whereby managers can advise, guide and correct members of staff with the aim of improving, supporting and maintaining acceptable standards of conduct. Often talking about the problem, before entering a formal process, can bring about a speedy resolution.
- 6.6 At an informal stage, managers are expected to meet with the employee and discuss the issues with them in private and ascertain in what way the expected standard of conduct is not being met. The aim of the meeting should be to confirm the expected standards of conduct agree and plan improvement over an agreed timescale, whilst being clear on the potential consequences if there is no improvement.
- 6.7 The manager should give the employee an opportunity to offer an explanation and should also try and find out if there is any underlying difficulty, such as personal (including domestic violence) or health problems, that might be mitigation.
- 6.8 If the manager is satisfied that an informal meeting is sufficient to get the message across, they must make a file note of the conversation which will be placed on the personnel file (P-File). A copy of the notes of the meeting/letter must be given to the employee. They will remain on the personnel file throughout their employment with the Trust and the employee should be made aware of this and that they would be relevant should the conduct issues continue or there has been no change in behaviour from the employee.

- 6.9 Line Managers should ensure they meet with the employee as agreed if further support was agreed.
- 6.10 Whilst at this informal stage there is no right to accompaniment for the member of staff however the line manager may wish to consider such involvement to facilitate an open and honest dialogue. This should not be allowed to unnecessarily delay this informal process.
- 6.11 Where the informal procedure fails to resolve the issue or is not deemed appropriate following an assessment of the circumstances, it will be appropriate to follow the formal disciplinary procedure. Attempts at informal resolution are relevant both in any decision making as to the appropriateness of any formal disciplinary process and as potential evidence in any subsequent investigation.

STAGE 3 - FORMAL STAGES

Fast Track Procedure

- 6.12 Where an employee admits an allegation of minor misconduct during an initial fact-finding the matter can be considered for Fast-Tracking. A Fast-Track process has a number of benefits for the employee in relation to their health and wellbeing as well as for colleagues who might be witnesses or connected to the event in some way.
- 6.13 The decision to Fast-Track can only be made by the Director for People or their Deputy and will only be relevant for matters that might be considered suitable for a first written warning. **Fast-Track will not be considered for matters of gross misconduct or where dismissal maybe appropriate.** It also cannot be used if any of the allegations are contested by the employee or if there is a connected disciplinary process involving another employee.
- 6.14 If a first written warning is a likely or reasonable outcome then the employee, their representative or the manager may ask that that the case move directly to that conclusion without a full investigation under this Policy. It should be noted however that there must be sufficient information for both the employee to request a Fast-Track process and for the senior manager to make a decision on the appropriateness of the request.
- 6.15 There has to be written agreement between all parties to progress using the Fast Track process. If that is the case a meeting is held between the employee, any representative, a senior manager from the relevant service and the People Team to explore the circumstances. At the meeting there must be recognition that the employee has learnt from the experience, is unlikely to repeat their misconduct and will adhere to the values of the Trust.
- 6.16 Cases that might be considered for Fast-Tracking would include but not be limited to social media concerns, drug errors, a lack of professional documentation, confidentiality, minor IG breaches, breaches of procedure and internet misuse.
- 6.17 The full Fast Track process is detailed in [AC1](#).

Formal Disciplinary Hearings

- 6.18 The process relating to Disciplinary/Capability hearings is outlined in [AC2](#). It details the process to be adopted prior to the hearing, panel make up and the structure of the hearings themselves.

Outcomes of Disciplinary Hearings

- 6.19 The potential outcomes for Disciplinary Hearings are set out below. No sanction should be imposed without a hearing unless the Fast-Track process has been followed. The Trust aims to treat all employees fairly and consistently and whilst sanctions imposed in cases of similar misconduct will be taken into account they should not be treated as a precedent. Each case will be considered on its own merit.
- 6.20 **No Further Action** - If the case is found to be unsubstantiated, or because of exceptional mitigating circumstances the panel may decide to take no action but there might still be organisational or personal learning.
- 6.21 **Informal Warning** – The panel may issue an informal warning based on the conduct of an employee. Such advice is not subject to a time limit for disciplinary purposes.
- 6.22 **First Written Warning** - A first written warning may be given in circumstances which include:
- Cases which are more serious than would warrant informal action being taken but which are not serious enough to warrant another sanction
 - Cases where the issue relates to an act of misconduct where there are no other active written warnings on the employee's disciplinary record
 - Cases of minor acts of misconduct which have already been subject to informal warning by the employee's line manager
 - Cases which have been deemed appropriate for the Fast-Track process
- 6.23 A first written warning may remain live for a period of 6 months triggering an increased sanction if further conduct matters are revealed within that timeframe. However, it might still be considered in the decision making for disciplinary purposes in any future misconduct outside of that timeframe if relevant.
- 6.24 **Final Written Warning** - A final written warning may be given in circumstances which include:
- Misconduct where there is already a live written warning on the employee's record
 - Misconduct that is considered sufficiently serious to warrant a final written warning even though there are no other active warnings on the employee's record
- 6.25 A final written warning may remain live for a period of 12 months triggering an increased sanction if further conduct matters are revealed within that timeframe. However, it might still be considered in the decision making for disciplinary purposes in any future misconduct outside of that timeframe if relevant.

- 6.26 All written warnings will set out the nature of misconduct, the change of behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct. This will be shared with the employee.
- 6.27 **Dismissal with Notice** - The decision to dismiss an employee may be appropriate in the following circumstances:
- Any misconduct during a probationary period
 - Further misconduct where there is a live final warning on the employee's record
 - Any gross misconduct regardless of whether there are any active warnings on the employee's record
- 6.28 In the event of dismissal with notice, the Trust reserves the right to execute dismissal immediately with pay in lieu of notice (PILON).
- 6.29 **Summary Dismissal** – Cases of gross misconduct which will usually result in dismissal without notice or payment in lieu of notice.
- 6.30 **Alternatives to Dismissal** – In some cases the panel may consider alternatives to dismissal which may include demotion, permanent or temporary transfer to another department, permanent or temporary loss of seniority, a period of suspension without pay, reduction in pay, loss of future pay increment or loss of overtime.
- 6.31 A final written warning will accompany any sanction imposed as an alternative to dismissal, which will remain on record for 24 months triggering an increased sanction if further conduct matters are revealed within that timeframe; in exceptional circumstances a final written may state that it will remain active indefinitely. However, in any case, it might still be considered in the decision making for disciplinary purposes in any future misconduct outside of that timeframe if relevant.
- 6.32 If an employee declines to accept a sanction which is an alternative to dismissal, or if an alternative sanction proposed by the panel subsequently proves impractical to implement, then the employee will be dismissed.
- 6.33 **Extending a Written Warning due to Absence** - The purpose of issuing a warning is to allow the opportunity is for the individual to amend their behaviour in work. If an employee is absent from work due to illness, special leave or away from the Trust for a period of 4 weeks or more during the duration of the warning, the warning will be extended by the amount of time the employee is absent from the Trust.
- 6.34 **Monitoring of Outcomes and Sanctions** - It is the responsibility of the employee's line manager to monitor the conduct and performance of the individual on an on-going basis and specifically as outlined in any warning immediately following its issue. Line managers will also ensure that any remedial action as set out in a warning is actioned. Records of such reviews and progress will be maintained by the manager and discussed with the colleague up to and including the end of the period stipulated in the warning.
- 6.35 If the employee's conduct does not improve the Trust may decide to extend the active period of the warning or increase the sanction. The decision to do so will be that of the original panel but if that were not possible then another independent panel will consider the circumstances.
- 6.36 Should there be a change in line manager during the material time any outstanding warnings and progress monitoring should form part of the managerial handover.

STAGE 4 – APPEALS - AGAINST FORMAL WARNINGS AND DISMISSAL

- 6.37 The employee has a right to appeal a Disciplinary hearing outcome. Disciplinary appeals must be directed to the manager named in the outcome letter using the Disciplinary Appeal form. This manager will have the seniority to chair the appeal and make decisions on the validity or otherwise of the grounds for appeal. Any appeal is not a re-hearing. The People Team will arrange the appeal hearing which should be heard as soon as reasonably practicable after receipt of the appeal notification and ideally within a calendar month. If delay is anticipated for whatever reason, the employee must be kept informed.
- 6.38 The process of how to appeal, the grounds for doing so, the appeal process itself and outcome possibilities are detailed in [AC3](#).
- 6.39 The appeal hearing may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at the discretion of the Trust depending on the circumstances of the employee's case. In any event, the appeal will be dealt with as impartially as possible.
- 6.40 Summary of Relevant Disciplinary Responsibility and Timeframes

Action	Responsibility	Time frame
Assessment		
Case Assessment Framework	Manager	Within 5 working days of trigger event/incident
Fast-track		
Submission of written request to the People Team	Subject of Proceedings/ Union Representative/ Manager	Within 3 working days of initial request
Fast-track meeting	People Team	Within 15 working days of the trigger event/incident
Suspension		
Suspension - Contact	Link Person	Bi-monthly contact
Suspension - Reviews	Case Manager	Every 4 weeks
Suspension - Reviews	Executive	At 12 weeks
Investigation		
Notes to witness	Investigator	Within 10 working days
Witness note return	Witness	Within 5 working days
Hearing		
Hearing Notice	People Team	10 working days
Hearing Notice – Dismissal	People Team	15 working days
Hearing Outcome	Panel Chair	Within 15 working days

Action	Responsibility	Time frame
Appeals		
Registering Appeal with grounds	Person Subject to Proceedings	Within 21 days of hearing outcome letter
Hearing to be heard	People Team	Within 2 months of original hearing
Hearing Notice	People Team	10 working days
Hearing notice - Dismissal	People Team	15 working days
Appeal Outcome	Panel Chair	Within 15 working days
MHPS		
MHPS - Hearing – Dismissal	Case Manager	20 working days
MHPS – Object to panel composition	Person Subject to Proceedings	Within 5 days of notification
MHPS - Exchange of documents	Case Manager/People Team/Person Subject to Proceedings	At least 10 working days
MHPS - Exchange of live witness names	Case Manager/People Team/Person Subject to Proceedings	At least 2 days before the hearing
MHPS – Proceeding in Absence	Panel Chair	After no less than 30 days

7. ADDITIONAL RELEVANT GUIDELINES

Investigation and Procedure

- 7.1 Formal disciplinary action will not normally be taken against an employee until the issue(s) of concern have been formally investigated.
- 7.2 The decision to formally investigate will be made by the line manager having completed the Case Assessment Framework ([AC5](#)) using the Restorative Guidance ([AC8](#)), Reflective Guidance if applicable ([AC9](#)) and having sought appropriate advice from the People Advisory Team. Once the decision has been made the line manager will become the Commissioning/Case Manager and seek an investigation into the issues of poor conduct.
- 7.3 The Trust recognises the challenges faced by all colleagues who are facing disciplinary action. However, national reporting shows that those colleagues with a disability or from an Ethnic Minority background can face unique challenges with unintended consequences. Whilst a restorative, just and learning approach will go some way to provide confidence into how concerns and issues are addressed in cases where the subject of the formal investigation is from an Ethnic Minority background or has a disability, a member of the Inclusion Council should also be assigned to provide support to the investigation process. That detail of that support is deliberately not prescribed but there is an expectation that the assigned Inclusion Council member will discuss the case with the investigator and/or case

manager regularly within the context of fairness, equity, bias or the perception of such.

- 7.4 The purpose of an investigation is for the Trust to establish the facts, in a fair and balanced way, relating to any disciplinary allegations against an employee, in order that the Commissioning/Case Manager can decide whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case.
- 7.5 The employee will be informed in writing as soon as possible about the allegations to be investigated. The letter should be as specific about the allegations as possible and explained verbally to the employee, particularly if the individual has difficulty reading.
- 7.6 The Commissioning/Case Manager will set the Terms of Reference (ToR) for the investigation and will appoint an Investigating Officer, unconnected with the case, to carry out an investigation. If relevant new information becomes available it should be brought to the attention of the Commissioning/Case Manager for any amendments that might be required to the ToR.
- 7.7 In some cases, the line manager may not be considered the most appropriate person to become the Commissioning/Case Manager, in these circumstances a peer or more senior manager may take the role.
- 7.8 In complex cases the Trust may appoint a group of independent senior managers to provide the oversight and governance in relation to the investigation. This decision-making group will collectively fulfil the role of Commissioning/Case Manager.
- 7.9 The Commissioning/Case Manager will base the decision on how to proceed on the outcome and conclusions of the formal investigation once they are satisfied that the ToR have been achieved.
- 7.10 A People Advisor may be assigned to support the investigating officer. The individual subject of the investigation will be asked in writing to meet and discuss the allegations as part of the investigation process. There is an organisational expectation that the employee will attend such a meeting. The meeting will be either electronically recorded or notes made of the conversation. In the case of notes every effort will be made to detail the questions and responses but there is no expectation that it will be a verbatim record. If it is recorded electronically the individual will be supplied with a copy of the meeting. Any notes or electronic recording will be shared with the individual within 10 working days. Any changes or indeed any further information that the witness wishes to add having reflected further on matters should be made clear in the notes.
- 7.11 The notes should be returned within 5 working days, unless a different time frame has been agreed with the investigating officer, confirming they are an accurate reflection of what was said. If not returned as agreed the investigating officer will determine whether the notes will form part of the reporting as they stand.
- 7.12 The Trust Outlook system can be used to review and agree the individual's notes. The electronic time and date used in such communication will be an acceptable electronic signature unless there is good reason to believe that is not the case. Any email confirming the notes should be retained.

The Right to be Accompanied

- 7.13 Employees have the right to be accompanied by an accredited trade union representative or by a workplace colleague at any disciplinary or appeal hearing under this policy, including investigatory meetings. However, the Trust would not consider a witness to the relevant conduct matters suitable for that role.
- 7.14 Employees are responsible for finding their own companion and must ensure that their chosen companion is informed of meeting/hearing arrangements. Employees must inform the People Team of the details of any individual supporting them under this policy.
- 7.15 Representatives cannot be legal executives/solicitors or individuals from outside the organisation, including family members.
- 7.16 If an accredited trade union representative is subject to action under this Policy, they are entitled to representation from a full-time officer. The People Team should in the first instance discuss the case with the National or Regional Officer of the relevant union prior to any action being undertaken under this Policy. This should be with the knowledge of the trade union representative unless doing so would compromise the investigation or place others at risk of harm.

Suspension/Exclusion from work

- 7.17 Suspension from duty is a neutral act, is not considered a disciplinary sanction and is not a presumption of guilt. That said, it will certainly not feel like that to the employee and therefore support to ensure health, wellbeing and psychological safety is important whilst the individual is away from the work environment. Suspension, if necessary, is a temporary measure so that the disciplinary process may take place. This might include an investigation, the organisational decision making following an investigation and/or hearings. It is intended to protect the interests of patients, other staff, the employee and/or to protect the integrity of the disciplinary process. It is in the interests of all concerned to ensure that suspension from work is not seen as the only course of action and alternative ways of managing any risk should always be considered e.g., close supervision, restricted duties or a temporary move to another area
- 7.18 Suspending an employee from work to allow an investigation to take place is likely to be appropriate, but is not necessarily limited to, circumstances where:
- The employer has grounds to believe that the employee might deliberately cause damage if allowed to remain at the workplace, for example damage to the employer's network or a risk to colleagues' well-being
 - The employee's continuing presence at work might prejudice the investigation in some way.
 - The employee has, or is alleged to have, acted in a violent way or threatened violence.
 - There is a genuine belief that allowing the employee to remain at work presents a risk to patients, staff or the employee
- 7.19 During the period of suspension, the organisation will maintain regular contact in order to keep the individual informed of any progress in the investigation, suspension reviews, personnel updates etc. The Link Person or manager responsible for that contact must be identified and agreed with the staff member along with when and how often contact will be undertaken. The Link Person should record all contact which should be at least twice a

month unless something different is agreed with the staff member.

- 7.20 Whilst suspended the employee will continue to receive their full pay and benefits. Employees with variable pay will receive an average of their weekly gross earnings calculated over 13 weeks prior to the date of suspension.
- 7.21 The actual terms of any suspension or exclusion should be carefully considered as a total exclusion might not be appropriate or indeed necessary. Each case must be on merit and decisions made to manage the specific risks identified. Alternative options may include but not be limited to;
- Telling the employee that no contact is made with work colleagues
 - Restricting or removing IT access
 - Restrictions on entering certain Trust premises (unless for medical appointments or emergencies) without prior agreement from the Case Manager or the People Team
 - Restricting any additional form of related work outside of the Trust. Any second job must be disclosed to include the type of work, the role the individual has and if suspension at the Trust is relevant. A note will be made on the persons P-file by the receiving manager in consultation with the Commissioning/Case Manager
 - Directing that the employee is to work remotely for a period
- 7.22 The decision to suspend will only be made by a senior member of staff who will do so in conjunction with the People Team and the line manager who has completed the Case Assessment Framework ([AC5](#)). The Suspension Checklist ([AC4](#)) should also be completed which also details an assessment of risk and any supporting rationale. Any immediate urgent need to suspend out of hours, i.e. police investigation, high risk safeguarding issue, will be the decision of the on-call Gold and should be reviewed by the line manager and People Team the next working day.
- 7.23 Any necessity for the exclusion from work of Doctors, Dentists and pharmacists will follow and comply with Maintaining High Professional Standards in the Modern NHS, the Department of Health guidance for responding to concerns, restrictions of practice and exclusion relating to that sector of the workforce.
- 7.24 The suspension of Doctors, Dentists or Pharmacist will ordinarily only take place once authorised by either the Chief Executive Officer, the Medical Director or their deputies. In the case of an urgent out of hours need and the CEO, Medical Director or their Deputies cannot be contacted the decision will be that of the on-call Gold. The decision will be reviewed by the CEO, Medical Director or their deputy the next working day.

Where a clinician has practice elsewhere, private or otherwise, that must be disclosed by the individual and it agreed how any other organisation will be notified.

- 7.25 As soon as reasonably practicable the employee will be told in person of the allegations, their suspension, any restrictions and the reasons why by a senior manager supported by a member of the People Team. They will be provided with the information in writing at the same time. They should also be told that;
- they must be available to respond to calls and/or attend the workplace during normal working hours
 - they must advise their line manager of their whereabouts if they cannot be contactable for any reason during normal working hours

- they may take annual leave under the Trust's standard procedures, but this must be agreed in advance with their line manager and will be deducted from their annual leave entitlement
 - they make take sickness absence as normal and must follow all standard procedures for reporting sick
 - a breach of suspension conditions constitutes a disciplinary offence
- 7.26 Reviews of suspension by the case manager will occur every four weeks but any decisions to remove suspension or restrictions should not wait for such a review and must be actioned as soon as possible with the staff member informed and updated in writing. Any requirement for a continuation of suspension beyond 12 weeks must be considered by a member of the Executive. Suspension beyond 6 months whilst considered unusual might be appropriate but any continued necessity will be considered by the CEO or their Deputy.
- 7.27 All review outcomes will be communicated in writing to the staff member.

Criminal Investigations

- 7.28 Employees must disclose to their line manager any arrests, convictions, cautions, warnings, reprimands or bind overs that are issued to them during employment. Where a staff member's conduct is subject of a criminal investigation, charge, warning or conviction the individual must immediately inform their line manager. A Fact-Find using the Case Assessment Framework ([AC5](#)), Restorative Guidance ([AC8](#)) and Reflective Guidance ([AC9](#)) will be undertaken before deciding whether to take formal action under this Policy.
- 7.29 The key considerations will be any associated risks to the public, patients or colleagues, the impact on public confidence and whether the circumstances impact on the ability for the employee to fulfil their contractual role or if their action has reputation al issues for the Trust. Any assessment will be subject to review as any matters progress.
- 7.30 For criminal investigation related issues relating to Doctors, Dentists and Pharmacists also refer to Maintaining High Professional Standards in the Modern NHS 2003
- 7.31 A criminal investigation, charge or conviction relating to any matter outside work may be treated as a disciplinary matter if it considered relevant, impacts on the ability of the staff member to fulfil their contract/duties or is seen as bringing the Trust into disrepute.
- 7.32 Where allegations of a possible criminal nature have taken place on trust premises this may be seen as an aggravating disciplinary factor. Any information gathered in the course of the investigation may be passed to the police for their consideration.
- 7.33 Where an employee receives a prison sentence, it would normally be necessary to terminate their employment. Advice in such cases must be sought from the People Team and the employee's staff side representative prior to such action.
- 7.34 Investigations by other bodies or agencies such as the counter fraud team, the police or social care, may be carried out separately from investigations under this procedure. The Trust will engage and cooperate with any such investigation and will only delay carrying out internal investigations and the subsequent disciplinary procedure through discussion with the relevant agency and where absolutely necessary.

- 7.35 Police forces have a duty to inform employers of cautions, reprimands, final warnings and recordable offences where the employee is in a position of “public trust”. See information on the [Notifiable Occupations Scheme](#) for further details

Duty of Candour

- 7.36 The Francis Report highlighted the importance for NHS bodies to be open, honest, and transparent. This includes:
- The Trust sharing the themes and learning from a disciplinary investigation with service users and carers regarding a patient safety incident, where appropriate
 - Encouraging open and honest dialogue with Service Users
 - Where appropriate, interviewing service users as part of any process.

Publishing of Disciplinary Outcomes

- 7.37 The Trust will publish anonymised details of disciplinary outcomes internally through the bulletin process as part of building confidence for colleagues. It is recognised nationally that primary barriers to reporting relate to a perception that matters will not be addressed or taken seriously and anonymised publishing is one method of addressing that issue. Any such publishing will be the outcome month, the basic allegation (i.e. bullying and harassment) and the outcome itself. Personal data will not be disclosed in the reporting.

Behavioural Concerns

- 7.38 Any complaints made in relation to bullying and harassment will be addressed in line with the Trust's Mutual Respect Policy. If it is found that there is a case to answer, the normal disciplinary investigation process will be followed, as per this policy.

Safeguarding

- 7.39 All safeguarding concerns should be discussed with and/or sent by appropriate referral to the Local Authority in accordance with the Trust safeguarding protocols and multi-agency arrangements.
- 7.40 When child safeguarding allegations are made about our own employees, bank workers, volunteers or agency workers then the relevant criteria and requirements of the Allegations Management process in Working Together 2023 should be considered. Advice may be sought from the named nurse, named midwife and/or the People Team regarding a potential referral to the Local Authority Designated Officer (LADO).
- 7.41 Similar consideration and duty to report exists with adults considered to be at risk.
- 7.42 All safeguarding allegations about our staff must also be reported to the Trust Deputy Director of Nursing regardless of any prior or immediate reporting to the Local Authority.

- 7.43 The Trust is required, where appropriate under the Safeguarding Vulnerable Groups Order 2007, to make a referral if a person working with children or vulnerable adults has been dismissed, would have been dismissed, or considered for dismissal had he/she not resigned, or has been suspended, or transferred from a Child Care or vulnerable adults' position.
- 7.44 The Trust also has a duty to make referrals to relevant professional bodies in certain circumstances e.g., NMC (Nursing and Midwifery Council), GMC (General Medical Council), GDC (General Dental Council), HCPC (The Health and Care Professions Council), the Police and share relevant information.

Information Governance

- 7.45 Information Governance ensures that one of the Trusts most important assets, information, in both clinical and management terms, is respected and held in secure and manageable conditions. The Trust has put into place a range of appropriate policies, procedures, and management arrangements to provide a robust framework for Information Governance.
- 7.46 All data loss/data breach incidents will be fully investigated by the Trust and should it be identified that there has been any misconduct by an employee then the seriousness of the incident will determine the organisational response in accordance with this policy. For consistency action will only be taken after the matter has been assessed using the Trust Assessment Framework ([AC5](#)).

Examples of poor conduct

There are two levels of poor conduct;

7.47 Misconduct

The following are examples of what might be considered misconduct although the list is not exhaustive:

1. Failure to comply with a reasonable management request
2. Abusive, objectionable, or insulting behaviour
3. Foul or abusive language
4. Minor Breaches of a Professional Code of Conduct
5. Repeated failure to maintain registration with appropriate professional body
6. Communication of any unauthorised written material
7. Failure to maintain the required standard of dress or presentation
8. Minor breaches of an employment contract
9. Negligent conduct
10. Minor breaches of Trust Policies
11. Failure to comply with the Trust Values
12. Accessing inappropriate materials on the Internet during working hours
13. Inappropriate use of internet and social network sites such as Facebook and Twitter
14. Failure to disclose that you have been or are subject of a criminal investigation in any form during Trust employment
15. Absenteeism and failure to comply with sickness absence procedures

7.48 Gross Misconduct

The following are examples of what might be considered gross misconduct although the list is not exhaustive:

1. Theft/ misappropriation – any instance of an unauthorised removal of property from the Trust or from a service user, carer, or colleagues
2. Physical Assault – Physical assault upon a service user, carer, a fellow employee, or member of the public
3. Threatening/ menacing behaviour towards a service user, carer, a fellow employee, or a member of the public
4. Persistent lack of respect or civility towards colleagues, patients and visitors that continues after feedback is provided or you are asked to stop behaving in a particular way
5. Serious Damage – to Trust property, property of service users/carers, or colleagues.
6. Cases of Fraud and Corruption – Acceptance of gifts, money, goods, favours, or excessive hospitality in respect of services rendered currently more than £25
7. Confidentiality – loss of confidential information, unauthorised access to confidential information, disclosure, or breach of confidence in relation to information regarding a service user/carers or colleague except where such a breach constitutes a protected disclosure for the purposes of the Trust's Concerns at Work
8. Discrimination or Harassment
9. Breach of Professional Code of Conduct
10. The concealment, altering or destruction of evidence in any form
11. Inappropriate or Unprofessional relationship with any service user
12. Whilst at work or using Trust property deliberately accessing or downloading material from any site that is of a pornographic, terror related, discriminatory or of an offensive nature
13. Persistent absence from the workplace without leave
14. Possession or attempt to supply alcohol or intoxicating substances (which may or may not be illicit)
15. Being under the influence of alcohol or substances (which may or may not be illicit), either prior to reporting for duty or whilst on duty, which has impaired their ability to undertake duties
16. Communicating any material which breaches the Trust Equality and Diversity policies
17. Committing a serious act, which is deemed to be prejudicial to the interests of the Trust or its employees.
18. Knowingly taking carers/parental/paternity/adoption leave for purposes other than supporting a child/ dependent
19. Victimising a colleague who has raised concerns under the Whistleblowing, Dignity at Work, Grievance, Disciplinary Policies/Procedures
20. Misrepresentation at any time, including at the time of appointment or when applying for any post in the Trust, e.g., previous positions held, qualifications held, date of birth, declaration of health, or failure to disclose a criminal offence or pending criminal action, subject to the provisions of Rehabilitation of Offenders Act 1974
21. Deception - giving false information including qualifications, health, immigration status, failure to disclose a criminal conviction or caution to gain employment or other benefits prior to or post-employment at the Trust

Witnesses

- 7.49 In the case of a formal investigation individuals might be required to participate a witness interview by the Investigating Officer if it is thought that they have relevant information to the event or incident. Trust employees are expected to fully engage in the investigation process.
- 7.50 There is no automatic right to a companion in investigation meetings, but the investigator may permit a companion who is a work colleague or union representative provided that this does not introduce unwarranted delay.
- 7.51 Notes of the witness interview should be shared with individual within 10 working days so that they can make any alterations or amendments. There is no expectation that such notes are a verbatim record of any discussion. Any changes or further information that the witness wishes to add having reflected further on matters should be made clear in the notes.
- 7.52 The notes should then be returned within 5 working days, unless a different time frame has been agreed with the Investigating Officer, confirming they are an accurate reflection of what was said. Such notes will be the witness's statement of events. If not returned as agreed the investigating officer will determine whether the notes will form part of the reporting as they stand.
- 7.53 If the witness and Investigating Officer cannot agree the notes as an accurate record of events then consideration should be given to presenting both sets of notes as part of the formal process. The Investigating Officer should make relevant observations on what has occurred in such circumstances.
- 7.54 The Trust Outlook Mail system can be used to review and agree witness interview notes. The electronic time and date used in such communication will be acceptable unless there is good reason to believe that is not the case. Any emails agreeing the notes should be retained.
- 7.55 Character witnesses are not considered relevant as part of a formal investigation and the Investigating Officer will not be expected to obtain such material.
- 7.56 Witnesses may be called by either side to attend a hearing and they may be accompanied by a work colleague not connected with the case or a staff side representative. If required witnesses should attend in most circumstances unless:
- There is agreement by both parties that attendance is not required, such as where it would cause significant distress (e.g. a sexual harassment case). Advice should be sought from the People Team.
 - The witness is too unwell to attend.
 - The statement is provided by a patient or member of the public who cannot be compelled to attend.
- 7.57 The employee will be given the opportunity to respond to any information given by a witness. However, the employee will not normally be permitted to cross-examine witnesses at a hearing unless, in exceptional circumstances, the Trust decides that a fair hearing could not be held otherwise.

- 7.58 The Trust may adjourn the disciplinary hearing if the panel determines there is a need to carry out any further investigations such as re-interviewing witnesses in the light of any new points raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 7.59 A witness's line manager must ensure that they are able to attend a hearing as required. Attending a disciplinary hearing is considered to be normal working time in every respect.

Failure to Attend the Hearing

- 7.60 If the employee or their companion cannot attend the hearing, the employee must inform the Trust immediately and alternative time for the hearing to take place will be arranged. The employee must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. The Trust will postpone a disciplinary hearing a maximum of two times if, on the third occasion, the employee is still unable or unwilling to attend for any reason, the hearing will proceed in their absence.
- 7.61 Not that an employee who is unable to attend in person has the option of attending remotely by video conference, by telephone or by proxy, if they wish to nominate their companion to attend on their behalf.

Grievances

- 7.62 If an employee lodges a grievance in relation to an ongoing disciplinary matter advice should be sought from the People Team. The raising of a grievance should not normally delay ongoing proceedings and the expectation is that this would be dealt with after the conclusion of a disciplinary hearing, or at least to run concurrently with it. However, the Trust has the discretion to consider a grievance prior to disciplinary proceedings.
- 7.63 People Team advice must be sought in all cases and the Case Assessment Framework ([AC5](#)) should be applied. In such a situation it is important to understand the background, context and any motivation that might exist in relation to the submission of a Grievance at that time. The views of the employee's union representative if applicable should also be sought.
- 7.64 Any final decision following an assessment of the circumstances must be made on a case-by-case basis.
- 7.65 If a grievance is raised during a disciplinary hearing related to the process itself, the chair of the panel can take actions which may include the following:
- Adjourn the hearing for a short period whilst the issue is dealt with according to the Trust Grievance Procedure
 - deal with the grievance at the same time as the disciplinary process if the grievance and disciplinary cases are related; or
 - hear the grievance after the disciplinary or appeal hearing has taken place
- 7.66 False grievances (see [B0295](#) - Grievance Policy) may lead to separate disciplinary action.

Resignation

- 7.67 If an individual chooses to resign from the Trust and refuses to engage during the Disciplinary process during or after their employment has been terminated, there may be occasions e.g. professional registration/code of conduct/safeguarding concerns where the case may continue and be heard in their absence even after their employment has been terminated. If the case is found against the former member of staff the Trust will be obliged to refer the case to the relevant professional body. The Trust therefore encourages employees to maintain their engagement with the process wherever possible. If relevant, the individual will be told if the process is to continue and why.
- 7.68 Any subsequent employment reference provided for that employee will state the facts relating to any outstanding investigation into alleged misconduct or hearing outcomes and whether or not the individual engaged in the process.

Special Circumstances

- 7.69 Special arrangements might be required for handling disciplinary matters among staff on night or weekend shifts, employees in isolated areas of the Trust, or staff with special needs. The Trust will provide time in lieu for attending meetings outside normal working hours. This policy and associated procedures must be followed at all times.

Fraud, Bribery and Corruption

- 7.70 In accordance with the Trust's Counter Fraud, Bribery and Corruption policy, where there is a reasonable belief that fraud has been committed, or when fraud is proven or admitted during the course of a disciplinary case, all matters should be referred to the Trust's Local Counter Fraud Service. The LCFS will undertake their own investigation alongside or following any disciplinary process. The LCFS will make independent decisions on whether or not to pursue any suspicion of fraud.
- 7.71 Where there is reasonable belief that bribery/corruption has occurred, the allegation will be referred to the LCFS for investigation in accordance with Trust's response to the Bribery Act 2010. All allegations of bribery/corruption will be referred to the NHS Counter Fraud Authority.

Health Issues Raised During Disciplinary Processes

- 7.72 If an employee's ability to participate in any aspect of the process outlined in this Policy is affected by ill health, the Trust will ensure that they are referred to Occupational Health as soon as possible so that any subsequent disciplinary process may then be modified to accommodate the advice of the OH physician. Of note is that ill health is not normally considered grounds for non-participation in a disciplinary process.

Expenses incurred during disciplinary processes

- 7.73 The Trust will not pay an employee's out-of-pocket expenses incurred during investigation or disciplinary processes.

Outcomes linked to Incremental Pay Progression

- 7.74 A formal warning issued under the Trust's Disciplinary Procedure will result in incremental pay being withheld, in line with the Pay Progression Policy.
- 7.75 The hearing will make an individual assessment of how the disciplinary issue has impacted on the achievement of appraisal objectives, performance or Trust values. Where there is evidence that there has been an impact on the achievement of appraisal objectives, performance or Trust values, incremental progression will be withheld. The panel will advise the individual of this decision at the time of the hearing.

8. TRAINING

- 8.1 Specific training will be delivered as and when required to those managers who are required to act and fulfil roles relevant to this policy. Such training will be coordinated through the People Team.
- 8.2 Mentoring and specific support for managers, case managers, investigators and panel members will be available on a case-by-case basis through the People Team.

9. EQUALITY IMPACT ASSESSMENT (EIA)

See [Equality Impact Assessment \(EIA\)](#) document.

10. MONITORING OF COMPLIANCE

Do the systems or processes in this document have to be monitored in line with national, regional or Trust requirements?		YES
Monitoring requirements and methodology	Frequency	Further actions
Consistency review of disciplinary cases and appeals by the People Team	Annually	Reported to the People Team for escalation where concerns are identified.
Review of casework and outcomes against People Team metrics	Annually	Reported to the People Team for escalation where concerns are identified.

11. REFERENCES

Ministry of Justice (2010). The Bribery Act 2010. London: Her Majesty's Stationery Office.

ACAS Code of Practice on Disciplinary and Grievance Procedures – TSO 2015

The ACAS Guide - Disciplinary and Grievances at Work – July 2020

Mersey Care NHS Foundation Trust – Maintaining Standards in a Just and Learning Culture Policy

Gloucestershire Health and Care NHS Foundation Trust – Disciplinary Policy

Equalities Act 2010

Maintaining High Professional Standards in the Modern NHS - 2003

Document Profile

Trust Policy Assurance Group (TPAG) require this information for approval and governance purpose. All fields must be fully completed prior to submission. Incomplete submissions will be rejected by the Policy Team. Please follow the guidance below.

Document Identification	
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Document Title	Disciplinary Policy
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Relevant NICE Guidance	N/A
Relevant Regulations	N/A

Equality Impact Assessment (EIA)

Date Completed	December 2024
Completed by	Simon Atkinson HR Investigation and Support Officer

<u>Age</u>		
		X
Adverse	Neutral	Positive
Consider people of different age groups. Think about the built environment, routines and practice.		

<u>Disability</u>		
		X
Adverse	Neutral	Positive
Consider both able and disabled people, and different types of disability. Think about accessibility of the built environment, routines, practice and communication.		

Protected characteristic: <u>Gender Reassignment</u>		
		X
Adverse	Neutral	Positive
Consider people who are transgender, or are transitioning. Think about routines, practice, communication and use of language.		

Protected characteristic: <u>Marriage and Civil Partnership</u>		
		X
Adverse	Neutral	Positive
Particularly relevant for issues concerning employment. Think about rules, practice, routines and use of language.		

<u>Pregnancy and Maternity</u>		
		X
Adverse	Neutral	Positive
Particularly relevant in the workplace is to consider people who are pregnant or on Maternity or Adoption Leave. Think about routines, practice and opportunities.		

<u>Race</u>		
	X	
Adverse	Neutral	Positive
Race can mean colour, nationality, ethnic and national origins, as well as people belonging to ethnic and racial groups. A racial group can be made up of two or more distinct racial groups e.g., British Jews; Romany Gypsies; Irish Travellers. Think about routines, practice and communication.		

<u>Religion or belief/no belief</u>		
		X
Adverse	Neutral	Positive
Consider people who follow religious practices or traditions. This also applies to philosophical beliefs which are cogent, serious and apply to an important aspect of human life or behaviour. Think about routines, practice, dietary issues and use of language.		

<u>Sex</u>		
		X
Adverse	Neutral	Positive
Consider people who are men, women, boys and girls. Discrimination could be a one-off act or as a result of a document/rule. Think about procedures, rules, routines, language and behaviour, built environment.		

<u>Sexual Orientation</u>		
		X
Adverse	Neutral	Positive
Consider people who are lesbian, gay and bisexual. This also covers how people choose to express their sexual orientation, such as through their appearance or places they visit. Think about practice, the environment and use of language.		

Other factors to be considered, not included as a 'Protected Characteristic'		
		X
Adverse	Neutral	Positive
Consider people with other differences which make them susceptible to discrimination e.g., socio-economic factors; gender and non-binary; marital status (such as divorced, single). Think about routines, practice, protocol, language.		

Action Card 1 - Fast Track process

For Use By: Line managers, People Team, staff side representatives

Liaises With: Director for People and Associate Director for People, People Team, staff side representatives

Fast Track Principles

Following an examination of an event or incident, using the Trust Case Assessment tool, if the decision is to move to a formal procedure one option open to the Trust and employee is to conclude the matter short of a formal investigation with consideration of the Fast-Track process.

Where the disciplinary outcome of a particular case is likely to result in a First Written Warning, the employee and /or their staff side representative may ask that the case move directly to that conclusion without completing a formal investigation.

The Manager may also suggest to any staff-side representative that the case may be suitable to be dealt with under Fast-Track process. It should be noted however that there must be sufficient information for both the employee to request a Fast-Track process and for the senior manager to make a decision on the appropriateness of the request. At the meeting there must be recognition that the employee has learnt from the experience, is unlikely to repeat their misconduct and adhere to the values of the Trust.

Fast-Track will not be considered for matters of gross misconduct or where dismissal maybe appropriate. It also cannot be used if any of the allegations are contested by the employee or if there is a connected disciplinary process involving another employee. In the event that the manager considering the facts decides that there may be no case to answer with the detail/evidence they have been given; this should be discussed with Human Resources.

The pro-forma request form can be completed by the manager or employee and submitted to the People Team within 3 working days of the initial request.

Employees who are not in a union should discuss their concerns with their manager, The People Team, or a workplace colleague before completing and submitting their pro-forma request.

Please note that employees can only apply and be considered to have one Fast Track process per 12-month period.

The Fast-Track process:

1. All requests must be submitted via the Fast-Track pro-forma [attached below] to the Director for People (DfP) or Associate Director for People.

2. A meeting with the employee, their Trade Union representative or workplace colleague will be necessary to gather the required information. The manager will be responsible for the collection of this information so that this can be passed on to the Director for People or their deputy. After reviewing the information, the decision as to whether to take the Fast-Track route or not is final. It

Action Card 1 - Fast Track process

For Use By: Line managers, People Team, staff side representatives

Liaises With: Director for People and Associate Director for People, People Team, staff side representatives

will be confirmed by the People Team to the employee, their manager and any staff-side rep/supporting colleague.

3. Once a decision has been made the employee will be reminded that there will be no appeal against a warning given using the Fast-Track process.

4. Where the DfP or their deputy considers that the Fast-Track approach is inappropriate for whatever reason the normal disciplinary process will be followed and this will be fed back to the individual by the People Team.

Cases that may fall under the Fast-Track process could include social media misuse, drug errors, lack of

documentation, confidentiality, minor IG breaches, breaches of procedure internet misuse etc. Please note that this list is not exhaustive.

Please also note that whilst medication errors will be considered as part of the Fast-Track process every error must be reviewed and learning actioned.

If the Fast-Track application is accepted there will be no need for a formal investigation although a sufficient and reasonable examination of the facts must have taken place in order to ensure there is agreement between all parties on a first written warning.

If the Fast-Track process is agreed a Fast-Track meeting will take place between the employee their representative or colleague, a senior manager from the relevant Service and HR. Brief notes will be kept, shared with the employee and placed on their P file and the People Team Case management system. In addition, all records that led the decision making.

This meeting must have taken place within 15 working days of the issue/event being raised with their manager.

The order of a Fast-Track meeting:

- Introductions
- The senior manager outlines the nature of the allegation(s) accepted by the colleague and advises that it will result in an agreed sanction of first written warning.
- The senior manager confirms with the colleague that they accept the allegations previously stated.
- The senior manager will then communicate their decision to the employee and their representative.
- The senior manager will send a letter confirming the decision to the employee. The record of any warning will be kept on the personal file.
- The disciplinary sanction imposed is given in accordance with the Trust Disciplinary policy.

Action Card 1 - Fast Track process

For Use By: Line managers, People Team, staff side representatives

Liaises With: Director for People and Associate Director for People, People Team, staff side representatives

FAST TRACK PROFORMA (to be completed by the manager and employee)

Name:

Post:

Division:

Ward/Department:

Date of Allegation:

Allegation:

Meeting to discuss allegation date:

Present:

Main Points discussed:

I (Insert name) request to be fast tracked to a meeting were a sanction of a first written warning maybe be given without further investigation for the above allegation/s

I (insert name) agree and confirm that I would like to be considered for Fast-Track:

I have no right of appeal against the sanction/First Written Warning Issued.

I have discussed the matter with my staff side rep or workplace colleague:

I understand the allegation and fully admit my role and action in the events as stated:

I request no further investigation of this allegation:

Employee (Name and signature) _____

Approved/ Not approved:

Director for People/Associate Director for People - HR (Delete as appropriate)

For Office Use:

Meeting arranged First Written Warning issued:

Database updated:

Fast track not approved and fed back to individual/staff side:

Action Card 1 - Fast Track process

For Use By: Line managers, People Team, staff side representatives

Liaises With: Director for People and Associate Director for People, People Team, staff side representatives

Employee invitation to a Fast-Track meeting

Date:

Employee Address:

Dear

Fast-Track Disciplinary Meeting

I am writing regarding your Disciplinary Fast-Track Request Form dated and would like to inform you that your request has been accepted by the Trust Director for People or their deputy. I would therefore like to confirm that you should attend a Fast-Track Disciplinary Meeting with me to consider the following allegation(s) of misconduct, the basis of which you signed as accepting on your form (copy enclosed):

-
-
-

This meeting will be conducted under the Fast-Track process of the Trust's Disciplinary Policy and Procedure which is available on the Trust intranet. Detailed below are the arrangements for this meeting:

Location:

Date:

Time:

You have a right to be accompanied at this meeting by a representative of a trade union recognised by the Trust, a full time official of any other trade union or a work-based colleague. I would be grateful if you could inform me if you are to be accompanied prior to the day of the hearing.

Under the Fast-Track process no witnesses and no HR representative will be present.

You should be aware that the outcome of this hearing will be that you will receive a first written warning which is in compliance with the maximum limited sanction you confirmed as acceptable on your Disciplinary Fast-Track Request Form.

You now have a final opportunity not to be part of the Fast-Track process and request a formal investigation and potential disciplinary hearing. If you elect to take this course of action you should inform me by email at least 2 working days prior to the day of the meeting.

You will not suffer any detriment if you choose to proceed with your right to a full disciplinary hearing. If you have any queries in advance of the meeting, please contact me.

Yours Sincerely

Action Card 2 - Disciplinary/Capability Hearings

For Use By: Authorised Officers, panel members, line managers, People Team, staff-side representatives

Liaises With: People Team, Staff-side representatives

Process – Prior to Hearing:

- A member of the People Team will organise the disciplinary/capability panel and venue for hearing
- The People Team will ensure the employee and their staff side representative are given at least 10 working days written notice of the date and time of the hearing, 15 working days in the case of possible dismissal. The letter confirming the arrangements will include:
 - the specific allegations/capability
 - copies of all written documentation to be presented at the hearing
 - date, time and venue of the hearing
 - names and designation of all members of the panel and those presenting the management case
 - That warning is given of the possibility of dismissal where this could be considered as an action by the panel if the allegations are proven
 - Names of any witnesses to be called at the hearing
- If the employee has learning or language difficulties the manager must ensure that the content of the letter is understood. Access to an interpreter service is available.

If additional evidence to the previously written submissions is likely the panel chair must be made aware before the hearing for a decision in delaying proceedings. Late submission of material should be considered unusual and unhelpful. The premise is one of openness and transparency and neither party should expect to be “ambushed” with material during the process. The panel may adjourn the hearing to allow further investigations to be conducted

Composition of Panels:

- Panels will consist of two managers, one of whom will be a manager of an appropriate level and one HR representative
- Panels will not include managers who have conducted the investigation process
- Panels on cases which could lead to dismissal must include an officer with authority to dismiss (or delegated authority)
- **Medical/dental practitioners:** For capability hearings **ONLY**, one member of the panel must be an appropriately qualified medical/dental professional who is not currently employed by the Trust.

Action Card 2 - Disciplinary/Capability Hearings

For Use By: Authorised Officers, panel members, line managers, People Team, staff-side representatives

Liaises With: People Team, Staff-side representatives

Process – Conducting the Hearing

The hearing will take place in the following order:

- The chair of the panel will ensure all those present are introduced, the process explained and that the employee is aware that the hearing is being conducted in accordance with the Disciplinary or Capability Policy
- The management side will present their case and accept questions from the employee, staff side representative or members of the panel
- The employee or staff side representative will present their case and accept questions from the panel and management side
- Witnesses may be called by either side at an appropriate point and will accept questions
- The management side will sum up their case
- The employee and/or their staff side representative will sum up their case
- When all the evidence has been heard, the panel will adjourn to consider their decision in private; both sides may be recalled if the panel need clarification on any matter
- Brief adjournments may be called during the hearing by any party
- The outcome of the hearing will, wherever possible, be communicated to the employee at the end of the hearing, but will in any case be communicated in writing not more than 15 working days after the hearing
- All rights of appeal will be explained to the employee, including time limits and the name of the manager who will receive the appeal
- All papers and documents should be collated and returned to the People Team who will be responsible for ensuring safe and secure retention including the updating of the Trust Case Management system.
- The line manager will be informed of the outcome of the hearing and the duration of any sanctions imposed.

Panel Considerations:

In considering any outcome, having heard all the available evidence, panels will consider a number of factors including but not necessarily limited to;

- Whether the allegations are proven by direct evidence, or in the case of disciplinary hearings, on the balance of probability
- In the case of multiple allegations, which are to be upheld and which disregarded
- An employee's disciplinary, general and attendance records although spent sanctions will be ignored
- Explanations and mitigation provided by the employee
- Any early acceptance and recognition of misconduct by the employee
- Personal responsibility for action without blaming others
- Relevant aggravating factors i.e. ignoring a reasonable management instruction, an abuse of trust or position
- Professional advice presented by either side, e.g., from occupational health
- Actions taken in previous similar cases within the Trust (The People Team will advise)
- Whether the intended action/sanction is reasonable in the circumstances

Action Card 2 - Disciplinary/Capability Hearings

For Use By: Authorised Officers, panel members, line managers, People Team, staff-side representatives

Liaises With: People Team, Staff-side representatives

- Whether there has been an impact on the achievement of appraisal objectives, performance or trust values. If so, incremental pay progression should be withheld

Capability Hearings for Employees Who Fall Under Maintaining High Professional Standards ONLY – Process Variations

- The practitioner should receive a minimum of 20 working days' notice of the date of the hearing
- All parties must exchange any documents, including witness statements, no later than 10 working days before the hearing
- Names of witnesses must be available to both sides no later than 2 working days before the hearing
- If late evidence is presented, the Panel Chair must consider whether it is appropriate to rearrange the date of the hearing
- In the absence of the practitioner, the Panel Chair may proceed with the hearing in his/her absence after no less than 30 working days
- The practitioner may raise an objection to the choice of any panel members within 5 days of notification, and the Trust will take reasonable measures to ensure that the membership of the panel is acceptable to the practitioner. It may be necessary to postpone the hearing while the matter is resolved. In these cases, the Trust must provide written reasons for their decision on panel choice before the hearing takes place
- Witness evidence, if contested, may be given less weight if the panel are not able to challenge it by cross-examining the witness (although the Panel Chair cannot require anyone other than an employee to attend; other witnesses attend by consent only)

Note: Always consult the People Team before issuing any written communications

ALWAYS ENSURE ALL RELEVANT ACTIONS AND DECISIONS ARE DOCUMENTED

Action Card 3 - Disciplinary Appeals

For Use By: Panel members, Authorised Officers, Line managers, People Team, staff side representatives

Liaises With: People Team, Professional/staff side representatives

How to Appeal

- The employee must appeal in writing within 21 working days of the date of the outcome letter from an initial hearing. The employee must submit their request for appeal using the Appeal Form within this Action Card and indicate what the grounds for appeal are
- Appeals will be addressed to the manager named in the outcome letter

The Grounds for Appeal

Appeals against disciplinary or capability sanctions are not a re-hearing and may only be made on the following grounds:

1. The outcome was unreasonable or disproportionate to the circumstances
2. There was significant deviation from Trust policy that would have made a material difference to the outcome
3. New evidence/information has come to light not available at the original hearing

The appeal panel will only hear the material relevant to the grounds for the appeal and consider that within the context of the original panel decision. The panel will need to satisfy themselves that the original decision was fair, reasonable and proportionate based on the observations now being made by the employee with any relevant new supporting evidence

Appeal Panel Composition

- Appeals against a First Written Warning will be heard by a senior manager (normally the line manager of the person who issued the warning) supported by a senior member of HR
- Appeals against a Final Written Warning or Dismissal will be heard by a panel of up to three senior managers, one of whom will be a Director (or equivalent). The panel will be supported by a senior member of the People Team
- When the employee lodging the appeal is a Doctor, a Medical Director or nominated deputy will form part of the appeal panel

Process – Prior to Appeal Hearings

- A member of the People Team will organise the appeal panel and venue for the hearing
- All reasonable steps will be taken to ensure that an Appeal Hearing is heard within 2 months of the receipt of the appeal but if that is not possible the employee will be updated on progress
- The employee and their staff side representative will be given at least 10 working days written notice of the time and date of the hearing, 15 working days in the case of a dismissal. The letter confirming the arrangements will include:

Action Card 3 - Disciplinary Appeals

For Use By: Panel members, Authorised Officers, Line managers, People Team, staff side representatives

Liaises With: People Team, Professional/staff side representatives

- date, time and venue of the hearing
 - names and designation of all members of the panel and those presenting the management case
- If the employee has learning or language difficulties the manager must ensure that the content of the letter is understood. Please refer to the Translation Service if necessary.
 - The employee will submit in writing detail of the grounds and rationale for the appeal with any supporting and relevant documentation or witness testimony; it must be clear which one of the 3 grounds in the document is the basis for the appeal. This is separate from the initial form registering the desire to appeal within 21 working days and must include the specific material the employee wishes to use in their appeal
 - All the information to be disclosed and relied upon will be agreed and disclosed by all parties at least 10 working days prior to the appeal hearing.

If additional evidence to the previously written submissions is likely the panel chair must be made aware before the appeal hearing for a decision in delaying proceedings. Late submission of material should be considered unusual and unhelpful. The premise is one of openness and transparency and neither party should expect to be “ambushed” with material during the process.

Process – Appeal Hearings

- The chair of the panel will ensure all those present are introduced, the process explained and that the employee is aware that the appeal hearing is being conducted in accordance with the Disciplinary or Capability Policy. The Chair will also confirm that this is an appeal hearing and not a process to re-hear the original hearing.
- The employee and/or staff side representative will be given an opportunity to outline their case for appeal, reference their supporting documentation and bring relevant witnesses directly linked to the grounds for appeal if required.
- Members of the panel and the management side may ask questions of the employee and/or the staff side representative
- Members of the panel and the management side can ask questions of any witnesses called
- The management side will be given an opportunity to outline the grounds for original decisions
- The employee and/or staff side representative may ask questions of the management side
- The employee and/or staff side representative sum up their case
- The management side sum up their case
- Brief adjournments may be called during the hearing by any party
- The panel retire to consider the evidence presented. They may seek additional clarification from either side during the deliberation. and may change the disciplinary/capability action taken if necessary; they have the power to increase, uphold or reduce the sanctions issued, or dismiss the case entirely

Action Card 3 - Disciplinary Appeals

For Use By: Panel members, Authorised Officers, Line managers, People Team, staff side representatives

Liaises With: People Team, Professional/staff side representatives

Process – Appeal Outcomes

- The appeal panel may change the original disciplinary/capability outcome; increase, uphold or reduce the sanctions issued or dismiss the case entirely
- If an appeal is unsuccessful, the outcome of the original hearing remains and any sanctions will run their course as defined, unless there is an increased sanction to be applied.
- If an appeal is successful, the decision of the appeal panel will apply and the reduction or removal of any sanction will be recorded
- If pay progression was withheld at the original hearing, but this decision is over-turned at the appeal hearing, the panel must inform the line manager so that they can instruct payroll to pay the increment, backdated to the original due date.
- The outcome of the hearing will, wherever possible, be communicated to the employee at the end of the hearing, but will in any case be communicated in writing not more than 15 working days after the hearing
- There are no further stages in an appeal process

Appeal Hearings Involving Doctors or Dentists – Process Variations

Composition of Appeal Panels

- Appeal panels will consist of three members, who must not have been previously involved in the investigation or original hearing. These members will be:
- For capability hearings ONLY an independent member (trained in legal aspects of appeals) from an approved pool. This person will be appointed from the national list held by NHS Employers for this purpose (see [Maintaining High Professional Standards in the Modern NHS](#), section 4, Annex A). This person is designated Chair
- The Chair (or other non-executive director) of the employing organisation
- A medically/dentally qualified member (as appropriate) who is not employed by the Trust. The Trust will agree the external medical or dental member with the Chair of the Medical Staff Committee/Local Negotiating Committee

Panels should call on others for specialist advice. This will include:

- A consultant from the same specialty or subspecialty as the appellant, but from another NHS employer. Where the case involves a dentist, this may be a consultant or an appropriate senior practitioner
- Senior People Team who may be from another NHS organisation

It is important that the panel is aware of the typical standard of competence required of the grade of doctor/dentist in question. If for any reason the senior clinician is unable to advise on the appropriate level of competence, a doctor in the same grade from another NHS employer will be asked to provide advice.

Action Card 3 - Disciplinary Appeals

For Use By: Panel members, Authorised Officers, Line managers, People Team, staff side representatives

Liaises With: People Team, Professional/staff side representatives

Powers of Appeal Panels

- Any grounds for appeal will only be in accordance with the three criteria earlier in this document.
- Witnesses – the panel has the right to call witnesses of its own volition, but must notify both parties at least 10 working days in advance of the hearing and provide them with a written statement from any such witness at the same time
- Additional witnesses – exceptionally, where the appeal panel determines during the course of the hearing that it needs to hear evidence from a witness not called by either party, it will adjourn the hearing to enable a written statement to be obtained from the witness and made available to both parties before the hearing reassembles
- New evidence – if the panel determines that new evidence needs to be presented, it should consider whether an adjournment is appropriate to obtain and consider it. The panel will determine whether any new evidence is relevant to the appeal, or warrants a fresh capability hearing being convened

Appeal Hearing Outcomes

- The panel will make their decision known to the appellant and the case manager in writing within 15 working days of the hearing. The decision of the appeal panel is final and binding. No correspondence will be entered into unless clarification on any outcome is required (merits of the case will not be entered into), which must be obtained from the Chair of the panel.

Note: All written communications with the employee must be made using the appropriate standard letters from templates which are available on the [HR website](#).

Always consult the People Team before issuing any written communications.

ALWAYS ENSURE ALL RELEVANT ACTIONS ARE DOCUMENTED

Action Card 3 - Disciplinary Appeals

For Use By: Panel members, Authorised Officers, Line managers, People Team, staff side representatives

Liaises With: People Team, Professional/staff side representatives

REQUEST FOR APPEAL AGAINST DISCIPLINARY OR CAPABILITY OUTCOME

To:

(Designated Manager for Appeal Process)

Name:

Department:

Date of Hearing:

Sanction applied:

Name of Staff Side Representative:

I wish to appeal against the outcome of the hearing on the following grounds:
(Delete as appropriate)

1. The outcome was unreasonable or disproportionate to the circumstances
2. There was significant deviation from Trust policy that would have made a material difference to the outcome
3. New evidence/information has come to light not available at the original hearing

Please give brief details of your reasons below – a full report will be required for the appeal hearing.

1. The outcome was unreasonable or disproportionate to the circumstances:

2. There was significant deviation from Trust policy that would have made a material difference to the outcome

3. New evidence/information has come to light not available at the original hearing

Employee Signature:

Date:

Action Card 4 - Suspension Checklist

For Use By: Exec Directors, Senior Managers,
Line managers, People Team, staff side
representatives

Liaises With: Exec Directors, Senior Managers,
Line managers, People Team, staff side
representatives

SUSPENSION CHECKLIST

To be completed in ALL cases when suspension is actioned

Suspension may only be carried out by a manager with delegated authority to suspend and in the presence of a People Team representative – the employee must be advised of the reasons /terms of the suspension

Employee Name:	
Suspension Risk Assessment Tool completed and confirmed need for suspension:	Yes / No
Date:	
Suspending Manager:	
HR Business Partner/People Advisor: <i>To contact HR out of hours please contact the switchboard on 0300 422 2222 in the first instance</i>	
Reason for suspension (confirm with individual):	

Action Card 4 - Suspension Checklist

For Use By: Exec Directors, Senior Managers,
Line managers, People Team, staff side
representatives

Liaises With: Exec Directors, Senior Managers,
Line managers, People Team, staff side
representatives

Confirm with employee the following: -	Tick when complete
Suspension is with immediate effect / they must leave Trust premises	<input type="checkbox"/>
Not an assumption of guilt / not disciplinary action	<input type="checkbox"/>
Confirm they are on full pay, no detriment financially <i>(suspension without pay is considered only in exceptional circumstances and advice must be sought from The People Team before a decision is made)</i>	<input type="checkbox"/>
Confirm access to EPR/ Trakcare / NHS mail / any other access to IT systems will be suspended for duration of suspension	<input type="checkbox"/>
Must not enter premises unless prior agreement has been given by management, or they are a patient, or a patient's carer, or visiting a relative, or if they are attending Occupational Health, attending meetings for the investigation, or if they need reasonable time to gather evidence for the investigation – in all cases they must notify their manager if you need to attend site	<input type="checkbox"/>
Inform that they need to advise their manager if they are unavailable during work time or wish to take annual leave	<input type="checkbox"/>
Check if there are any dates currently they are unavailable or on annual leave	<input type="checkbox"/>
Offer Staff Support & Wellbeing Hub - contact 0300 422 2020 and ghn-tr.2020@nhs.net	<input type="checkbox"/>

Action Card 4 - Suspension Checklist

For Use By: Exec Directors, Senior Managers,
Line managers, People Team, staff side
representatives

Liaises With: Exec Directors, Senior Managers,
Line managers, People Team, staff side
representatives

Provide Employee Assistance Programme details /
available 24/7 Tel: 03303 800 658

Web: www.vivup.co.uk

Discuss referral to Working Well (this can be made at
any time during suspension if required)

Advise of Freedom to Speak Up Guardians within the
Trust

Confirm the person and contact details of who will be
supportive link to the employee during suspension or
agree to follow up with name with contact details

Suspension will be reviewed every 4 weeks and you will
informed of outcome from the review

Issue a copy of Disciplinary Policy

Confirm confidentiality must be maintained and the
investigation not discussed with any work colleagues

Any breach of the above conditions could constitute a
disciplinary offence

Discuss how they will be going home and if they need
any support/assistance?

Check if someone is at home to provide support if
needed?

☐☐☐☐☐☐☐☐☐☐

Action Card 4 - Suspension Checklist

For Use By: Exec Directors, Senior Managers,
Line managers, People Team, staff side
representatives

Liaises With: Exec Directors, Senior Managers,
Line managers, People Team, staff side
representatives

Confirm employee's address, mobile number and email address	<input type="checkbox"/>
Discuss and note preferred method of contact for correspondence – via post or email	<input type="checkbox"/>
Make sure that the employee is safe to get home	<input type="checkbox"/>
Date line manager informed of suspension:	
Note any items handed in by Employee:	
Note any items removed from workplace by employee:	
Book date for suspension review in 4 weeks with The People Team:	

Signed Manager: _____ Date: _____

Action Card 4 - Suspension Checklist

For Use By: Exec Directors, Senior Managers, Line managers, People Team, staff side representatives

Liaises With: Exec Directors, Senior Managers, Line managers, People Team, staff side representatives

Suspension Assessment Tool

This assessment tool is to be used prior to any decision being taken about whether to suspend/redeploy or limit the duties of the employee.

The line manager should complete the risk assessment seeking advice from the appropriate People Team lead and retain a copy during the investigation.

The decision to suspend or not lies with the manager with designated authority (but advice must be sought from The People Team **BEFORE** any suspension is agreed).

Date:	
Manager:	
People Team Lead:	
Name of Employee:	
Department/Directive:	
Issue/incident:	
Reported by:	
Evidence obtained prior to risk assessment:	

Action Card 4 - Suspension Checklist

For Use By: Exec Directors, Senior Managers,
Line managers, People Team, staff side
representatives

Liaises With: Exec Directors, Senior Managers,
Line managers, People Team, staff side
representatives

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Risk analysis

Risks	Yes/No	Explanation	Risk Likelihood (1=high 2=medium, 3=low)	Risk Consequence (1=high 2=medium 3=low)
Risk of harm to patients				
Risk of harm to employees				
Risk of harm to self				
Risk of interference in investigation				
Risk of harm to the Trust				

Action Card 4 - Suspension Checklist

For Use By: Exec Directors, Senior Managers,
Line managers, People Team, staff side
representatives

Liaises With: Exec Directors, Senior Managers,
Line managers, People Team, staff side
representatives

Risk of continued Fraud				
Risk to service provision				
Minimal/limited risk of any problem				
No risk of problems				

Risk options

Risk options	Yes/No	Reason for Risk option
No requirement to take action identified		
Manage the risk and allow the employee to remain within their role under close supervision		
Reduce the risk and limit duties and role under supervision within the same workplace		

Action Card 4 - Suspension Checklist

For Use By: Exec Directors, Senior Managers,
Line managers, People Team, staff side
representatives

Liaises With: Exec Directors, Senior Managers,
Line managers, People Team, staff side
representatives

Transfer the risk and redeploy the employee temporarily within the Trust		
Avoid the risk and suspend the employee		

Outcome

Outcome of assessment and decision:

Action Card 4 - Suspension Checklist

For Use By: Exec Directors, Senior Managers,
Line managers, People Team, staff side
representatives

Liaises With: Exec Directors, Senior Managers,
Line managers, People Team, staff side
representatives

Date: _____
Signature: _____

Manager:

Action Card 5 - Case Assessment Framework

For Use By: Authorised Officers, panel members, line managers, People Team, staff-side representatives

Liaises With: People Team, Staff-side representatives

Case Assessment Framework

Date:	
Employees Name:	
Role and Division:	
Manager's Name:	
Manager Conducting the Assessment (If different):	
HR Advisor:	

Why do we need a framework?

The Trust supports a Restorative, Just and Learning culture that places equal importance on learning and accountability for both staff and the organisation. Crucial in cases that might result in any form of disciplinary action is a reasonable and proportionate gathering of information to ensure fair decision making on any next steps. Such an approach is equally as important in understanding any grievance raised by an employee.

A Restorative, Just and Learning culture places an emphasis on appropriately resolving complaints and events of concern informally. **No formal action under either the Mutual Respect or Disciplinary Policy will be taken unless complaints, allegations or concerns have been explored within the context of this framework beforehand.**

Whilst not every question will be relevant in all cases this framework is intended to provide structure and consistency to any fact-finding, assessment and recording process. The framework will help to provide a moment to 'stop and think' before moving forward with a case.

It is the managers responsibility to gather the necessary information prior to any discussion, if necessary, with HR. The gathering of information within this framework does not constitute a formal investigation.

Remember - **What not** who is responsible for the event/incident?

A - Event/Incident/Trigger – what has actually happened?	
1. What is the allegation, incident or event?	

Action Card 5 - Case Assessment Framework

For Use By: Authorised Officers, panel members, line managers, People Team, staff-side representatives

Liaises With: People Team, Staff-side representatives

2. Are there any known previous events linked to either the process, activity or the individual(s) involved?	
3. How has it been reported? i.e., public, whistle-blower, Freedom to Speak Up, colleague, manager etc	
4. Who is currently aware? i.e., patients, staff, media	
5. Who are the key people/organisations who need to be kept informed and by whom? ie. Safeguarding, Trust on-call, police, family members etc	
B – Stabilisation and the Human Element - How and why did the incident/event take place? i.e. what were the contributing factors	
6. What action has been taken to stabilise or prevent reoccurrence?	
7. Who is hurt or harmed? (This could be patients, staff, public, organisation - detail all those relevant List out all victims	1 st 2 nd 3 rd 4 th 5 th
8. What are their needs? (if more than one mentioned in 7 above, please state each)	
9. Whose obligation is it to meet those needs? (if more than one mentioned	

Action Card 5 - Case Assessment Framework

For Use By: Authorised Officers, panel members, line managers, People Team, staff-side representatives

Liaises With: People Team, Staff-side representatives

in 7 above, please state each	
10. What immediate risks exist? Consider patients, staff, the individual, the organisation and any witnesses. Are there any immediate actions required to keep people safe? If there are, what are they and who needs to take the action and when?	
11. Does the reporting person have a view on resolution?	
C – The Gateway - Rules/Training/Supervision – a formal investigation into the actions of others will only take place if these issues are all true	
12. Do rules exist and they are accepted and normal practice?	
13. Do the rules work?	
14. Was there knowingly a deviation from rules or policy? i.e. was this deliberate/intentional and “out-of-step” with peers and colleagues	Yes
15. Is training available and was the training sufficient and current?	
16. Was the required supervision in place with acceptable and normal oversight?	

Action Card 5 - Case Assessment Framework

For Use By: Authorised Officers, panel members, line managers, People Team, staff-side representatives

Liaises With: People Team, Staff-side representatives

D - Restoration, Learning and Normality		
17. What needs to happen now? What initial restorative conversations need to take place with who and by whom?		
18. How will we know when these conversations have taken place, and the outcome?		
19. Is everyone engaged in doing the right thing?		
20. Are people back at work?		Yes.
21. Is there anything else that needs to be done now to prevent reoccurrence and return normality?		
22. What organisational learning exists and how will that be actioned and monitored?		

Note: Always consult HR before issuing any written communications

ALWAYS ENSURE ALL RELEVANT ACTIONS AND DECISIONS ARE DOCUMENTED

Action Card 6 - Authorised Officers

For Use By: Authorised Officers, Panel Members, Line Managers, People Team, Staff-side representatives

Liaises With: People Team, Staff-side representatives

Non-medical/dental staff

Disciplinary Action	Level of Staff being Disciplined	Authorised Officer
Management Words of Advice	Executive Director Members of the Trust Leadership Team	Chairman, Non-Executive Directors, Chief Executive
	Managers at level below Executive Director/Member of the Trust Leadership Team	Executive Director
	All other staff, including professionally registered staff	First or second Line Manager
First Written Warning	Executive Director Members of the Trust Leadership Team	Chairman, Non-Executive Directors, Chief Executive
	Managers at level below Executive Director/Member of the Trust Leadership Team	Executive Director
	All other staff, including professionally registered staff	Manager of section, ward, unit or department; Clinical manager
Final written warning	Executive Director Members of the Trust Leadership Team	Chairman, Non-Executive Directors, Chief Executive Head of Department/Directorate/Division/Manager
	Managers at level below Executive Director/Member of the Trust Leadership Team	Executive Director

Action Card 6 - Authorised Officers

For Use By: Authorised Officers, Panel Members, Line Managers, People Team, Staff-side representatives

Liaises With: People Team, Staff-side representatives

	All other staff, including professionally registered staff	Head of Department/Directorate/Division/Manager
Suspension	Executive Director Members of the Trust Leadership Team	Chairman, Non-Executive Directors, Chief Executive
	Managers at level below Executive Director/Member of the Trust Leadership Team	Executive Director
	All other staff, including professionally registered staff	Head of Department/Directorate/Division/Manager
Downgrading	Executive Director Members of the Trust Leadership Team	Chairman, Non-Executive Directors, Chief Executive
	Managers at level below Executive Director/Member of the Trust Leadership Team	Executive Director
	All other staff, including professionally registered staff	Deputy or Assistant Director/Member of Operational Board
Dismissal	Executive Director Members of the Trust Leadership Team	Chairman, Non-Executive Directors, Chief Executive
	Managers at level below Executive Director/Member of the Trust Leadership Team	Executive Director
	All other staff, including professionally registered staff	Deputy or Assistant Director/Member of Operational Board

Action Card 6 - Authorised Officers

For Use By: Authorised Officers, Panel Members, Line Managers, People Team, Staff-side representatives

Liaises With: People Team, Staff-side representatives

Registered nursing and midwifery staff

Disciplinary Action	Level of Staff being Disciplined	Authorised Officer (all NMC registered)
First written warning	Any	Immediate line manager
Final written warning	Band 4 to 7	Any matron or head of department
	Band 8a and above	NMC registered nurse or midwife in a more senior band
Dismissal	Executive Director and Deputy level	Chairman and Chief Executive
	Band 8a to Band 8d	Deputy Chief Nurse or Deputy Director of Quality (if NMC registered)
	Band 4 to 7	Divisional Director of Quality & Nursing

Medical and Dental Staff

Disciplinary Action	Level of Staff subject to Disciplinary process	Authorised Officer
Management Words of Advice	Consultant Junior Staff Trainee staff	Specialty Director/Chief of Service*
First Written Warning	Consultant Junior Staff Trainee staff	Specialty Director/Chief of Service*
Final Written Warning	Consultant Junior Staff Trainee staff	Executive Director, Medical Director* or their Deputy
Suspension	Consultant Junior Staff Trainee staff	Executive Director, Medical Director* or their Deputy
Downgrading	Consultant	Chief Executive and Medical Director*
	Junior Staff/Trainee staff	Executive Director, Medical Director*

Action Card 6 - Authorised Officers

For Use By: Authorised Officers, Panel Members, Line Managers, People Team, Staff-side representatives

Liaises With: People Team, Staff-side representatives

Dismissal	Consultant	Chief Executive and Medical Director*
	Junior Staff/Trainee staff	Executive Director, Medical Director*

*No action will be taken without the advance notification of the Medical Director

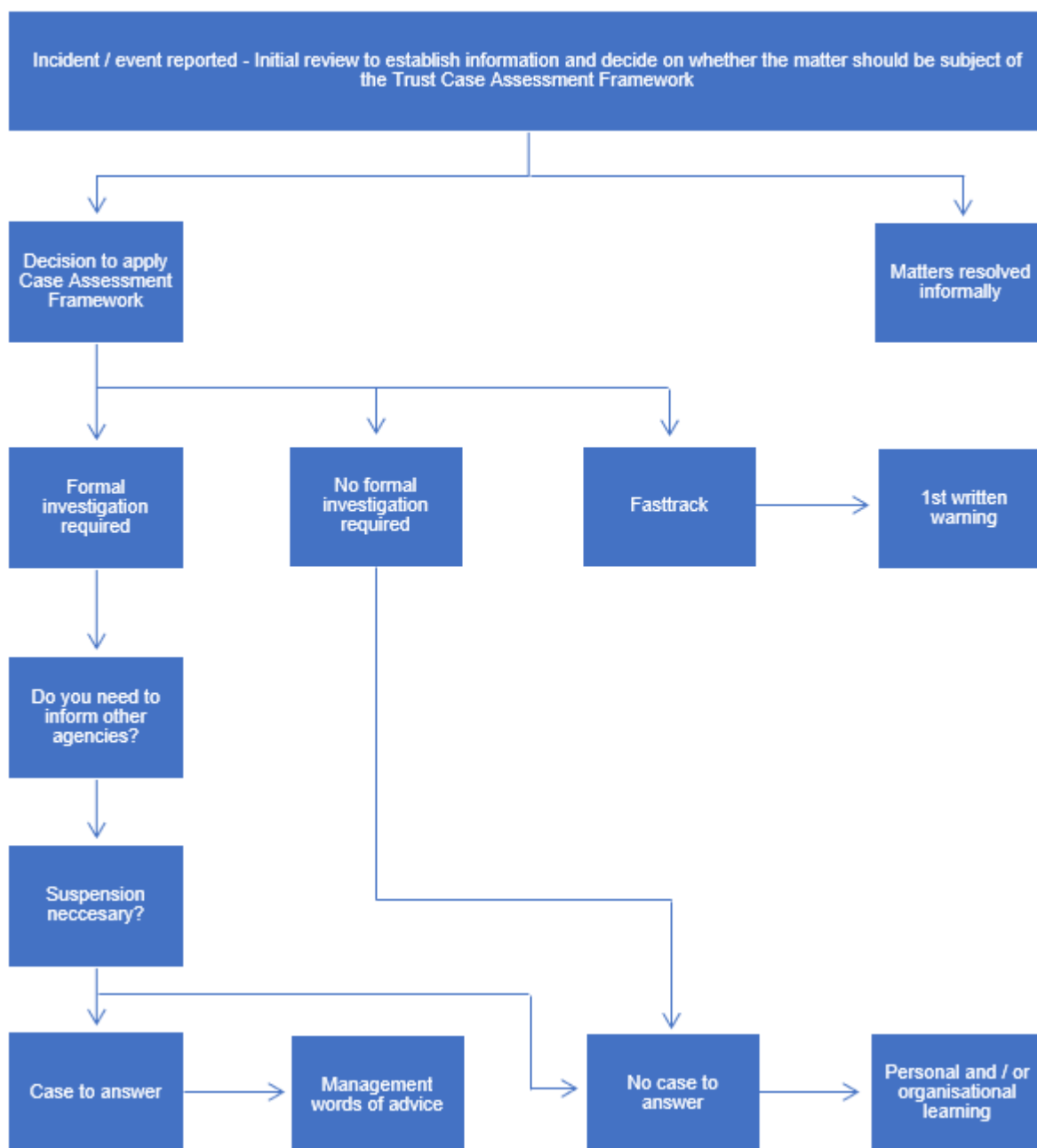
Action Card 7 - Disciplinary Process Flow-Chart

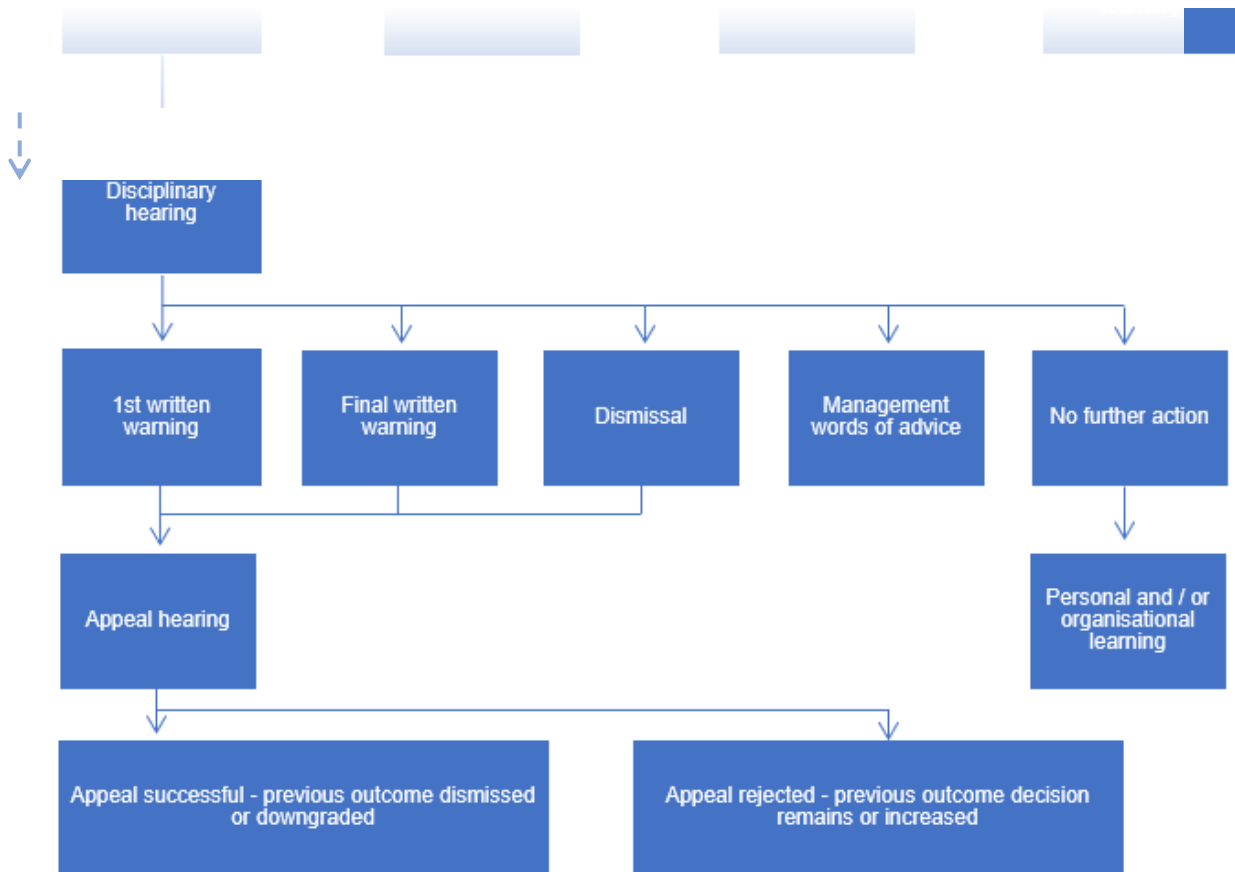
For Use By: Panel members, Authorised Officers, Line managers, People Team, staff side representatives

Liaises With: People Team

Always consult the People Team before issuing any written communications.

ALWAYS ENSURE ALL RELEVANT ACTIONS ARE DOCUMENTED





Action Card 8 - Restorative Guidance

For Use By: All Employees

Liaises With: People Team

RESTORATIVE GUIDANCE

EVENT/INCIDENT/TRIGGER

Always remember

The event – could be something that has not gone as planned

An event that could have caused or did result in harm to people or groups of people. This can include psychological harm and feelings of hurt, physical harm or damage to property.

Comments

Be clear about what the event is that has not gone to plan. This process is intended to establish restoration of the situation and not to assign blame. Remember colleagues may feel cautious giving their account so it's important that managers create a psychologically safe space to share an individual's account. It is important that managers enter, what may be a very difficult situation, with compassion, kindness, respect and understanding for everyone.

STABILISATION AND THE HUMAN ELEMENT

Following an event, the process of stabilisation should be led by an

Individual manager – there should only be 2 managers if one manager asks for support for their own development needs.

Always remember - (these are your prompts when reviewing and some areas overlap. You don't always need to have linear conversations)

Stabilise the situation.

In stabilisation recognise how psychological safety can be impacted by being involved and participating in this process.

This does not include removing anyone from work, their workstation or restricting duties unless the safety of patients and colleagues require it.

Comments

Provide reassurance no decisions will be made until explored further / all the facts are gathered. Stabilising the situation involves potentially many other actions, such as first aid, (formal) reporting, inform patients, prevent same event happening again etc. Do you need to move the colleague as an interim measure to support? Is there potential for service user harm by not moving? Consider who this applies to also e.g., colleague, manager, others.

Action Card 8 - Restorative Guidance

For Use By: All Employees

Liaises With: People Team

If the safety of patients and colleagues are impacted then the Trust Risk Assessment for Suspending should be completed.

Ask, who is hurt?

This can include service users, service providers, colleagues and/or people external to our organisation (could be

physical, financial, psychological, social)

In answering this you need to understand the hurt and how it has impacted but you need to ask them the question, not assume you know.

Colleagues may feel stressed, failed by the Trust, witnesses feeling awkward and/or uncomfortable. Hurt is not only about feelings, can also be damage / missed treatment etc.

Be aware of your personal biases that may impact on your perceptions of who is hurt.

What is their need?

Support, include clear communication plan, regular and timely. Consider colleague support policy, interventions, etc. Are you aware of the whole support offer available to our colleagues.

Always ask what they need as it may not be obvious. Can include resolution/closure, support, a link person, effective communication, however it is necessary to be clear that this can be wider than HR matters- this is to prevent it happening again.

Consider cultural sensitivities and protected characteristics and make adjustments to support the individuals involved.

Whose obligation is it to meet that need?

Someone especially assigned to ensure the restorative process is properly applied.

Often the organisation is in the best place to meet that need – e.g., management, staff side, HR, support resources available etc.

Everyone needs to be clear on what their responsibilities and expectations are- need to be clear on who is best placed to decide this.

What is the understanding of what happened?

Did it make sense? (Consider/ask why it made sense to the individual) - can ask for a written account regarding the event to gain a full understanding.

This is the key question as the only way we can understand this is if the individuals can give their account and be listened to.

Consider historical practice, custom and practice, cultural sensitivities? Do not consider the norm as this is only relevant for the Gateway. Critical question to ask here is what made sense to the colleague at the time.

Action Card 8 - Restorative Guidance

For Use By: All Employees

Liaises With: People Team

Are the resources and systems available and appropriate?

Consider staffing levels/numbers, observations, resilience, resources, systems, required to manage, and any other resources appropriate.

Consideration of environmental & cultural microaggressions where protected characteristics are concerned.

WHAT NEXT?

You do not always need to complete the Gateway review. Following completion of the Stabilisation process consider:

Comments

Are you satisfied that no further action is required following stabilisation?

Make sure to consider restoration to meet hurt with healing and reintegration for the individual and the organisation.

What learning is there and for who? Individual, team, service, profession, or organisation?

Are there unanswered questions or outstanding concerns that need further exploration?

Complete the Gateway review.

GATEWAY and the HUMAN ELEMENT

If you are satisfied at 'Stabilisation', you do not need to move to the 'Gateway' but should always consider the personal and organisational learning at 'Restoration and Reintegration'

An investigation into anyone's individual actions is only warranted if all of the below that are applicable are true:

Comments

Are rules available? Accepted, practiced and in place? e.g., patient confidentiality.

e.g.: SOP's, policies, professional code of conduct, unwritten rules/standards or accepted practice.

Are the rules workable? Do they make sense in the context, environment, in the routine, consider work as done versus work imagined?

Recognising if they are workable in the timescales given.

Were the rules knowingly departed from? Is there awareness that people's actions were diverging from what is

Unconscious human error is no reason to invoke a formal process, this is not only about unconscious human error, also other unconscious deviations from rules- this should

Action Card 8 - Restorative Guidance

For Use By: All Employees

Liaises With: People Team

described? Rules that made sense to you at that time.

Exception to peers? Is the behaviour very different to what colleagues/peers with comparable experience and skills would do in similar circumstances? If the answer is yes, then it is in exception to peers.

Was training available? Consider the availability, quality and regularity of the training, and whether that was appropriate for our people and the situation (if applicable).

Sufficient supervision – was it provided? Take into consideration:

- Does the supervisor or manager know the work as done?
- Does the supervisor or manager know the work as done, but didn't realise it was a departure from the rules?
- Does the supervisor or manager know the work as done but doesn't act? (Does the manager understand the job / process of a task / duty etc?)

Regardless of whether there is an investigation make sure you consider restoration to meet hurt with healing and reintegration for the individual and the organisation

RESTORATION LEARNING AND NORMALITY

Have we been successful in applying Restorative Just Culture?

Moral Engagement

Were we able to engage all parties mentioned under Stabilisation in considering the right thing to do?

link back to the understanding of the circumstances of the event - why did it make sense to the colleague(s)?

Are others in the same circumstances knowingly breaking the same rules? Would others have responded similarly?

e.g., induction, mandatory training - is this appropriate to the alleged situation? Was the training appropriate for the event, if not, the answer may be no.

Important organisational learning – may include coaching, supervision, training, systems / processes.

This could even be an alert on a system that provides a prompt / reminder e.g. when accessing patient records an alert will flag asking if you are authorised to view the records. Was the supervision applicable for the event, if not the answer may be no.

What learning is there for who? Individual, team, service, profession or organisation

Comments

Has there been an apology and has this been undertaken. Have all colleagues had the opportunity to reflect and re-engage.

Please refer to the reflective guidance (if needed).

Action Card 8 - Restorative Guidance

For Use By: All Employees

Liaises With: People Team

Emotional Healing

Were we able to help cope with guilt and humiliation; did we offer empathy?

Consider sign posting, what is the need, don't assume refer back to stabilisation, this may be an on-going process, check ins after the event and ongoing.

Reintegrating Practitioner

Were we able to do what was needed to get the colleague back in their job?

Ask what they need, don't assume, refer back to stabilisation, how can this be accommodated and by whom and in what timescale - may be on-going process, check ins after the event and ongoing.

Consider the use of a restorative conversation with the individuals.

Organisational Learning

Explored and addressed systemic causes of harm - this is best enabled through a learning review process. It is an important step for every organisation to be able to identify systemic shortcomings.

Important for the recovery process- can be thematic or individual- need to evidence. What have we learnt, what has this taught us.

Who do I need to share this with to make sure events cannot be repeated?

Completed by (name):

Date completed:

Nominated HR Support (if required):

Action Card 9 - Reflective Guidance

FOR USE BY: All Employees

LIAISES WITH: People Team, Staff-side representatives

Reflection Guidance:

The purpose of a reflective account is to support experiential learning both for the individual and for the Trust. This enables a continuous cycle of improvement both for a repeated experiences and standalone experiences.

It is key within the Reflective Account that you acknowledged your feelings and consider the positives and the negatives to enable you to achieve some perspective on the event.

Description of the Event:

Please describe the event in detail considering the following questions:

1. What happened?
2. When did it occur?
3. Who was there?
4. What did they do?
5. What was the outcome?

Description of feelings about the Event:

Please describe how the event made you feel, considering the following questions:

1. How did you feel at the time?
2. What did you think at the time?
3. What impact did your emotions, beliefs and values have?
4. What do you think others were feeling?
5. What did you think about the event afterwards?

Evaluation of Event:

Please describe how things went, describing the positives and the negatives and considering the following questions:

1. What went well?
2. What could have been better?
3. Do you feel the event/situation is resolved?

Action Card 9 - Reflective Guidance

FOR USE BY: All Employees

LIAISES WITH: People Team, Staff-side representatives

Understanding of Event:

Given the above reflections please describe you understanding of the event now, considering the following questions:

- 1. What went well?*
- 2. What could have been better?*
- 3. What might have helped or improved things?*

Learning Outcome of the Event:

Considering the above reflections please describe what you have learnt considering the following questions:

- 1. What can I now do better?*
- 2. What could/should have I done differently?*
- 3. What skills or resources would I need to handle this better?*

Actions Plan to prevent re-occurring event:

Considering the above reflections and learning please describe what actions you will take to ensure the same event do not re-occur, considering the following questions:

- 1. What will I now do differently to ensure this does not happen again?*
- 2. How will I adapt my skills and practices to ensure this does not happen again?*
- 3. How will I support my colleagues/Team/Trust to prevent this from occurring again in the future?*
- 4. Can I identify any training that will support my and Trust learning/reflections and improve the situation/Event?*

Colleague signature:

Dated:

Feedback (if applicable) from

Signed:

Dated: